

WSR 08-05-097
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)

[Filed February 15, 2008, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-081 and 07-14-081.

Title of Rule and Other Identifying Information: The department is amending chapter 388-828 WAC regarding the DDD assessment.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on April 22, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 15, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule making adds sections to chapter 388-828 WAC regarding the residential algorithm. The residential algorithm determines the residential service level of support for clients receiving supported living, group home, group training home, and companion home residential services.

The department is amending the following sections to include references to the residential algorithm and the individual and family services algorithm: WAC 388-828-1060, 388-828-5020, 388-828-5140, 388-828-5520, and 388-828-8020.

The department is amending the following sections to maintain consistency with the DDD computer based assessment, agency standards, and to correct references to other rule: WAC 388-828-1480, 388-828-1540, 388-828-1640, and 388-828-5940.

The proposed rules incorporate the following emergency rules:

- WAC 388-828-5080 filed as WSR 07-21-145 which amends the WAC to accurately reflect the protective supervision age-based score adjustment.
- WAC 388-828-1200 through 388-828-1300 filed as WSR 07-23-020 which amends and repeals the WAC to remove penalties for clients and their families that decline to provide income information when receiving the DDD assessment.
- WAC 388-828-5360 filed as WSR 07-24-029 which amends the back-up caregiver availability table. The department will propose the other emergency rules

included in WSR 07-24-029 in the proposed rules for the individual and family services program.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed the proposed rule amendments and has determined that small businesses will not be disproportionately impacted by these changes and any costs will not be considered "more than minor."

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

February 11, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5080 How does DDD determine your adjusted protective supervision acuity score? DDD determines your adjusted protective supervision acuity score by applying the following age-based score adjustments to your level of monitoring score for question number one in WAC 388-828-5060:

If you are:	Then your age-based score adjustment is:
18 years or older	Score is equal to your level of monitoring score
16-17 years of age	Subtract ((+)) <u>2</u> from your level of monitoring score
12-15 years of age	Subtract ((=)) <u>3</u> from your level of monitoring score
8-11 years of age	Subtract ((3)) <u>4</u> from your level of monitoring score
5-7 years of age	Subtract ((4)) <u>5</u> from your level of monitoring score
0-4 years of age	Subtract ((5)) <u>6</u> from your level of monitoring score
If your adjusted level of monitoring score is a negative number, your adjusted protective supervision acuity score is zero.	

Example: If you are fifteen years old and "close proximity, (e.g., 1-2 hours, structured)" is identified as your level of

monitoring score, your adjusted protective supervision acuity score is: Your close proximity score of four minus age-based score adjustment of ~~((two))~~ three. For age twelve through fifteen, this equals an adjusted protective supervision score of ~~((two))~~ one.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1200 ~~((Will DDD ask your family to disclose))~~ **Who does DDD ask to disclose financial ~~((and dependent))~~ information?** When administering the DDD assessment, DDD ~~((will only))~~ is required to ask for ~~((information regarding your family's))~~ annual gross income information ~~((and the number of household dependents when))~~ from:

- (1) Your family, if:
 - (a) You are age seventeen or younger; and
 - ~~((2))~~ (b) Your family has not made a request for your admission to a residential habilitation center (RHC)~~((:))~~; or
- (2) You, if:
 - (a) You are age eighteen or older; and
 - (b) You are receiving state-only funded services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1220 ~~Will DDD require ~~((your family to provide supporting documentation of their annual gross income and number of household dependents))~~ the reported annual gross income to be verified with supporting documentation?~~ DDD accepts ~~((your family's))~~ a verbal report of annual gross income and does not require ~~((your family to provide))~~ supporting documentation ~~((of their annual gross income and number of household dependents))~~ to verify the reported information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-828-1240 What does DDD do when family income and household dependent information are not provided?
- WAC 388-828-1260 What action will DDD take if your family does not report income and dependent information?
- WAC 388-828-1280 How will your access to, or receipt of, DDD HCBS waiver services be affected if your family does not report family income and dependent information?

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1300 ~~How will your access to, or receipt of, ~~((Medicaid personal care))~~ DDD paid services, private duty nursing services, or SSP be affected if ~~((your family does not report family))~~ income ~~((and dependent))~~ information is not reported?~~ Your access to, or receipt of, ~~((Medicaid personal care))~~ DDD paid services per ~~((chapter 388-106))~~ WAC 388-828-1440, Private duty nursing services for children seventeen years of age and younger per WAC 388-551-3000, or SSP per chapter 388-827 WAC is not affected if ~~((your family does not report))~~ income ~~((and dependent))~~ information is not reported.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5360 ~~How does DDD determine the risk level score of your backup caregiver not being able to provide the supports you need when you need them?~~ The following table identifies the criteria that are used to calculate the risk level score of your backup caregiver not being able to provide the supports you need when you need them:

If the availability of your backup caregiver is:	Then your risk level score is:
(1) Your backup caregivers are available routinely or upon request as evidenced by a score of 0 to 2 for question 1 of the backup caregiver subscale; and (2) You have a person identified as a backup caregiver that does not live with you evidenced by the "Lives with client" checkbox not being selected as contact details information for him or her.	1 (Not at risk)
(3) Your backup caregivers are available upon an emergency only basis evidenced by a score of 4 for question 1 of the backup caregiver subscale; ((and)) <u>or</u> (4) "Lives with client" has been selected for all of the persons you have identified as your backup caregivers.	2 (Some risk)
(5) You have no other caregiver available evidenced by a score of 9 for question 1 of the backup caregiver subscale.	3 (High risk)

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1060 ~~What is the purpose of the DDD assessment?~~ The purpose of the DDD assessment is to provide a comprehensive assessment process that:

- (1) Collects a common set of assessment information for reporting purposes to the legislature and the department.
- (2) Promotes consistency in evaluating client support needs for purposes of planning, budgeting, and resource management.
- (3) Identifies a level of service and/or number of hours that is used to support the assessed needs of clients who have been authorized by DDD to receive:
 - (a) Medicaid personal care services or DDD HCBS waiver personal care per chapter 388-106 WAC;

- (b) Waiver respite care services per chapter 388-845 WAC;
 - (c) Services in the voluntary placement program (VPP) per chapter 388-826 WAC;
 - (d) Supported living residential services per chapter 388-101 WAC;
 - (e) Group home residential services per chapter 388-101 WAC;
 - (f) Group training home residential services per chapter 388-101 WAC;
 - (g) Companion home residential services per chapter 388-829C WAC; or
 - (h) Individual and family services per chapter 388-832 WAC.
- (4) Records your service requests.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1480 Are there any exceptions allowing authorization of a DDD paid service prior to administering a DDD assessment? During the year prior to July ~~((2008))~~ 2009, due to staff resources, DDD may authorize or reauthorize the following services before a DDD assessment is administered:

- (1) Funding from the legislature that provides resources for services to be available by a certain date; or
- (2) ~~((The annual reallocation of dollars for traditional family support in June 2007; or~~

~~(3))~~ Emergency services as determined by DDD as critical to the client's health and safety.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1540 Who participates in your DDD assessment? (1) All relevant persons who are involved in your life may participate in your DDD assessment, including your parent(s), legal representative/guardian, advocate(s), and service provider(s).

(2) DDD requires that at a minimum: You, one of your respondents, and ~~((you))~~ a DDD ~~((case resource manager/social worker))~~ employee participate in your DDD assessment interview. In addition:

- (a) If you are under the age of eighteen, your parent(s) or legal guardian(s) must participate in your DDD assessment interview.
- (b) If you are age eighteen or older, your court appointed legal representative/guardian must be consulted if he/she does not attend your DDD assessment interview.
- (c) If you are age eighteen and older and have no legal representative/guardian, DDD will assist you to identify a respondent.
- (d) DDD may require additional respondents to participate in your DDD assessment interview, if needed, to obtain complete and accurate information.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1640 What are the mandatory panels in your DDD assessment? After DDD has determined your client group, DDD determines the mandatory panels in your DDD assessment using the following tables. An "X" indicates that the panel is mandatory; an "O" indicates the panel is optional. If it is blank, the panel is not used.

(1) DDD "Assessment main" and client details information

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State Only Paid Services
Assessment Main	X	X	X	X
Demographics	X	X	X	X
Overview	X	X	X	X
Addresses	X	X	X	X
Collateral Contacts	X	X	X	X
Financials	X	X	X	X

(2) Supports intensity scale assessment

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Home Living	X	X	X	X
Community Living	X	X	X	X
Lifelong Learning	X	X	X	X
Employment	X	X	X	X
Health & Safety	X	X	X	X
Social Activities	X	X	X	X
Protection & Advocacy	X	X	X	X

(3) Support assessment for children

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Activities of Daily Living	X	X	X	X
IADLs (Instrumental Activities of Daily Living)	X	X	X	X
Family Supports	X	X	X	X
Peer Relationships	X	X	X	X
Safety & Interactions	X	X	X	X

(4) Common support assessment panels

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Medical Supports	X	X	X	X
Behavioral Supports	X	X	X	X
Protective Supervision	X	X	X	X
DDD Caregiver Status*	X	X	X	X
Programs and Services	X	X	X	X

*Information on the DDD Caregiver Status panel is not mandatory for clients receiving paid services in an AFH, BH, SL, GH, SOLA, or RHC.

(5) Service level assessment panels

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Environment		X	X	O
Medical Main		O	X	O
Medications		X	X	X
Diagnosis		X	X	X
Seizures		X	X	X
Medication Management		X	X	X
Treatments/programs		X	X	X
ADH (Adult Day Health)		O	O	O
Pain		X	X	X
Indicators-Main		O	X	O
Allergies		X	X	X
Indicators/Hospital		X	X	X
Foot		X	X	O
Skin		X	X	O
Skin Observation		O	O	O
Vitals/Preventative		X	X	O
Comments		O	O	O
Communication-Main		O	X	O
Speech/Hearing		O	X	O
Psych/Social		O	X	O
MMSE (Mini-Mental Status Exam)		O	X	O
Memory		O	X	O
Behavior		O	X	O

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Depression		O	X	O
Suicide		O	O	O
Sleep		O	O	O
Relationships & Interests		O	O	O
Decision Making		O	X	O
Goals		X	O	O
Legal Issues		O	O	O
Alcohol		O	O	O
Substance Abuse		O	O	O
Tobacco		O	X	O
Mobility Main		O	X	O
Locomotion In Room		O	X	O
Locomotion Outside Room		O	X	O
Walk in Room		O	X	O
Bed Mobility		O	X	O
Transfers		O	X	O
Falls		O	O	O
Toileting-Main		O	X	O
Bladder/Bowel		O	X	O
Toilet Use		O	X	O
Eating-Main		O	X	O
Nutritional/Oral		O	X	O
Eating		O	X	O
Meal Preparation		O	X	O
Hygiene-Main		O	X	O
Bathing		O	X	O
Dressing		O	X	O
Personal Hygiene		O	X	O
Household Tasks		O	X	O
Transportation		O	X	O
Essential Shopping		O	X	O
Wood Supply		O	X	O
Housework		O	X	O
Finances		O	O	O
Pet Care		O	O	O
Functional Status		O	O	O
Employment Support*		X*	X*	X*
Mental Health		X	X	X
DDD Sleep*		X*	O	O

*Indicates that:

- (a) The "Employment Support" panel is mandatory only for clients age twenty-one and older who are on or being considered for one of the county services listed in WAC 388-828-1440(2).
- (b) The "DDD Sleep" panel is mandatory only for clients who are age eighteen or older and who are receiving:
- (i) DDD HCBS Core or Community Protection waiver services; or
 - (ii) State-Only residential services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5020 How is information in the protective supervision acuity scale used by DDD? (1) Information obtained in the protective supervision acuity scale is one of the factors used by DDD to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive;

(b) Your individual and family services level, if you are authorized to receive individual and family services per chapter 388-832 WAC; and

(c) Your residential service level of support, if you are authorized to receive a residential service listed in WAC 388-828-10020.

(2) The protective supervision acuity scale is not used when determining your Medicaid personal care or waiver personal care; and

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5140 How is information in the DDD caregiver status acuity scale used by DDD? (1) Information obtained in the DDD caregiver status acuity scale is one of the factors used by DDD to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive; and

(b) Your individual and family services level, if you are authorized to receive individual and family services.

(2) The DDD caregiver status acuity scale does not affect service determination for the Medicaid personal care or waiver personal care assessment; and

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5520 How is information in the DDD behavioral acuity scale used by DDD? (1) Information obtained in the DDD behavioral acuity scale is one of the factors used by DDD to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive;

(b) Your individual and family services level, if you are authorized to receive individual and family services per chapter 388-832 WAC; and

(c) Your residential service level of support, if you are authorized to receive a residential service listed in WAC 388-828-10020.

(2) The DDD behavioral acuity scale does not affect service determination for the Medicaid personal care or waiver personal care assessment.

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5940 Are there any exceptions when the respite assessment is not used to determine the number of hours for waiver respite services? The respite assessment is not used to determine waiver respite when you are receiving any of the following:

(1) Voluntary placement program services per chapter 388-826 WAC; or

(2) Companion home services per chapter ~~((388-824))~~ 388-829C WAC.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-8020 What components contained in the individual support plan module determine a service level and/or number of hours? The following components of the individual support plan module determine a service level and/or number of hours:

(1) The foster care rate assessment, as defined in chapter 388-826 WAC ~~((, is the only component in the individual support plan module that determines a service level and/or number of hours));~~

(2) The individual and family services algorithm, as defined in WAC 388-828-9000 through 388-828-9140; and

(3) The residential algorithm, as defined in WAC 388-828-10000 through 388-828-10380.

NEW SECTION

WAC 388-828-10000 What is the residential algorithm? The residential algorithm is a formula in the DDD assessment that determines the level of residential services and supports you may expect to receive based on your assessed support needs.

NEW SECTION

WAC 388-828-10020 When is the residential algorithm administered? The residential algorithm must be administered when you are approved to receive one of the following paid services:

(1) Supported living residential services per chapter 388-101 WAC;

(2) Group home residential services per chapter 388-101 WAC;

(3) Group training home services per chapter 388-101 WAC; or

(4) Companion home residential services per chapter 388-829C WAC.

NEW SECTION

WAC 388-828-10040 Where does the residential algorithm obtain your support needs information? The residential algorithm obtains your support needs information from the following components of your current DDD assessment:

- (1) The supports intensity scale assessment (SIS) per WAC 388-828-4000 through 388-828-4320;
- (2) The DDD protective supervision scale per WAC 388-828-5000 through 388-828-5100;
- (3) The DDD behavioral acuity scale per WAC 388-828-5500 through 388-828-5640;
- (4) The DDD medical acuity scale per WAC 388-828-5660 through 388-828-5700;
- (5) The program and services panel per WAC 388-828-6020;
- (6) The DDD seizure acuity scale per WAC 388-828-7040 through 388-828-7080; and
- (7) The DDD sleep panel per WAC 388-828-10260.

- (3) Mid-frequency support needs score as defined in WAC 388-828-10140;
- (4) Behavior support needs score as defined in WAC 388-828-10160;
- (5) Medical support needs score as defined in WAC 388-828-10180;
- (6) Seizure support needs score as defined in WAC 388-828-10200;
- (7) Protective supervision support needs score as defined in WAC 388-828-10220;
- (8) Ability to Seek Help score as defined in WAC 388-828-10240;
- (9) Nighttime support needs score as defined in WAC 388-828-10260;
- (10) Toileting support needs score as defined in WAC 388-828-10280; and
- (11) Total critical support time as defined in WAC 388-828-10300 through 388-828-10360.

NEW SECTION

WAC 388-828-10060 How does the residential algorithm identify your residential support needs score? The residential algorithm uses the support needs information from your current DDD assessment to identify the following residential support needs scores:

- (1) Community protection program enrollment as defined in WAC 388-828-10100;
- (2) Daily support needs score as defined in WAC 388-828-10120;

NEW SECTION

WAC 388-828-10080 What residential service levels of support does DDD use? DDD uses the following residential service levels of support which correspond with your assessed support needs (see WAC 388-828-10060):

Support Need Level	Typical Support Need Characteristics from the DDD Assessment	Expected Level of Support*
Weekly or less Support Level 1	Client requires supervision, training, or physical assistance in areas that typically occur weekly or less often, such as shopping, paying bills, or medical appointments. Client is generally independent in support areas that typically occur daily or every couple of days.	Clients assessed to need this level receive support on a weekly basis or less frequently.
Multiple times per week Support Level 2	Client is able to maintain health and safety for a full day or more at a time AND needs supervision, training, or physical assistance with tasks that typically occur every few days, such as light housekeeping, menu planning, or guidance and support with relationships. Client is generally independent in support areas that must occur daily.	Clients assessed to need this level receive support multiple times per week.
Intermittent daily - Low Support Level 3A	Client is able to maintain health and safety for short periods of time (i.e., hours, but not days) OR needs supervision, training, or physical assistance with activities that typically occur daily, such as bathing, dressing, or taking medications.	Clients assessed to need this level receive daily support.
Intermittent daily -Moderate Support Level 3B	Client requires supervision, training, or physical assistance with multiple tasks that typically occur daily OR requires frequent checks for health and safety or due to disruptions in routines.	Clients assessed to need this level receive daily support and may receive checks during nighttime hours as needed.
Close proximity Support Level 4	Client requires support with a large number of activities that typically occur daily OR is able to maintain health and safety for very short periods of time (i.e., less than 2 hours, if at all) AND requires occasional health and safety checks or support during overnight hours.	Clients assessed to need this level receive supports in close proximity 24 hours per day. Support hours may be shared with neighboring households.
Continuous day and continuous night Support Level 5	Client is generally unable to maintain health and safety OR requires support with a large number of activities that occur daily or almost every day AND requires nighttime staff typically within the household.	Clients assessed to need this level receive support 24 hours per day.

Support Need Level	Typical Support Need Characteristics from the DDD Assessment	Expected Level of Support*
Community Protection Support Level 6	Client is enrolled in the community protection program.	Clients assessed to need this level of support will receive 24 hour per day supervision per community protection program policy.
*Emergency access to residential staff is available to all clients, 24-hours per day, regardless of the residential service level of support the assessment indicates.		

NEW SECTION

WAC 388-828-10100 How does the residential algorithm determine if you are enrolled in the community protection program? The residential algorithm determines that you are enrolled in the community protection program if your current DDD assessment (see WAC 388-828-6020) shows that you are:

- (1) On the community protection waiver; or
- (2) Considered for the community protection waiver.

NEW SECTION

WAC 388-828-10120 How does the residential algorithm determine your daily support needs score? The residential algorithm determines that you have daily support needs if you meet or exceed all of the qualifying scores for one or more of the following activities from the SIS:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your score for type of support is:	And your score for frequency of support is:	And your daily support time is:
A1: Using the toilet	2 or more	3 or more	1 or more
A4: Eating food	2 or more	3 or more	1 or more
A6: Dressing	2 or more	3 or more	1 or more
A7: Bathing, personal hygiene, grooming	2 or more	3 or more	1 or more
A9: Using currently prescribed equipment or treatments	2 or more	3 or more	1 or more
E1: Taking medication	2 or more	3 or more	1 or more
E2: Avoiding health and safety hazards	1 or more	3 or more	1 or more
E4: Ambulating and moving about	3 or more	3 or more	1 or more
Or			
Any combination of 3 of the SIS activities listed above (A1, A4, A6, A7, A9, E1, E2, E4)	1 or more	3 or more	1 or more

NEW SECTION

WAC 388-828-10130 How does DDD define mid-frequency support? DDD defines mid-frequency support as support for selected SIS activities that most people perform every two to four days.

NEW SECTION

WAC 388-828-10140 How does the residential algorithm determine your mid-frequency support needs score? The residential algorithm determines that you have mid-frequency support needs if you meet one of the following three conditions:

- (1) You meet or exceed all of the qualifying scores for one or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:
A3: Preparing food	2 or more	2 or more	2 or more
A5: Housekeeping and cleaning	3 or more	3 or more	2 or more
B2: Participating in recreational/leisure activities in community settings	3 or more	2 or more	2 or more
B7: Interacting with community members	3 or more	2 or more	2 or more
G3: Protecting self from exploitation	2 or more	2 or more	2 or more

(2) Or you meet or exceed all of the qualifying scores for four or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)				
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Score if you meet or exceed criteria
A1: Using the toilet	1 or more	2 or more	1 or more	
A3: Preparing food	1 or more	2 or more	1 or more	
A4: Eating food	1 or more	2 or more	1 or more	
A5: Housekeeping and cleaning	1 or more	2 or more	1 or more	
A6: Dressing	1 or more	2 or more	1 or more	
A7: Bathing, personal hygiene and grooming	1 or more	2 or more	1 or more	
A9: Using currently prescribed equipment and medications	1 or more	2 or more	1 or more	
B2: Participating in recreational/leisure activities in community settings	1 or more	2 or more	1 or more	
B7: Interacting with community members	1 or more	2 or more	1 or more	
E1: Taking medications	1 or more	2 or more	1 or more	
E2: Avoiding health and safety hazards	1 or more	2 or more	1 or more	
E4: Ambulating and moving about	1 or more	2 or more	1 or more	
G3: Protecting self from exploitation	1 or more	2 or more	1 or more	
Total of all questions where criteria is met or exceed =				Sum of scores entered

(3) Or you meet the qualifying scores for the following SIS activities and your total weekly critical support time score exceeds ten hours:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Your weekly critical support time is:	Enter one time for each qualifying SIS activity
A2: Taking care of clothes (includes laundering)	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B3: Using public services in the community	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B6: Shopping and purchasing foods and services	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F2: Participation in recreational / leisure activities with others	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F8: Engaging in volunteer work	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
G2: Managing money and personal finances	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Mid-frequency support needs weekly critical support time total =					Sum of times entered

NEW SECTION

WAC 388-828-10160 How does the residential algorithm determine your behavior support needs score? The residential algorithm uses your behavioral acuity level from the behavioral acuity scale, per WAC 388-828-5500 through 388-828-5640, to determine your behavior support needs score.

NEW SECTION

WAC 388-828-10180 How does the residential algorithm determine your medical support needs score? The residential algorithm uses your medical acuity level from the

medical acuity scale, per WAC 388-828-5660 through 388-828-5700, to determine your medical support needs score.

NEW SECTION

WAC 388-828-10200 How does the residential algorithm determine your seizure support needs score? The residential algorithm uses your seizure acuity level from the seizure acuity scale, per WAC 388-828-7040 through 388-828-7080, to determine your seizure support needs score.

NEW SECTION

WAC 388-828-10220 How does the residential algorithm determine your protective supervision support needs score? The residential algorithm uses your adjusted protective supervision score from the protective supervision acuity scale, per WAC 388-828-5000 through 388-828-5100, to determine your protective supervision support needs score.

NEW SECTION

WAC 388-828-10240 How does the residential algorithm determine your ability to seek help score? The residential algorithm determines your ability to seek help score by using your answer to the following question found in the protective supervision acuity scale (WAC 388-828-5060(3))

Protective Supervision Acuity Scale Question:	If your answer to the following question is:	Then your ability to seek help score is:
Is client able to summon help?	Can call someone who is remote	Yes
	Can seek help outside the house, nearby	Yes
	Can seek help inside house	No
	Cannot summon help	No

NEW SECTION

WAC 388-828-10260 How does the residential algorithm determine your nighttime support needs score? The residential algorithm scores the answers to each of the five following questions from the DDD sleep panel in the service level assessment to determine your nighttime support needs:

(1)

DDD Sleep Panel Question	If you answer to the question is:	Then your support needs score for this question is:
Nighttime Assistance*needed? Frequency	0 = None or less than monthly	Less than daily
	1 = At least once a month but not once a week	Less than daily
	2 = At least once a week but not once a day	Less than daily
	3 = At least once a day but not once an hour	Daily or more frequently
	4 = Hourly or more frequently	Daily or more frequently

DDD Sleep Panel Question	If you answer to the question is:	Then your support needs score for this question is:
* Nighttime assistance needed means that the person wakes in the night and requires assistance with toileting, mobility, medical issues, behaviors, guidance through sleepwalking, or other support requiring intervention.		

(2)

DDD Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Nighttime assistance needed? Daily support time	0 = None	Less than (<) 30 minutes
	1 = Less than 30 minutes	Less than (<) 30 minutes
	2 = 30 minutes to less than 2 hours	30 minutes or more
	3 = 2 hours to less than 4 hours	30 minutes or more
	4 = 4 hours or more	30 minutes or more

(3)

DDD Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Can toilet self at night?	Yes	Yes
	No	No

(4)

DDD Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Wakes to toilet most nights?	Yes	Yes
	No	No

(5)

DDD Sleep Panel Question	If your answer to this question is:		Then your support needs score for this question is:
Nighttime behavioral/anxiety issues?	None	Defined as: No behavioral or anxiety issues at night.	No
	Minor	Defined as: You experience low to medium behavioral or anxiety issues when left alone at night, but can manage the behaviors/anxiety with minimal or no intervention.	No
	Moderate	Defined as: You experience intense behavioral or anxiety issues when left alone at night, but you are managing to cope, even if only minimally, by yourself or with remote or occasional onsite help as needed.	No
	Severe	Defined as: You experience intense behavioral or anxiety issues on most nights if left alone and require a support person within your home during all overnight hours in order to maintain yours and/or other's health and safety.	Yes

NEW SECTION

WAC 388-828-10280 How does the residential algorithm determine your toileting support needs score? The residential algorithm adds the three dimensions of the SIS activity "A1: Using the toilet" (see WAC 388-828-4200) to determine your toileting support score. Formula:

$$\begin{aligned}
 &\text{Type of support score (0-4)} \\
 &+ \\
 &\text{Frequency of support score (0-4)} \\
 &+ \\
 &\text{Daily support time score (0-4)} \\
 &= \\
 &\text{Toileting support needs score (0-12)}
 \end{aligned}$$

NEW SECTION

WAC 388-828-10300 How does the residential algorithm calculate your daily critical support time? The residential algorithm uses the following chart to calculate your daily critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
A1: Using the toilet	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
		4	4	5	
			0	0	
			1	.25	
			2	1	
				3	
		4			

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
A4: Eating food	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0 or more	0				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	4	5				
			0	0				
			1	.25				
			2	1				
		A6: Dressing	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0 or more	0	
3	0			0				
	1			.25				
	2			1				
	3			3				
4	4			5				
	0			0				
	1			.25				
	2			1				
A7: Bathing and taking care of personal hygiene and grooming needs	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0 or more	0		
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	4	5				
			0	0				
			1	.25				
			2	1				
				3	3			
				4	5			
				0	0			
1	.25							
2	1							
3	3							
4	5							

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
A9: Using currently prescribed equipment or treatment	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0 or more	0				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	4	5				
			0	0				
			1	.25				
			2	1				
		E1: Taking medications	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0 or more	0	
				3		0	0	
						1	.25	
2	1							
3	3							
4	4			5				
	0			0				
	1			.25				
	2			1				
E2: Avoiding health and safety hazards	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0 or more	0		
				3	0	0		
					1	.25		
		2	1					
		3	3					
		4	4	5				
			0	0				
			1	.25				
			2	1				
			3	3				
			4	5				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
E4: Ambulating and moving about	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
		4	4	5	
			0	0	
			1	.25	
			2	1	
		3	3		
		4	5		
		Daily critical support time score =			

NEW SECTION

WAC 388-828-10320 How does the residential algorithm calculate your mid-frequency critical support time? The residential algorithm uses the following chart to calculate your mid-frequency critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
A1: Using the toilet	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		3	4	5	
			0 or more	0	
		4	0 or more	0	
A3: Preparing food	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		3	4	5	
			0	0	
			1	.25	
			2	1	
		3	3		
		4	5		

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)										
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity					
		4	0	0						
			1	.25						
			2	1						
			3	3						
			4	5						
A4: Eating food*	1 or more	0	0 or more	0						
			1	0 or more		0				
			2	0		0				
				1		.25				
				2		1				
				3		3				
		3	0 or more	0						
			4	0 or more		0				
		A5: Housekeeping and cleaning	1 or more	0		0 or more	0			
						1	0 or more		0	
2	0				0					
	1				.25					
	2				1					
	3				3					
3	0			0						
	1			.25						
	2			1						
	3			3						
4	0			0						
	1			.25						
	2			1						
	3			3						
	4			5						
A6: Dressing*	1 or more			0	0 or more	0				
					1	0 or more			0	
						2			0	0
									1	.25
		2	1							
		3	3							
		3	0 or more	0						
			4	0 or more	0					

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)						
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity	
A7: Bathing and taking care of personal hygiene and grooming needs*	1 or more	0	0 or more	0		
		1	0 or more	0		
			0	0		
			1	.25		
			2	1		
			3	3		
		2	4	5		
			3	0 or more		0
			4	0 or more		0
			0	0 or more		0
A9: Using currently prescribed equipment or treatment*	1 or more	0	0 or more	0		
		1	0 or more	0		
			0	0		
			1	.25		
			2	1		
			3	3		
		2	4	5		
			3	0 or more		0
			4	0 or more		0
			0	0 or more		0
B2: Participating in recreation/leisure activities in community settings	1 or more	0	0 or more	0		
		1	0 or more	0		
			0	0		
			1	.25		
			2	1		
			3	3		
		2	4	5		
			3	0		0
			1	.25		
			2	1		
		3	3	3		
			4	5		
			4	0		0
			1	.25		
		2	2	1		
			3	3		
			4	5		
			4	0		0
1	1	.25				
	2	1				
	3	3				
	4	5				
B7: Interacting with community members	1 or more	0	0 or more	0		
		1	0 or more	0		
		2	0	0		
		1	.25			
		2	1			
		3	3			
		4	5			

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
E1: Taking medications*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
E2: Avoiding health and safety hazards*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
E4: Ambulating and moving about*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
G3: Protecting self from exploitation	1 or more	0	0 or more	0	
		1	0 or more	0	

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		Mid-frequency critical support time score =			
*Daily support activities that have less than daily support needs are added into the mid-frequency critical support time score.					

NEW SECTION

WAC 388-828-10340 How does the residential algorithm determine your weekly critical support time? The residential algorithm uses the following chart to calculate your weekly critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)						
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity	
A2: Taking care of clothes (including laundering)	1 or more	0	0 or more	0		
			1	0 or more		0
				2		0
		1				.25
		2				1
		3	3			
		3	4	5		
			0	0		0
				1		.25
				2		1
		3		3		
		4	4	5		
			0	0		0
				1		.25
				2		1
		3		3		
4	4	5				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
B3: Using public services in the community	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	0	0				
			1	.25				
			2	1				
			3	3				
		B6: Shopping and purchasing goods and services	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0	0	
						1	.25	
						2	1	
						3	3	
3	0			0				
	1			.25				
	2			1				
	3			3				
4	0			0				
	1			.25				
	2			1				
	3			3				
F2: Participating in recreation and/or leisure activities with others	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0	0		
					1	.25		
					2	1		
					3	3		
		4	5					

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)							
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity		
		3	0	0			
			1	.25			
			2	1			
			3	3			
			4	5			
		4	0	0			
			1	.25			
			2	1			
			3	3			
			4	5			
		F8: Engaging in volunteer work	1 or more	0		0 or more	0
						1	0 or more
				2		0	0
						1	.25
2	1						
3	3						
4	5						
3	0			0			
	1			.25			
	2			1			
	3			3			
	4			5			
4	0			0			
	1			.25			
	2			1			
	3			3			
	4			5			
	G2: Managing money and personal finances			1 or more	0	0 or more	0
						1	0 or more
					2	0	0
1		.25					
2		1					
3		3					
4		5					
3		0	0				
		1	.25				
		2	1				
	3	3					
	4	5					

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Weekly critical support time score =				Sum of all times entered	

NEW SECTION

WAC 388-828-10360 How does the residential algorithm calculate your total critical support time (CST)? The residential algorithm uses the following formula to calculate your total critical support time (CST):

$$\frac{\text{DailyCST}}{1} + \frac{\text{MidFreqCST}}{3} + \frac{\text{WeeklyCST}}{7} = \text{Total CST (hours per day)}$$

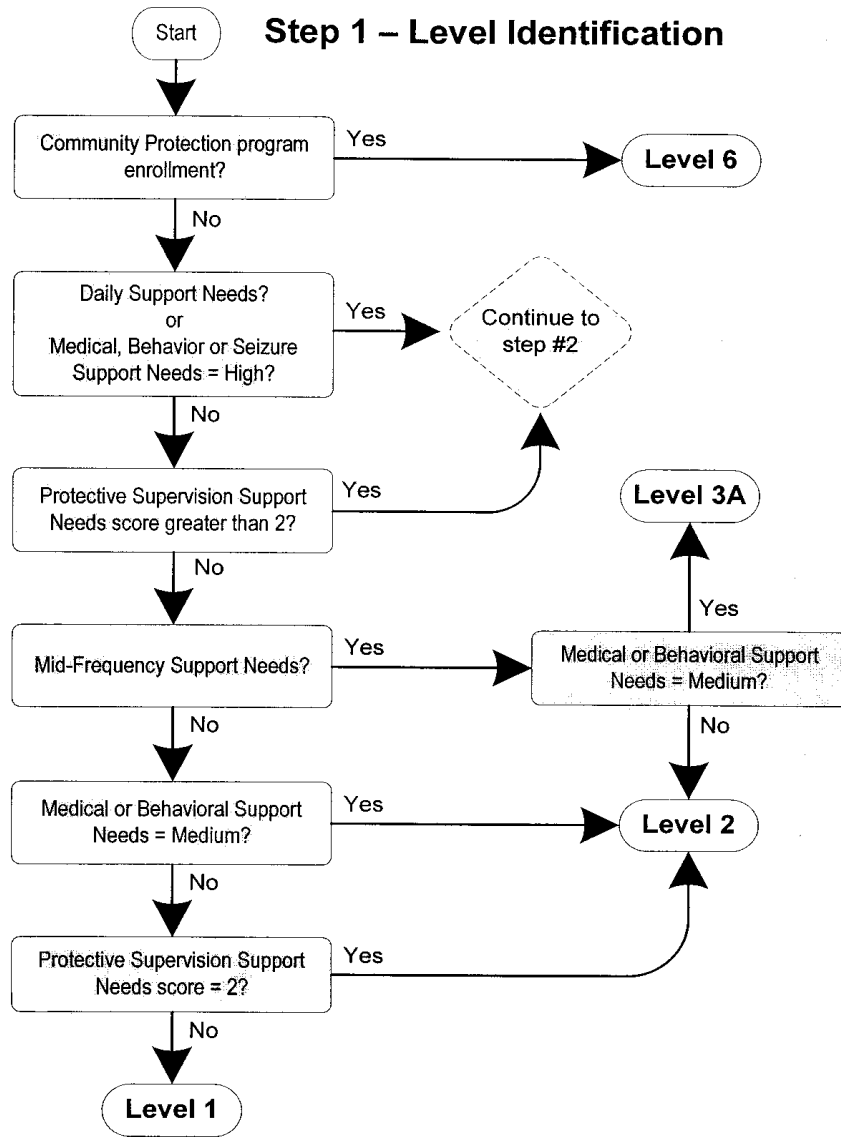
NEW SECTION

WAC 388-828-10380 How does the residential algorithm use your assessed support needs scores to determine your residential service level of support? (1) The residential algorithm uses your assessed support needs scores (as defined in WAC 388-828-10100 through 388-828-10300) to answer questions in a decision tree.

(2) The decision tree path determines your residential service level of support (WAC 388-828-10080).

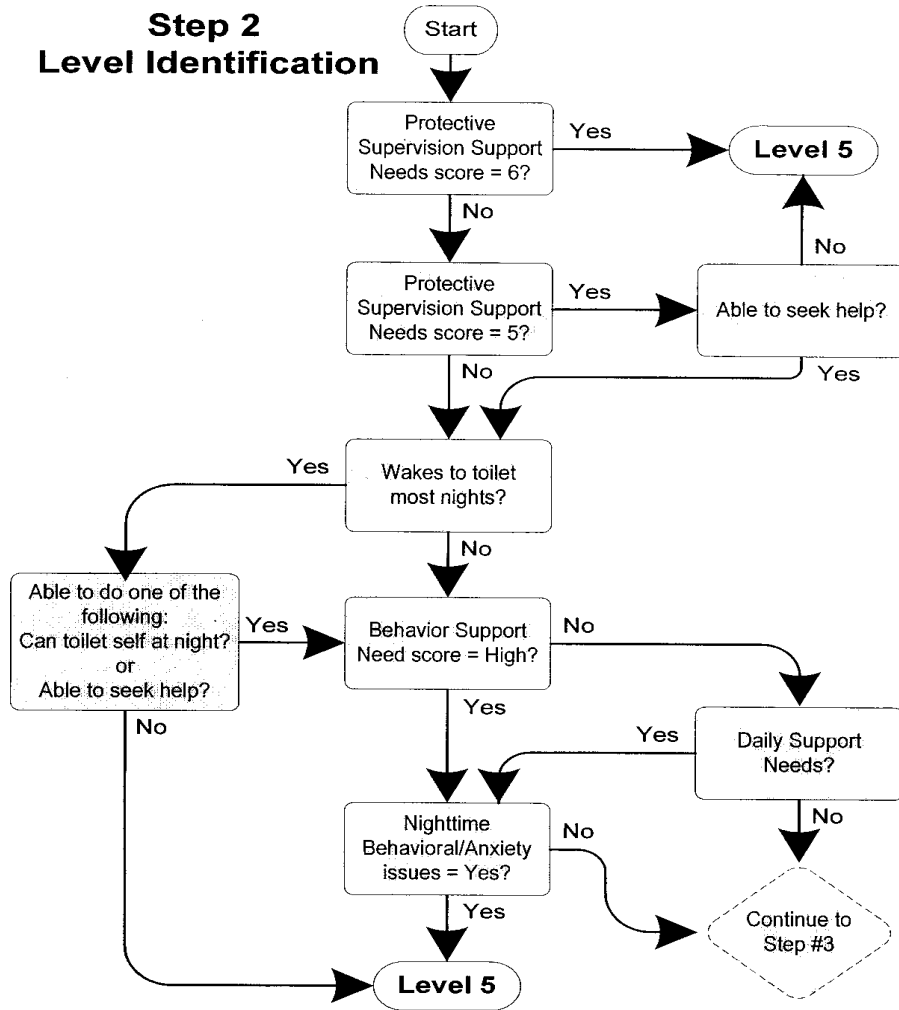
(3) The decision tree is separated into the following three steps:

(a) Step 1 determines whether your residential support needs scores meet the criteria for less than daily support or the criteria for community protection.

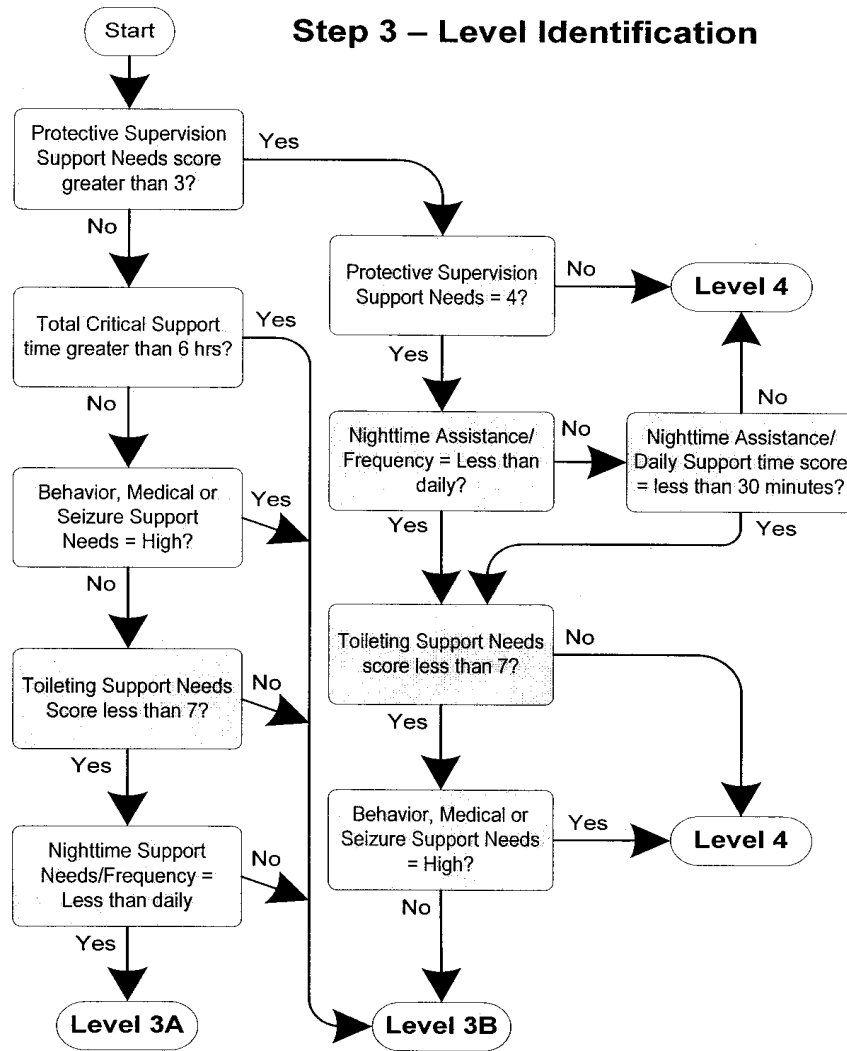


(b) Step 2 determines whether your residential support needs scores meet the criteria for continuous day and night support.

**Step 2
Level Identification**



(c) Step 3 determines whether your residential support needs scores meet the criteria for intermittent support.



WSR 08-07-021
PROPOSED RULES
WASHINGTON STATE LOTTERY
 [Filed March 10, 2008, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-114.

Title of Rule and Other Identifying Information: In compliance with regulatory reform and rules review, the Washington's lottery commission has revised the language in chapters 315-06, 315-08, 315-10 WAC; seeks to repeal WAC 315-11A-156 Instant Game 156, \$2 Win for Life and 315-11A-183 Instant Game 183, \$2 Win for Life, as these describe lottery scratch games no longer offered; revise chapter 315-12 WAC; and seeks to repeal all of chapter 315-36 WAC, Lucky for Life and chapter 315-37 WAC, Lotto Plus, as these describe lottery draw games no longer offered. These revisions reflect improved organization of the rules in the chapters and improve grammatical structure.

Hearing Location(s): Washington's Lottery, 814 4th Avenue, Olympia, WA 98506, on April 22, 2008, at 2:00 p.m.

Date of Intended Adoption: April 22, 2008.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail jjones@walottery.com, fax (360) 586-1039, by April 18, 2008.

Assistance for Persons with Disabilities: Contact Joan Reuell, TTY (360) 586-0933 or (360) 664-4818.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise chapters 315-06, 315-08, 315-10, 315-12 WAC, by improving on grammar, organization, and use of accurate descriptive words reflecting existing lottery business practice. Also, to repeal WAC 315-11A-156, 315-11A-183, chapters 315-12 and 315-36 WAC, as these are lottery games no longer offered.

Reasons Supporting Proposal: In furtherance of regulatory reform and improved organization and reading of Title 315 WAC.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington state lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jana Jones, Legal Services, Washington's Lottery, (360) 664-4833; Implementation: Christopher Liu, Director, Washington's Lottery, (360) 664-4800; and Enforcement: Len Brudvik, Security Director, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

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

March 10, 2008

Jana L. Jones

Director of Legal Services

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-06-030 Lottery retailer's instructions.

Each lottery retailer is to conform to the instructions and requirements established by the director for the delivery and return of tickets, the location and display of lottery materials, the conduct of a specific game, ~~((or))~~ and other lottery business.

AMENDATORY SECTION (Amending WSR 94-03-020, filed 1/7/94, effective 2/9/94)

WAC 315-06-035 Instant ticket purchase price and conditions. (1) The lottery retailer's purchase price for each pack of instant tickets shall be the retail price of the pack less the retailer discount authorized ~~((pursuant to WAC 315-04-190))~~ by the commission.

(2) Lottery retailers shall make payment to the lottery by electronic funds transfer (EFT).

(3) The director shall establish payment terms for purchase of instant tickets and shall issue instructions for such payments to lottery retailers.

AMENDATORY SECTION (Amending WSR 02-12-065, filed 5/31/02, effective 7/1/02)

WAC 315-06-040 Disclosure of probability of purchasing a winning ticket. (1) The estimated ~~((average))~~ probability of purchasing a winning ticket shall be conspicuously displayed on:

(a) The ~~((back-of))~~ tickets for a specific game;

(b) All printed promotional and advertising materials for a specific game, including but not limited to, brochures, posters, billboards, placards, and point-of-sale displays.

(2) The estimated ~~((average))~~ probability of purchasing a winning ticket shall be communicated in television and radio commercials for a specific game.

(3) The estimated ~~((average))~~ probability of purchasing a winning ticket for each category of prize in a specific game shall be conspicuously displayed as part of:

(a) The "how-to-play" brochure which explains the procedures for the lottery's ~~((on-line))~~ draw games; and

(b) The brochures of instructions to lottery retailers for the conduct of specific scratch games.

(4) The disclosure required by this section shall not apply to generic promotional and advertising materials publicizing the Washington state lottery which do not promote a specific ~~((on-line))~~ draw game or a specific scratch ticket theme.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-06-050 Location of sale. Tickets may be sold by any person who is issued a license to act as a lottery retailer at the location specified on the license, subject to the director's authority as set forth in ~~((sections 5 and 7, chapter 7, Laws of 1982 2nd ex. sess.))~~ chapter 67.70 RCW, and these rules.

No ~~((such))~~ sales of lottery tickets shall be made on premises used primarily for residential purposes, in or on the property of any ~~((school))~~ educational facility, or ~~((in or upon the property of any))~~ facility operated primarily for providing welfare services to the poor or infirmed, or ~~((in any facility))~~ maintained solely for religious worship.

AMENDATORY SECTION (Amending Order 5, filed 10/15/82)

WAC 315-06-070 Purchaser's obligations. In purchasing a ticket, the purchaser agrees to comply with chapter ~~((7, Laws of 1982 2nd ex. sess.))~~ 67.70 RCW, these rules, the final decisions of the director, and all procedures established by the director for the conduct of games.

AMENDATORY SECTION (Amending WSR 99-04-077, filed 2/2/99, effective 3/5/99)

WAC 315-06-075 Game sell-out ~~((prohibited))~~. No Washington state lottery retailer shall sell a ticket or combination of ~~((on-line))~~ draw game lottery tickets, which would guarantee the purchaser a jackpot or grand prize, and in accordance with chapter 315-30 WAC.

AMENDATORY SECTION (Amending WSR 90-11-040, filed 5/10/90, effective 6/10/90)

WAC 315-06-080 Certain purchases of tickets, acceptance of things of economic value, and winning of prizes prohibited. Certain purchases of tickets, acceptance of things of economic value and winning and sharing of prizes, are prohibited as follows:

(1) ~~((A ticket shall not be purchased by, and a prize shall not be paid to any member or employee of the commission or to [any] [a] spouse, child, brother, sister, or parent residing as~~

a member of the same household in the principal place of abode of any member or employee of the commission, or to any assistant attorney general assigned to advise the commission or director.

~~(2) A prize claimed by a holder of a winning ticket shall not be shared with any member or employee of the commission or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member or employee of the commission.~~

~~(3)) Members of the commission and employees of the lottery, or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission or employee of the lottery shall not purchase or share in any portion of or receive the prize winnings of any of Washington's lottery tickets.~~

~~(2) No things of economic value offered by ((the)) prize winners, vendors, contractors, or others conducting business with the lottery, may be accepted by lottery retailers or by any member ((or employee)) of the commission or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member ((or employee)) of the commission.~~

~~((4)) (3) A ticket shall not be purchased by, and a prize shall not be paid to any CPA accounting firm, or its employees, retained by the director of financial management pursuant to ((sections 31 and 32, chapter 7, Laws of 1982 2nd sess-)) RCW 67.70.310 and 67.70.320, or any employee of the director of financial management performing a management review or audit of the commission or director.~~

~~((5)) (4) A ticket shall not be sold to or purchased by any person under the age of eighteen. Nothing in this section shall prohibit the purchase of a ticket for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.~~

~~((6)) (5) A ticket shall not be purchased with ((food stamps)) public assistance electronic benefit cards or coupons and a lottery retailer shall not accept these as consideration for a ticket ((food stamps or coupons)).~~

AMENDATORY SECTION (Amending Order 111, filed 8/11/88)

WAC 315-06-090 Video machines prohibited. Coin-operated, instant video games which pay out prizes, either by skill or chance, shall not be used in the conduct of games, pursuant to RCW 67.70.040 (1)(a).

AMENDATORY SECTION (Amending Order 118, filed 8/7/89, effective 9/7/89)

WAC 315-06-115 Overlapping ((on-line)) draw game sales in consecutive fiscal years. When the sales for ((an on-line)) a draw game jackpot overlap two fiscal years, any fiscal reporting discrepancy between the statutory requirement that payment of prizes not be less than forty-five percent of gross annual revenue and the preparation of an annual financial statement using generally accepted accounting principles shall be explained in a footnote to the financial statements.

AMENDATORY SECTION (Amending WSR 00-24-103, filed 12/6/00, effective 1/6/01)

WAC 315-06-120 Payment of prizes—General provisions. (1) The director may designate claim centers for the filing of prize claims, and the location of such centers shall be publicized from time to time by the director.

(2) A claim shall be entered in the name of one claimant, which shall be either a natural person, association, corporation, general or limited partnership, club, trust, estate, society, company, joint stock company, receiver, trustee, or another acting in a fiduciary or representative capacity whether appointed by a court or otherwise. A claim which includes one or more tickets with an address label or stamp on the back of the ticket shall be deemed to have been entered in the name of one claimant: Provided, That if the address label or stamp contains the name of more than one claimant, the prize payment will be made to the one who has signed the ticket and/or claim form or, if there is no signature, to the first claimant listed on the address label or stamp. If there are two or more claimant names written or signed on the ticket, lottery personnel shall return the ticket(s) to claimants and shall request that the claimants sign a notarized statement relinquishing ownership to one claimant. The claimant must submit his or her Social Security number (SSN) or the federal employer's identification number (FEIN) when claiming any prize exceeding six hundred dollars.

(3) A claim may be entered in the name of a claimant other than a natural person only if the claimant is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service, such number is shown on the claim form and the entity's terms comply with subsection (4) of this section. Groups, family units, organizations, clubs, or other organizations which are not a legal entity, or do not possess a federal employer's identification number, shall designate one natural person or one legal entity in whose name the claim is to be entered.

(4) The terms governing a claimant other than a natural person, i.e., articles of incorporation, trust terms, etc., shall be submitted to the director for approval. Terms not in compliance with lottery statutes or rules shall not be approved. Payment shall not be made to a claimant other than a natural person until the director has approved the terms.

All claimants other than natural persons shall have governing terms which:

(a) Prohibit deletion, amendment, or addition of terms without the director's approval;

(b) State the names of all natural persons who have a direct or indirect right or interest in the claimant, each of their percentage interests and their Social Security numbers;

(c) Acknowledge that the debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to the natural persons who hold interests in the claimant through their Social Security numbers; and

(d) Provide that in the event the claimant ceases to exist prior to the full payout of the prize, the lottery will not make further payment without court order.

(5) The lottery shall not make payment to a claimant other than a natural person unless the terms governing the claimant include those enumerated in subsection (4) of this section.

(6) Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and/or complete and sign a claim form approved by the director. The claimant shall submit the claim form and/or claimant's ticket to the lottery in accordance with the director's instructions as stated in the ~~((players' manual))~~ game brochure and/or on the back of the ticket or submit a request for reconstruction of an alleged winning ticket and sufficient evidence to enable reconstruction and that the claimant had submitted a claim for the prize, if any, for that ticket. The claimant, by submitting the claim or request for reconstruction, agrees to the following provisions:

(a) The discharge of the state, its officials, officers, ~~((and))~~ employees, and the commission of all further liability upon payment of the prize; and

(b) The authorization to use the claimant's name and, upon written permission, photograph for publicity purposes by the lottery.

(7) A prize must be claimed within the time limits prescribed by the director in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than one hundred eighty days, except a shared game lottery, after the official end of that instant game or ~~((the on-line))~~ draw game drawing for which that ~~((on-line))~~ draw game ticket was purchased.

(8) The director may deny awarding a prize to a claimant if:

(a) The ticket was not legally issued initially;

(b) The ticket was stolen from the commission, director, its employees or retailers, or from a lottery retailer; or

(c) The ticket has been altered or forged, or has otherwise been mutilated such that the authenticity of the ticket cannot be reasonably assured by the director.

(9) No natural person or legal entity entitled to a prize may assign the right to payment, except under the following limited circumstances:

(a) That payment of a prize may be made to any court appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court appointed assignees; and

(b) When payment of all or part of the remainder of an annuity and the right to receive future annual prize payments has been voluntarily assigned to another person, pursuant to an appropriate judicial order that meets the requirements of RCW 67.70.100(2).

(10) In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the director may refrain from making payment of the prize pending a final determination by the director or by a court of competent jurisdiction relative to the same.

(11) A ticket that has been legally issued by a lottery retailer is a bearer instrument until signed. The person who signs the ticket or has possession of an unsigned ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the state, its officials, officers, and employees and of the commission, director and employees of the commission terminates upon payment.

(12) All prizes shall be paid within a reasonable time after the claims are validated by the director and a winner is determined. Provided, prizes paid for claims validated pursu-

ant to WAC 315-10-070(2) shall not be paid prior to one hundred eighty-one days after the official end of that instant game.

~~((13))~~ (13) The date of the first installment payment of each prize to be paid in installment payments shall be the date the claim is validated, or the date the winner makes a choice of payment by annual payments or by single cash payment pursuant to WAC 315-34-057. Subsequent installment payments shall be made as follows:

(a) If the prize was awarded as the result of a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date of the drawing in accordance with the type of prize awarded; however, at the director's discretion, the lottery may designate an alternate payment date for regular prize payment; or

(b) If the prize was awarded in a manner other than a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date the claim is validated in accordance with the type of prize awarded. However, at the director's discretion, the lottery may designate an alternate payment date for regular prize payment.

~~((14))~~ (14) The director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim or any other matter that may have come to his or her attention. All delayed payments shall be brought up to date immediately upon the director's confirmation and continue to be paid on each originally scheduled payment date thereafter.

~~((15))~~ (15) If any prize is payable for the life of the winner, only a natural person may claim such a prize. Such "win for life" type prizes shall cease upon the death of the winner or the end of a guaranteed payment period (if any), whichever is later. Win for life prizes may be assigned; and the following conditions apply to such assignments:

(a) The original winner's actual life shall determine when prize payments cease; and

(b) The assignee shall be responsible for notifying the lottery of the original winner's death.

~~((16))~~ (16) The director's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery.

~~((17))~~ (17) Each lottery retailer shall pay all prizes authorized to be paid by the lottery retailer by these rules during its normal business hours at the location designated on its license.

~~((18))~~ (18) In the event a dispute between the director and the claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the director may, solely at his or her option, replace the disputed ticket with an unplayed ticket (or tickets of equivalent sales price from any game). This shall be the sole and exclusive remedy of the claimant.

AMENDATORY SECTION (Amending WSR 98-15-114, filed 7/20/98, effective 8/20/98)

WAC 315-06-123 Voluntary assignment of prize pursuant to an appropriate judicial order. (1) In the case

of a petition for an order or an amended order for the voluntary assignment of a prize, a copy of a petition shall be served on the director of the lottery or designee, in addition to service on the attorney general, no later than ten days before any hearing or entry of any order or amended order. After superior court entry of voluntary assignment of a right to a prize pursuant to an appropriate judicial order or amended order, the director shall make payment to the person designated by a certified copy of the order or amended order which has been served upon the director personally or by certified mail provided that the order contains, in addition to the requirements set forth in RCW 67.70.100(2), the following provisions:

(a) The assignor's name. For an initial assignment, the winner's name as it appears on the prize claim form;

(b) The assignee's name;

(c) The citizenship or resident alien number of the assignee (if a natural person).

(2) The certified copy of the order must be served on the director at least twenty working days prior to the annual payment date to allow for a change in the payee. The director shall not be liable for failure to pay an annual payment to an assignee if service of the order and presentation of the required information for tax withholding purposes described in subsection (3) of this section is not timely made.

Lifetime cash winners may assign nonguaranteed payments provided that the original winner has properly verified they are still eligible to receive their prize pursuant to WAC 315-36-110(5). The lottery's obligation to issue assigned payments shall terminate upon the death of the original winner.

(3) Payment shall be made payable to the name of the assignee designated in the judicial order and to no other name (~~and~~). Federal income tax withholding shall be deducted from each payment and reported to the Internal Revenue Service. The assignee shall provide its social security number, if a natural person, or tax identification number, if a legal entity, to the director at the time the judicial order is served for the purpose of reporting tax withholding to the Internal Revenue Service and for the purpose of applying the debt collection process as described in subsection (5) of this section.

(4) RCW 67.70.100 authorizes the director to charge actual costs for each assignment and deduct such costs from the initial annuity payment made to the assignee. In determining actual costs the director has considered the staff time required to determine the sufficiency of the judicial order or amended order and to process the initial payment; telegraphic and long distance telephone communications, photocopying, postage, and private delivery service; and legal services directly related to determining the sufficiency of the judicial order and processing of the initial payment, including legal services and costs associated with any legal proceeding in which the agency is represented by the office of the attorney general. The director has determined the following costs shall be deducted from the initial annuity payment made to each assignee, unless paid pursuant to subsection (e):

(a) Assignment of whole annuity payments (one or more years) resulting in payment only to the assignee during each year of the assignment: \$250; or

(b) Assignment of a portion/percentage of annuity payments resulting in annual payments to one or more assignees

and/or the original prize winner: \$300 for the first year of the assignment, plus \$75 for each year thereafter;

(c) Assignment pursuant to an amended order of assignment, resulting in annual payments to the same number of assignees as in the original order: \$250;

(d) Assignment pursuant to an amended order of assignment, resulting in annual payments to one or more assignees in addition to the assignees in the original order of assignment: \$300 for the first year of the amended order of assignment, plus \$75 for each year thereafter;

(e) If payment of the total fees due for costs for processing an order or amended order is received by the Lottery together with and at the same time as the required certified copy of the order or amended order, the fees will not be deducted from annual payments;

(f) The director shall review these costs at least biennially from December 1, 1997, and shall recommend adjustments, if necessary, for commission consideration and approval.

(5) The debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to all payments made to any person pursuant to a voluntary assignment. The term person shall have the same meaning as the definition set forth in WAC 315-02-180.

AMENDATORY SECTION (Amending WSR 93-23-012, filed 11/5/93, effective 12/6/93)

WAC 315-06-125 Debts owed the state. (1) The terms used in RCW 67.70.255 and these regulations are defined as follows:

(a) Creditor - Any state agency or political subdivision of this state that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect.

(b) Debt - A judgment rendered by a court of competent jurisdiction or obligations established pursuant to RCW 50.20.190, 51.32.240, 51.48.140, 74.04.300, 74.20A.040, 74.20A.055 and 82.32.210 or administrative orders as defined in RCW 50.24.110, 51.32.240, 51.48.150, and 74.20A.020(6).

(c) State - The state of Washington.

(d) Two working days - Two days not to include Saturdays, Sundays, and holidays as defined in RCW 1.16.050 commencing the day following the date the claim was validated by the lottery.

(e) Verification - A facsimile or photo copy of a judgment or final order received by the lottery during the requisite two working day period.

(f) Individual - A natural person.

(2) Any creditor may submit, to the lottery, in a format specified by the director, ~~((data processing tapes containing))~~ debt information ~~((specified))~~ required by the ~~((director))~~ Revised Code of Washington. ~~((Tapes))~~ Debt information medium which do not contain the required information or are not in the proper format will be returned to the creditor. The creditor submitting debt information ~~((tapes))~~ shall provide replacement ~~((tapes))~~ debt information medium on a regular basis at intervals not to exceed one month or less than one

week. The creditor shall be solely responsible for the accuracy of the information contained therein.

(3) Creditors submitting ~~((data processing tapes))~~ debt information medium in the proper format to the lottery shall also submit the name or names of designated contact persons.

(4) The lottery shall include the debt information submitted by the creditor in its validation and prize payment process. The lottery shall delay payment of a prize, exceeding six hundred dollars, for a period not to exceed two working days, to any individual prize winner or to any other prize winner which has an individual holding a direct or indirect interest in the prize winner, and who owes a debt to a creditor pursuant to the information submitted in subsection (2) of this section. The lottery shall make a reasonable attempt to contact the creditor's designated contact person(s) by phone, followed by written correspondence, including e-mail, to verify the debt. Three phone calls, excluding busy signals, shall constitute a reasonable attempt. The prize shall be paid to the prize winner if the debt is not verified by the submitting creditor within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (9) of this section.

(5) It shall be the obligation of the prize winner to provide the lottery with the names, Social Security numbers, and percentage interests of the individuals who collectively hold one hundred percent of the interest in the prize.

(6) Where an individual holds an interest in a prize claimed by another individual, the lottery must be informed of that interest, its percentage and the Social Security number (SSN) of the nonclaimant individual who holds the interest, prior to the validation and prize payment process described herein; otherwise, the Social Security number of the claimant individual and the full net amount of the prize will be used in completing the processing required under this section.

(7) Where the right to payment to an individual who holds an interest in a prize winner is discretionary with a third party or is contingent, the tax ID number of the prize winner shall be used in completing the processing required under this section, rather than the Social Security number of said individual.

(8) A creditor shall verify the debt by submitting to the lottery at lottery headquarters in Olympia, Washington within the requisite two working day period, a facsimile or photocopy of a judgment or final order which is the basis for the debt.

(9) Prior to disbursement, any verified debts owed to a creditor by the individual winner of any lottery prize exceeding six hundred dollars or by an individual holding more than a six hundred dollar interest in a prize winner shall be set off against the prize owing to the individual or against the proportionate interest of the individual in the prize winner. In the event a prize winner or an individual holding more than a six hundred dollar interest in a prize winner owes debts to more than one creditor, and the total prize to that winner or individual is insufficient to pay all debts, the set off shall be paid to the creditors on a pro rata basis based on the amount of debt owed to each creditor unless priority is established by statute.

AMENDATORY SECTION (Amending WSR 94-19-062, filed 9/20/94, effective 10/21/94)

WAC 315-06-130 Prizes payable after death or disability of individual winner. (1) All prizes or a portion thereof which remain unpaid at the time of an individual prize winner's death shall be payable to the court appointed representative of the prize winner's estate once satisfactory evidence of said representative appointment has been presented to the director, claim forms have been properly filled out, and the director is satisfied that such payment is lawful and proper: Provided, however, That where the prize winner and spouse had entered into any agreement valid under the law of this state or another state which establishes the prize as property to pass to the surviving spouse without probate upon the death of the prize winner, then the prize shall be made payable to the surviving spouse, without the probating of an estate of the deceased.

(2) Prize moneys will be paid according to the law of descent and distribution, chapter 11.04 RCW, of the state of Washington if the winner thereof dies intestate regardless of whether the prize winner was domiciled at the time of the prize winner's death in the state of Washington.

(3) The director may rely wholly on the presentment of certified copies of a court's appointment of an administrator or executor, guardian, conservator or on any other evidence that a person is entitled to the payment of any prize winnings then due.

(4) The payment to the estate of the deceased winner of any prize winnings by the director shall absolve the director, the commission and employees of the ~~((commission))~~ lottery of any further liability for payment of said prize winnings. ~~((The director need not look to the payment of the prize winnings beyond the payee thereof.))~~

(5)(a) Where the party who claimed a prize from the lottery was an individual, and the individual has died, the estate of the deceased individual prize winner may petition the lottery director to have the payment of an installment prize accelerated and paid to the estate at the installment prize's present cash value in lieu of receiving continued payments. The director may grant the petition if, in the director's sole discretion, payment of the remaining installments in a single, present cash value payment is in the best interests of the state lottery.

(b) The estate of an individual which has a community property interest in a prize, may petition the lottery director to have the payment of its interest in an installment prize accelerated and paid to the estate at the installment prize's present cash value in lieu of receiving continued payments. The director may grant the petition if, in the director's sole discretion, payment of the remaining installments in a single, present cash value payment is in the best interests of the state lottery. Payment to the surviving spouse of the remaining community property interest shall continue in installments.

(6) The director may petition any court of competent jurisdiction to request a determination for the payments of any prize winnings which are or may become due the estate of a deceased winner or a winner under a disability because of, but not limited to, underage, mental deficiency, or physical or mental incapacity.

(7) If the legatee(s) or heir(s) of a deceased winner entitled to prize winnings obtains an order from a court of competent jurisdiction directing payments due and to become due from the director to be paid directly to said legatee(s) or heir(s) or otherwise directs the director to make payments to another in the event of a winner's disability or otherwise, the director shall pay the prize winnings accordingly after application of that process mandated by RCW 67.70.255 and WAC 315-06-125.

(8) A deceased winner's estate shall be considered to be a winner, and payments thereto shall be governed by WAC 315-06-120.

AMENDATORY SECTION (Amending Order 5, filed 10/15/82)

WAC 315-06-210 Law enforcement. (1) The director shall be the chief law enforcement officer, pursuant to (~~section 33, chapter 7, Laws of 1982 [2nd] ex. sess.-)~~ chapter 67.70 RCW, for the purposes of enforcing such chapter, and the penal laws of this state relating to the conduct of or participation in lottery activities.

(2) The director shall appoint in accordance with the laws of the state of Washington a sufficient number of competent persons to act as Washington state lottery law enforcement officers, may remove them from a law enforcement capacity without cause, and shall define their rank and duties.

(3) The director may appoint employees to serve as special deputies, with such restricted police authority as the director shall designate as being necessary and consistent with their assignment to duty.

(4) The director shall apply for certification as a criminal justice agency pursuant to WAC 446-20-050 and shall designate specific employees for the collection and dissemination of criminal history record information, and for undercover audit or investigative work or other security operations.

(5) The director (~~shall~~) may issue a badge and shall issue an identification card to each employee designated as a lottery law enforcement officer.

(6) The director shall develop cooperative arrangements with other criminal justice agencies in the state of Washington for enforcement of laws related to lottery activities.

(7) The director shall issue guidelines for the conduct of lottery law enforcement personnel.

AMENDATORY SECTION (Amending WSR 90-11-040, filed 5/10/90, effective 6/10/90)

WAC 315-08-010 Expenditure and transfer limits—State lottery account. (1) At the outset of fiscal year 1991, and at the outset of each biennium after fiscal year 1991, the commission shall determine by resolution the following:

(a) The total amount of moneys which may be transferred from the state lottery account to the state's general fund and to the lottery administrative account, pursuant to legislative appropriation; and

(b) The total amount of moneys which may be expended from the state lottery account for each of the following purposes:

(i) Payment of retailer compensation;

(ii) Payment of prizes (which shall not be less than 45 percent of gross annual revenue of the lottery);

(iii) On-line vendor payments;

(iv) On-line telecommunications payments;

(v) Instant game vendor payments;

(vi) Promotion/advertising; and

(vii) Any other purposes required by law.

(2) The commission may amend by resolution the amounts determined under this section based on changes in the revenue stream and/or program requirements.

(3) The director may exceed approved totals when necessary for sales volume-related expenses provided that such expenditures are reported (~~(at)~~) in the next regularly scheduled financial report to the commission (~~(meeting)~~).

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-010 Instant games—Authorized—Director's authority. (~~It is the commission's intent to provide the director broad authority in carrying out the following duties:)~~ The director shall:

(1) (~~The commission hereby authorizes the director to~~) Select, operate, and contract relating to and for the operation of instant games meeting the criteria set forth in this chapter.

(2) (~~The director shall~~) Establish final instant game specifications, including the determination of winning tickets, in executed working papers or software requirement specifications(~~The director shall~~); keep the portions of these documents that are subject to public disclosure available for one hundred eighty days after the end of each game for public review during normal business hours.

(3) (~~The director or designee shall~~) Inform commission members of instant game development.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-022 (~~What are the~~) Essential elements of instant game tickets(?). The director shall establish in executed working papers or software requirement specifications for each instant game the specific form and location in which the following essential elements shall appear on each instant game ticket:

(1) **Play field** is generally the area that may contain play symbols, play symbol captions, prize symbols, prize symbol captions, and validation numbers;

(2) **Play spots** are the specific areas where play symbols are located;

(3) **Play symbols** are symbols, letters, or numbers appearing in each play spot of a ticket;

(4) **Play symbol captions** are small printed characters generally associated with each play symbol which may appear on the play field and correspond with and verify that play symbol. These captions spell out, in full or abbreviated form, the play symbol. There is only one play symbol caption for each play symbol, and each play symbol caption is associated with the three-digit ticket number;

(5) **Prize symbols** may be numeric or symbolic representations, printed either in a display printed prize legend or

on the play field, which indicate the amount of money a player may win;

(6) **Prize symbol captions** may be small printed characters generally associated with each prize symbol appearing on the play field which correspond to and verify that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol;

(7) **Validation number** is a unique multidigit number on the ticket;

(8) **Pack-ticket number** is a number that may include the game, pack and ticket identifier;

(9) **Retailer verification code** is the code on the ticket that the lottery retailer uses to verify instant winners; and

(10) **Odds of winning** shall always appear on the back of the ticket.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-023 ((What are the)) Prizes available for instant games((?)). Prizes available are as set forth on the instant game ticket. Prizes may also include "Win for Life" prizes. "Win for Life" prizes will be paid in accordance with WAC 315-06-120((+4)) (15) and may include prizes exceeding one million dollars.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-024 ((What are the)) Methods of selecting winning tickets((?)). (1) Methods for selecting winning tickets ~~((shall))~~ may be as set forth on the instant game ticket and in the executed working papers or software requirement specifications. Methods for selecting winning tickets may include:

(a) Higher number. Your (the player's) number is greater than their number.

(b) Match one or more. Match your play symbols to the winning play symbol(s).

(c) Bonus play. Find a bonus symbol to win a bonus prize instantly.

(d) Match two or more consecutive. Match two or more consecutive "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the ticket.

(e) Match two or more. Match two or more "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the legend on the ticket.

(f) Three like cards. Get three like cards with one hand to win the corresponding amount shown on the ticket.

(g) Grand prize drawing. Find a bonus symbol that qualifies you to enter a grand prize drawing or submit one or more nonwinning tickets to enter a grand prize drawing.

(h) Match symbols. Match a specified number of identical play symbols on a play area.

(i) Add up "yours." Add up the play symbols designated as "yours" and the total is greater than, less than or equal to the symbol or symbols designated as "theirs."

(j) Add up. Add up the play symbols and the amount is greater than or equal to the designated symbols on the ticket.

(k) Tic tac toe. Match three identical play symbols, in a row, column, or diagonal, on a grid in the play area.

(l) Sequence. Find the designated play symbols in the specified sequential order.

(m) Spelling out. Find the play symbols to form the designated word or words.

(n) In between. Find the play symbol or symbols designated as "yours" with a value less than the play symbol or symbols designated as "their high value" and greater than the play symbol or symbols designated as "their low value."

(2) Each of the methods described in subsection (1) of this section may include a special variant such as "automatic win feature," "doubler," "wild card," or "free space" that provides added or alternative methods of winning.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

WAC 315-10-025 ((How much does it)) Cost to purchase an instant game ticket((?)). The price of an instant game ticket shall not be less than \$1.00 and not more than \$20.00, except for those tickets used in media promotions and retailer incentive programs authorized by the director.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-030 Instant games criteria. (1) The total of all prizes available to be won in an instant game shall not be less than forty-five percent of the instant game's projected revenue.

(2) There is no required frequency of drawing or method of selection of a winner in an instant game.

(3) At the director's discretion, an instant game may include a grand prize or second chance drawing(s). The criteria for the grand prize or second chance drawing shall be as follows:

(a) Finalists for ~~((a grand prize))~~ such drawing(s) shall be selected in an elimination drawing(s) from tickets meeting the criteria stated on the ticket and in executed working papers or software requirement specifications or stated in lottery promotional materials, at the discretion of the director. Participation in the elimination drawing(s) shall be limited to such tickets that are actually received or ticket information is actually received and validated by the director on or before a date to be announced by the director. The director may reserve the right to place any semi-finalist whose entry was not entered in the elimination drawing(s) and who is subsequently determined to have been entitled to such entry into an elimination drawing of a subsequent instant game, and the determination of the director shall be final.

(b) The number of prizes and the amount of each prize in the ~~((grand prize))~~ drawing(s) shall be determined by the director to correspond with the size and length of the instant game and to comply with subsection (1) of this section.

(c) The dates and times as well as the procedures for conducting the ~~((elimination drawing and grand prize))~~ drawing(s) shall be determined by the director.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-035 ((How do I know if I have a) Winning an instant game ticket(?)) Each instant ticket shall be printed with instructions clearly indicating what constitutes a winning ticket. In addition, written descriptions of winning play and prize symbol combinations shall be included in the executed working papers or software requirement specifications for the production of each game. The ticket bearer must submit the winning ticket to the lottery as specified by the director. The winning ticket must be validated by the lottery through use of the validation number or any other means as specified in ~~((this chapter))~~ WAC 315-10-070 or by the director.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-055 ((How much time does a player have to redeem winning and/or grand prize drawing instant game tickets?) Redemption time (1) A player may submit a winning ticket for prize payment up to one hundred eighty days after the official end of game or one hundred eighty days from date of purchase of a computer generated ticket.

(2) In order to participate in a grand prize drawing in which the entry is the submittal of one or more winning or nonwinning tickets, a player must redeem and submit such a ticket or tickets or ticket information within the time limits set forth in chapter 315-06 WAC governing the conduct of that specific game.

AMENDATORY SECTION (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

WAC 315-10-060 Official beginning and end of an instant ticket game ticket sales. The director shall announce the official start date and closing date of each instant ticket game in an official lottery publication via printed or electronic media, or both. Lottery retailers shall not sell any tickets prior to the start date of a game unless expressly authorized by the director.

A lottery retailer may continue to sell tickets for each instant game up to sixty days after the official end of that game.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-075 ((How do I claim) Claiming an instant game prize(?)) Procedures for claiming instant game prizes are as follows:

(1) To claim an instant game prize of \$600.00 or less the claimant may either present the apparent winning ticket to any lottery retailer regardless of where the ticket was purchased, or may present the apparent winning ticket to the lottery by mail or in person. When a retailer is presented with a claim under this section, the retailer shall verify the claim and, if acceptable, make payment of the amount due the claimant. The prizes shall be paid during all normal business

hours of that retailer provided that claims can be validated on the lottery's terminal. The retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the retailer's account.

(2) In the event the retailer cannot verify the claim, the claimant shall present a claim to the lottery by mail or in person. If the claim is validated by the lottery, funds shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(3) To claim an instant prize of more than \$600.00, the claimant shall complete a claim form, as provided in WAC 315-06-120, which is obtained from the lottery retailer or the lottery and mail or present in person the completed form together with the apparent winning ticket to the lottery. Upon validation by the director, funds shall be forwarded or presented to the claimant in payment of the amount due, less any applicable federal income tax withholding and deductions pursuant to RCW 67.70.255 and WAC 315-06-125. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(4) To claim an instant prize pursuant to WAC 315-10-070(2), the claimant shall notify the lottery of the claim and request reconstruction of the ticket not later than one hundred eighty days after the official end of that instant game or one hundred eighty days from purchase of a computer generated ticket. If the director authorizes reconstruction, the ticket shall not be validated nor the prize paid prior to one hundred eighty days following the official end of that instant game or one hundred eighty days from purchase of a computer generated ticket. A ticket(s) validated pursuant to WAC 315-10-070(2) shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game.

(5) Any ticket not passing all the validation checks specified by the director is invalid and ineligible for any prize and shall not be paid. However, the director may, solely at his or her option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price from any other current game). In the event a defective ticket is purchased, the only responsibility or liability of the director shall be the replacement of the defective ticket with another unplayed ticket (or tickets of equivalent sale price from any other current game).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 315-10-062

May a lottery retailer continue to sell instant game tickets for a particular game after the official end of that game?

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state lottery commission and the office of the director, Washington state

lottery, with the provisions of RCW ((42.17.250-42.17.340)) 42.56.040 - 42.56.550, dealing with public records.

AMENDATORY SECTION (Amending WSR 97-15-122, filed 7/23/97, effective 8/23/97)

WAC 315-12-030 Description of central and field organization of the commission and the director. The administrative office of the commission and director is located at 814 - 4th Avenue, Olympia, WA 98506. Regional offices of the director located in other cities are as follows:

<u>CITY</u>	<u>SERVICES</u>
EVERETT REGION Casino Square Shopping Plaza 205 E. Casino Road Everett, WA 98204	(a) Sales Representative (b) Payout Center
OLYMPIA REGION 814 - 4th Avenue Olympia, WA 98506	(a) Sales Representative (b) Payout Center (c) Ticket Warehousing
((SEATTLE REGION Georgetown Center 5963 Corson Ave. S., Suite 106 Seattle, WA 98108-2611))	(a) Sales Representative (b) Payout Center
<u>FEDERAL WAY REGION</u> <u>33701 9th Avenue S</u> <u>Federal Way, WA 98003-6762</u>	
SPOKANE REGION East 10517 Sprague Avenue Spokane, WA 99206-3631	(a) Sales Representative (b) Payout Center
VANCOUVER REGION El Camino Fountain Shopping Mall Suite 4 1503 NE 78th Street Vancouver, WA 98665	(a) Sales Representative (b) Payout Center
YAKIMA REGION 9 South 5th Yakima, WA 98901	(a) Sales Representative (b) Payout Center

All records of the commission and director are maintained in the administrative office in Olympia.

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-050 Public records available. All public records of the lottery, its commission and director ((~~as defined in WAC 315-12-020(2) are deemed to be~~)) are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ((42.17.260, 42.17.310, 42.17.330)) 42.56.070, 42.56.210, 42.56.540, WAC 315-12-100, and other applicable laws.

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-060 Public records officers. The lottery, its commission((~~s~~)) and director((~~s~~)) public records shall be in the charge of the public records officer(s) as designated by the director. The person(s) so designated shall be located in the administrative office of the director. The public records officer(s) shall be responsible for the following: The implementation of the commission's rules regarding release of public records, coordinating the staff of the director in this

regard, maintaining, keeping current, and publishing an index of all agency records as required by RCW ((42.17.260)) 42.56.070 and WAC 315-12-140, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter ((42.17)) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 97-07-063, filed 3/19/97, effective 4/19/97)

WAC 315-12-080 Requests for public records. In accordance with requirements of chapter ((42.17)) 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request ((~~shall~~)) may be made in writing upon a form prescribed by the director which shall be available at its administrative office. The form ((~~shall~~)) may be presented to any member of the director's staff ((~~designated by the responsible public records officer to receive requests~~)) at the administrative office of the director during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record.

(b) The time of day and calendar date on which the request was made.

(c) ((~~The nature of the request~~))

((~~it~~)) A reference to the requested record as ((~~it is described in the current record index~~)) a specific existing identifiable public record.

((Note: If the material is not identifiable by reference to the current index, an accurate description of the record is requested.

((~~e~~)) ((~~d~~)) The purpose for which a list of individuals, if so requested, will be used.

((~~f~~)) ((~~e~~)) The signature of the requestor.

(2) In all cases in which a member of the public makes a request, it shall be the obligation of the staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

(3) Any persons authorized by law to obtain a list of individuals from public records will be required to complete a statement agreeing not to release or use the information for commercial purposes. One or more requests from the same or associated persons for information regarding individuals shall be treated as a request for a list of individuals.

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-150 Communications. All written communications with the commission or director pertaining to the administration or enforcement of chapter ((42.17)) 42.56 RCW and these rules shall be addressed as follows: Washington State Lottery, P.O. Box 9770, Olympia, WA 98504, Attn: Public Records Officer.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 315-12-040 Operations and procedures.
- WAC 315-12-100 Exemptions.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 315-11A-156 Instant Game Number 156 ("\$2 Win For Life").
- WAC 315-11A-183 Instant Game Number 183 ("\$2 Win For Life II").

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 315-36-010 What is Lucky for Life and how do I play?
- WAC 315-36-020 How much does a ticket cost?
- WAC 315-36-030 What are the prizes for Lucky for Life?
- WAC 315-36-040 Can I win more than once on one ticket?
- WAC 315-36-050 How is the winning set of numbers selected?
- WAC 315-36-060 How often is the winning set of numbers chosen?
- WAC 315-36-070 Where can I buy or redeem Lucky for Life tickets?
- WAC 315-36-080 What information is included on a Lucky for Life ticket and playslip?
- WAC 315-36-090 What are the odds of winning Lucky for Life?
- WAC 315-36-100 If more than one person per drawing wins the grand prize, does each person receive the entire prize of \$1,000 for life or is the prize split among the winners?
- WAC 315-36-110 How is the "Lifetime Cash" type grand prize paid?
- WAC 315-36-120 How are prizes, other than the "Lifetime Cash" type grand prize, paid?
- WAC 315-36-130 What happens to unclaimed Lucky for Life prizes?

- WAC 315-36-140 Definitions for Lucky for Life.
- WAC 315-36-150 Suspension or termination of Lucky for Life.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 315-37-010 What is Lotto Plus and how do I play?
- WAC 315-37-020 How much does a Lotto Plus ticket cost?
- WAC 315-37-030 What are the prizes for Lotto Plus and the odds of winning the prizes?
- WAC 315-37-040 When will Lotto Plus start?
- WAC 315-37-050 How are the winning sets of numbers selected?
- WAC 315-37-060 How often are the winning sets of numbers chosen?
- WAC 315-37-070 Where can I buy or redeem Lotto Plus tickets?
- WAC 315-37-080 What information is included on a Lotto Plus ticket and playslip?
- WAC 315-37-090 How are prizes paid?
- WAC 315-37-100 What happens to unclaimed Lotto Plus prizes?
- WAC 315-37-110 Definitions for Lotto Plus.
- WAC 315-37-120 Suspension or termination of Lotto Plus.

WSR 08-07-045
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 (Division of Child Support)
 [Filed March 14, 2008, 8:48 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 07-10-116.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS), division of child support (DCS) is adopting new sections and/or amendments in chapter 388-14A WAC to implement state legislation, which implements the federal Deficit Reduction Act of 2005, and to clarify DCS procedure and policy around the

establishment and enforcement of child support obligations. See Reviser's note below.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The federal Deficit Reduction Act of 2005 (DRA) made changes in the child support enforcement program under Title IV-D of the Social Security Act. DCS must adopt and amend rules to comply with the state law changes under the DRA. DCS adopted emergency rules under WSR 07-16-023 with an effective date of July 22, 2007, and then filed a second emergency rule under WSR 07-23-058 (effective November 16, 2007) to carry through the regular rule-making process. Due to extensive stakeholder work, DCS is filing a third emergency rule to be effective March 16, 2008.

Reasons Supporting Proposal: The department is adopting new sections and/or amendments in chapter 388-14A WAC to implement state legislation, which implements the federal Deficit Reduction Act of 2005, and to clarify DCS procedure and policy around the establishment and enforcement of child support obligations.

Statutory Authority for Adoption: DCS rule-making authority is found in sections 1, 2, 3, 4, 5, 7, 8, and 9, chapter 143, Laws of 2007.

Statute Being Implemented: Chapter 143, Laws of 2007.

Rule is necessary because of federal law, Deficit Reduction Act—Public Law 109-171.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

March 12, 2008
Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-09 issue of the Register.

WSR 08-07-061

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 17, 2008, 10:09 a.m.]

Continuance of WSR 07-15-076 and 07-18-088.

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

Title of Rule and Other Identifying Information: Continuance, WAC 246-310-990 Certificate of need, 246-329-990 Child birth centers, 246-335-990 In-home services agencies, 246-337-990 Residential treatment facilities, and 246-380-990 State institutional survey.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on April 22, 2008, at 10:00 a.m.

Date of Intended Adoption: May 1, 2008.

Submit Written Comments to: Alisa Harris, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 18, 2008.

Assistance for Persons with Disabilities: Contact Alisa Harris by April 18, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to the passage of Initiative 960, the department needed approval from the legislature to increase fees. The department is extending the deadline for submitting written comments and conducting a continuance to the August 22, 2007, hearing. The new hearing will be held April 22, 2008. The proposed rules increase fees in the certificate of need, child birth centers, in-home services agencies, residential treatment facilities and state institutional survey program in excess of the fiscal growth factor. This exemption was given to meet the actual cost of conducting business as approved by the legislature in section 222, chapter 522, Laws of 2007 (SHB 1128).

This proposal also adds to WAC 246-335-990(5), in-home services agencies on how the department of health will process refunds.

Reasons Supporting Proposal: RCW 43.70.250 requires the department to charge fees sufficient to cover the full cost program operations. These additional resources are necessary to maintain current program operations and the assure public health and safety in facilities statewide.

Statutory Authority for Adoption: RCW 43.70.250, 70.38.105, 18.46.030, 70.127.090, 71.12.470, 43.70.040.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health, office of facilities and services licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steven Saxe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2905.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal is exempt under RCW 19.85.025(3) and does not require a small business economic impact statement. However, the department prepared fee analyses which provides documentation of the need for fee increases. To obtain a copy of a fee analysis, contact Alisa Harris at the address above.

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis. This proposal is exempt from this requirement under RCW 34.05.328 [(5)(b)(ii)].

March 17, 2008
 Mary C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 03-22-020, filed 10/27/03, effective 11/27/03)

WAC 246-310-990 Certificate of need review fees. (1) An application for a certificate of need under chapter 246-310 WAC must include payment of a fee consisting of the following:

- (a) A review fee based on the facility/project type;
- (b) If more than one facility/project type applies to an application, the review fee for each type of facility/project must be included.

Facility/Project Type	Review Fee
Ambulatory Surgical Centers/Facilities	\$((13,379.00) <u>17,392.00</u>)
Amendments to Issued Certificates of Need	\$((8,432.00) <u>10,961.00</u>)
Emergency Review	\$((5,427.00) <u>7,055.00</u>)
Exemption Requests	
• Continuing Care Retirement Communities (CCRCs)/Health Maintenance Organization (HMOs)	\$((5,427.00) <u>7,055.00</u>)
• Bed Banking/Conversions	\$((883.00) <u>1,147.00</u>)
• Determinations of Nonreviewability	\$((1,261.00) <u>1,639.00</u>)
• Hospice Care Center	\$((1,136.00) <u>1,476.00</u>)
• Nursing Home Replacement/Renovation Authorizations	\$((1,136.00) <u>1,476.00</u>)
• Nursing Home Capital Threshold under RCW 70.38.105 (4)(e) (Excluding Replacement/Renovation Authorizations)	\$((1,136.00) <u>1,476.00</u>)
• Rural Hospital/Rural Health Care Facility	\$((1,136.00) <u>1,476.00</u>)
Extensions	
• Bed Banking	\$((505.00) <u>656.00</u>)

Facility/Project Type	Review Fee
• Certificate of Need/Replacement Renovation Authorization Validity Period	\$((505.00) <u>656.00</u>)
Home Health Agency	\$((16,155.00) <u>21,001.00</u>)
Hospice Agency	\$((14,388.00) <u>18,704.00</u>)
Hospice Care Centers	\$((8,432.00) <u>10,961.00</u>)
Hospital (Excluding Transitional Care Units-TCUs, Ambulatory Surgical Center/Facilities, Home Health, Hospice, and Kidney Disease Treatment Centers)	\$((26,506.00) <u>34,457.00</u>)
Kidney Disease Treatment Centers	\$((16,409.00) <u>21,331.00</u>)
Nursing Homes (Including CCRCs and TCUs)	\$((30,293.00) <u>39,380.00</u>)

(2) The fee for amending a pending certificate of need application is determined as follows:

(a) If an amendment to a pending certificate of need application results in the addition of one or more facility/project types, the review fee for each additional facility/project type must accompany the amendment application;

(b) If an amendment to a pending certificate of need application results in the removal of one or more facility/project types, the department shall refund to the applicant the difference between the review fee previously paid and the review fee applicable to the new facility/project type; or

(c) If an amendment to a pending certificate of need application results in any other change as identified in WAC 246-310-100, a fee of one thousand ((~~three~~) seven hundred ((~~fifty-one~~) fifty-six) dollars must accompany the amendment application.

(3) If a certificate of need application is returned by the department under WAC 246-310-090 (2)(b) or (e), the department shall refund seventy-five percent of the review fees paid.

(4) If an applicant submits a written request to withdraw a certificate of need application before the beginning of review, the department shall refund seventy-five percent of the review fees paid by the applicant.

(5) If an applicant submits a written request to withdraw a certificate of need application after the beginning of review, but before the beginning of the ex parte period, the department shall refund one-half of all review fees paid.

(6) If an applicant submits a written request to withdraw a certificate of need application after the beginning of the ex parte period the department shall not refund any of the review fees paid.

(7) Review fees for exemptions and extensions are non-refundable.

AMENDATORY SECTION (Amending WSR 07-07-075, filed 3/16/07, effective 4/16/07)

WAC 246-329-990 Fees. The purpose of the fees section is to describe the fees associated with licensing, renewal and other charges assessed by the department.

(1) Childbirth centers licensed under chapter 18.46 RCW shall submit an annual fee of ~~((five))~~ seven hundred ~~((ninety-nine))~~ thirteen dollars and ~~((ninety))~~ zero cents to the department unless a center is a charitable, nonprofit, or government-operated institution under RCW 18.46.030.

(2) A change of ownership fee of one hundred ~~((fifty))~~ seventy-eight dollars. A new license will be issued and valid for the remainder of the current license period.

(3) The department may charge and collect from a licensee a fee of ~~((seven))~~ eight hundred ~~((fifty))~~ ninety-two dollars for:

(a) A second on-site visit resulting from failure of the licensee to adequately respond to a statement of deficiencies;

(b) A complete on-site survey resulting from a substantiated complaint; or

(c) A follow-up compliance survey.

(4) A licensee shall submit an additional late fee in the amount of ~~((twenty-five))~~ twenty-nine dollars per day, not to exceed five hundred ninety-five dollars, from the renewal date (which is thirty days before the current license expiration date) until the date of mailing the fee, as evidenced by the postmark.

(5) Refunds. The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department,

two-thirds of the fees paid, less a fifty dollar processing fee; or

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(c) The department may not refund applicant fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

AMENDATORY SECTION (Amending WSR 04-19-142, filed 9/22/04, effective 10/23/04)

WAC 246-335-990 Fees. (1) A licensee or applicant shall submit to the department:

(a) An initial twelve-month license fee of ~~((one thousand nine hundred sixty-six))~~ two thousand one hundred sixty-two dollars for each service category for new persons not currently licensed in that category to provide in-home services in Washington state, or currently licensed businesses which have had statement of charges filed against them;

(b) A twenty-four month renewal fee based on the number of full-time equivalents (FTEs), which is a measurement based on a forty-hour week and is applicable to paid agency personnel or contractors, or the number of beds, as follows:

(c) For single service category licenses:

# of FTEs	Home Health	Hospice	Home Care	# of Beds	Hospice Care Center
5 or less	\$(1,966.00) <u>2,162.00</u>	\$(983.00) <u>1,081.00</u>	\$(590.00) <u>649.00</u>	5 or less	\$(655.00) <u>720.00</u>
6 to 15	\$(2,765.00) <u>3,041.00</u>	\$(1,035.00) <u>1,138.00</u>	\$(1,068.00) <u>1,174.00</u>	6 to 10	\$(1,311.00) <u>1,442.00</u>
16 to 50	\$(3,146.00) <u>3,460.00</u>	\$(1,540.00) <u>1,694.00</u>	\$(1,147.00) <u>1,261.00</u>	11 to 15	\$(1,966.00) <u>2,162.00</u>
51 to 100	\$(3,965.00) <u>4,361.00</u>	\$(2,467.00) <u>2,713.00</u>	\$(1,343.00) <u>1,477.00</u>	16 to 20	\$(2,621.00) <u>2,883.00</u>
101 or more	\$(4,083.00) <u>4,491.00</u>	\$(2,595.00) <u>2,854.00</u>	\$(1,442.00) <u>1,586.00</u>		

(d) For multiple service category licenses:

(i) One hundred percent of the home health category fee and seventy-five percent of the appropriate service category fee for each additional service category (hospice, home care, hospice care center); or

(ii) One hundred percent of the hospice category fee and seventy-five percent of the appropriate service category fee for each additional service category (home care, hospice care center); and

(e) A change of ownership fee of ~~((one hundred ninety-seven))~~ two hundred sixteen dollars for each licensed service category. A new license will be issued and valid for the remainder of the current license period.

(2) The department may charge and collect from a licensee a fee of ~~((nine hundred eighty-three))~~ one thousand eighty-one dollars for:

(a) A second on-site visit resulting from failure of the licensee to adequately respond to a statement of deficiencies;

(b) A complete on-site survey resulting from a substantiated complaint; or

(c) A follow-up compliance survey.

(3) A licensee with deemed status shall pay fees according to this section.

(4) A licensee shall submit an additional late fee in the amount of ~~((thirty-three))~~ thirty-six dollars per day, not to exceed five hundred fifty dollars, from the renewal date (which is thirty days before the current license expiration

date) until the date of mailing the fee, as evidenced by the postmark.

(5) Refunds. The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee; or

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(6) The department may not refund applicant fees if:

(a) The department has performed more than one on-site visit for any purpose;

(b) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(c) The amount to be refunded as calculated by subsection (5)(a) or (b) of this section is ten dollars or less.

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

WAC 246-337-990 Licensing fees. A licensee must submit the following fees to the department:

FEE TYPE	AMOUNT
Administrative processing/ initial application fee	\$((155.00)) <u>204.00</u>
License bed fee (per bed)	\$((144.60)) <u>190.00</u>
Annual renewal fee (per bed)	\$((144.60)) <u>190.00</u>
Late fee (per bed)	\$((25.00)) <u>33.00</u> (up to \$((500.00)) <u>660.00</u>)
Follow-up compliance survey fee or a complete on-site survey fee resulting from a substantiated complaint	\$((1000.00)) <u>1,320.00</u>

(1) The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received an application but has not conducted an on-site survey or provided technical assistance. The department shall refund two-thirds of the fees paid, less a fifty dollar processing fee;

(b) The department has received an application and has conducted an on-site survey or provided technical assistance. The department shall refund one-third of the fees paid, less a fifty dollar processing fee.

(2) The department will not refund fees paid by the applicant if:

(a) The department has conducted more than one on-site visit for any purpose;

(b) One year has elapsed since the department received an initial licensure application, and the department has not issued a license because the applicant failed to complete requirements for licensure; or

(c) The amount to be refunded as calculated by subsection (1)(a) or (b) of this section is ten dollars or less.

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

WAC 246-380-990 Fees. An annual health and sanitation survey fee for community colleges, ferries, and other state of Washington institutions and facilities shall be assessed as follows:

- | | Fee |
|---|--|
| (1) Food Service | |
| (a) As defined in WAC 246-215-011(12) food service establishments or concessions in community colleges, ferries, or any other state of Washington facility preparing potentially hazardous foods. This shall include dockside food establishments directly providing food for the Washington state ferry system. | \$((603.30))
<u>796.00</u> |
| (b) Food service establishments or concessions that do not prepare potentially hazardous foods. | \$((302.60))
<u>399.00</u> |
| (c) The health and sanitation survey fee referenced in subsection (a) and (b) of this section may be waived provided there is an agreement between the department of health and the local jurisdictional health agency for the local health agency to conduct the food service establishments surveys. | |
| (2) State institutions or facilities. | |
| (a) Institutions or facilities operating a food service: The annual fee shall be ((nine)) <u>twelve</u> dollars and fifty cents times the population count plus ((six)) <u>seven</u> hundred ((three)) <u>ninety-six</u> dollars and ((thirty)) <u>zero</u> cents <u>per food service establishment</u> . The population count shall mean the average daily population for the past twelve months (January through December). | |
| (b) Institutions or facilities that do not operate a food service: The annual fee shall be ((nine)) <u>twelve</u> dollars and fifty cents times the population count. | |

- (c) The population count for a new institution shall mean the average projected daily population for the first twelve months of operation.

WSR 08-07-066**PROPOSED RULES****GAMBLING COMMISSION**

[Filed March 17, 2008, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-051.

Title of Rule and Other Identifying Information: WAC 230-13-135 Commercial amusement games—Wager and prize limitations.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 98301, (509) 547-0701, on May 9, 2008, at 9:30 a.m.

Date of Intended Adoption: May 9, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Reasons Supporting Proposal: Music Vend [Inc.], a commercial amusement game licensee, has submitted a petition for rule change requesting amusement game wagering limits be increased from \$0.50 to \$1. The petition was filed for discussion at the February commission meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Marv Galante, Music Vend, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

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

March 17, 2008
Susan Arland
Rules Coordinator

Fee

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

WAC 230-13-135 Maximum wagers and prize limitations at certain amusement game locations. The maximum wager is ~~((fifty cents))~~ one dollar and the maximum cost for a prize is two hundred fifty dollars if school-aged minors are allowed to play amusement games at the following locations:

- (1) Regional shopping centers; and
- (2) Movie theaters; and
- (3) Bowling alleys; and
- (4) Miniature golf course facilities; and
- (5) Skating facilities; and
- (6) Amusement centers; and
- (7) Department or grocery stores within a regional shopping center as defined in WAC 230-13-090 (2)(b); and
- (8) Any business whose primary activity is to provide food service for on premises consumption.

WSR 08-07-067**PROPOSED RULES****GAMBLING COMMISSION**

[Filed March 17, 2008, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-050.

Title of Rule and Other Identifying Information: WAC 230-13-150 Amusement game locations, 230-13-080 Operating coin or token activated amusement games, and 230-13-135 Maximum wagers and prize limitations at certain amusement game locations.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 98301, (509) 547-0701, on May 9, 2008, at 9:30 a.m.

Date of Intended Adoption: May 9, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 1, 2008, TTY (360) 486-3637, or (360) 486-3453.

Reasons Supporting Proposal: Star Fire Sports operates a multi-sports complex located in Tukwila. The complex is a managed fifty-four acre site containing multiple outdoor soccer and baseball fields. Star Fire also has one large central building containing indoor soccer fields, locker rooms, a restaurant, a retail store, and other amenities.

WAC 230-13-150 states that amusement games must be conducted at locations set out in RCW 9.46.0331. In 1997, the commission authorized skating facilities and department or grocery stores as amusement game locations.

Staff's Alternative: Staff's alternative proposal would, in addition to the petitioner's request, add two locations (skating facilities and grocery stores) previously authorized by rule into WAC 230-13-150. WAC 230-13-080 and 230-13-135 need to be amended to include Mr. Englin's request.

Additionally, a housekeeping change is being made to each of these two rules.

Staff's alternative is supported by the petitioner and was filed at the February 2008 commission meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Sean Englin, Star Fire Sports, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the change would not impose additional costs on businesses. Amusement games are already authorized at specific locations. The proposed rule change adds another authorized location.

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

March 17, 2008

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, 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; ~~((ø))~~ and
- (b) Regional shopping malls; ~~((ø))~~ and
- (c) Movie theaters; ~~((ø))~~ and
- (d) Bowling alleys; and
- (e) Miniature golf course facilities; and
- (f) Skating facilities; and

(g) Commercially operated family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and

(h) Amusement centers (~~("Amusement center" means a permanent location whose primary source of income is from the operation of ten or more amusement games)); and~~

~~((h))~~ (i) Restaurants; and

~~((i))~~ (j) 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))~~ (k) 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 players before play that change is not returned and disclose to them where at the location they may get change.

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

WAC 230-13-135 Maximum wagers and prize limitations at certain amusement game locations. The maximum wager is fifty cents and the maximum cost for a prize is two hundred fifty dollars if school-aged minors are allowed to play amusement games at the following locations:

- (1) Regional shopping centers; and
- (2) Movie theaters; and
- (3) Bowling alleys; and
- (4) Miniature golf course facilities; and
- (5) Skating facilities; and
- (6) Commercially operated family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and

(7) Amusement centers; and

~~((7))~~ Department or grocery stores within a regional shopping center as defined in WAC 230-13-090 (2)(b)) (8) 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

~~((8))~~ (9) Any business whose primary activity is to provide food service for on premises consumption.

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

WAC 230-13-150 Amusement game locations. (1) Amusement game operators must obtain written permission to operate at any location from the person or organization owning the premises or sponsoring the event where the operator will hold the activity.

(2) Operators may only conduct commercial amusement games at:

(a) Locations set out in RCW 9.46.0331; and

(b) Commercially operated family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and

(c) Skating facilities; and

(d) 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.

(3) Operators must conduct amusement games in conformance with local zoning, fire, health, and similar regulations.

WSR 08-07-068
PROPOSED RULES
CONVENTION AND TRADE
CENTER

[Filed March 17, 2008, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-124.

Title of Rule and Other Identifying Information: Chapter 140-09 WAC, Washington state convention and trade center (WSCTC)—SEPA guidelines.

Hearing Location(s): Washington State Convention and Trade Center, 800 Convention Place, Seattle, WA 98101-2350, on May 20, 2008, at 2:00 p.m.

Date of Intended Adoption: May 20, 2008.

Submit Written Comments to: Dan Johnson, Administrative Services Manager, Washington State Convention and Trade Center, 800 Convention Place, Seattle, WA 98101-2350, e-mail djohnson@wsctc.com, fax (206) 694-5399, by 5:00 p.m., May 13, 2008.

Assistance for Persons with Disabilities: Contact Dan Johnson by 5:00 p.m., May 6, 2008, (206) 694-5013 or fax (206) 694-5399.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments update WSCTC's SEPA rules. They would also clarify when WSCTC will serve as lead agency, specify certain emergency actions that would be categorically exempt from SEPA, and adopt the city of Seattle's flexible thresholds for categorical exemptions.

Reasons Supporting Proposal: The proposed amendments update WSCTC's SEPA rules in order to be consistent with state department of ecology SEPA rules, which have changed since initial adoption of the WSCTC rules.

Statutory Authority for Adoption: RCW 43.21C.120.

Statute Being Implemented: Chapter 43.21C RCW.

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

Name of Proponent: WSCTC, governmental.

Name of Agency Personnel Responsible for Drafting: Dan Johnson, 800 Convention Place, Seattle, WA 98101-2350, (206) 694-5013; Implementation and Enforcement: John Christison, 800 Convention Place, Seattle, WA 98101-2350, (206) 694-5010.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impact small businesses as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. WSCTC is not named in RCW 34.05.328 (5)(a)(i).

March 17, 2008

Suzanne Shaw

for Dan Johnson

Administrative Services Manager

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 08-08 issue of the Register.

WSR 08-07-069
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 17, 2008, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-185.

Title of Rule and Other Identifying Information: Amending WAC 230-03-005 permits for recreational gaming activities, 230-06-110 Buying, selling or transferring gambling equipment, 230-14-085 Calculating markup for merchandise prizes and 230-15-460 Supervision requirements for house-banked card games; and new section WAC 230-15-453 Using match play or similar coupons in gambling promotions.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on May 9, 2008, at 9:30 a.m.

Date of Intended Adoption: May 9, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rules package incorporates rule interpretations that existed since 2005 and 2006.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is

not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

March 17, 2008
Susan Arland
Rules Coordinator

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

WAC 230-03-005 Permits for recreational gaming activities. A recreational gaming activity (RGA) is a non-gambling activity, using poker tables and gambling equipment authorized for use in fund-raising events(~~(s)~~). An RGA is conducted no more than two times per calendar year, by, or on behalf of, a sponsoring organization, business, or association, or department of an organization, business, or association.

(1) An organization, business, or association, or department of an organization, business, or association, that holds or sponsors an RGA must either:

- (a) Apply for and get a permit before the event; or
- (b) Hire a licensed fund-raising equipment distributor to organize and conduct the activity.

(2) Only members and guests of the sponsoring organization, business, or association, or department of the sponsoring organization, business, or association, may participate in the RGA.

(3) Permit holders must:

- (a) Rent the gambling equipment used in the RGA from:
 - (i) A licensed distributor of fund-raising event equipment; or

(ii) A licensee who has conducted a fund-raising event within the last twelve months; and

- (b) Use scrip or chips which have no cash value; and
- (c) Limit the RGA to eight hours.

(4) The permit holder may charge a fee to enter the premises if that fee pays for:

(a) An accompanying meal and entertainment associated with the RGA; or

(b) The costs of renting the equipment used in the RGA.

(5) All prizes must be donated to, or provided by, the permit holder.

(6) The permit holder may allow participants to:

(a) Redeem their scrip or chips for prizes; or

(b) Trade scrip or chips for tickets which are then drawn to determine the prize winners. ((All prizes must be donated to, or provided by, the permit holder.))

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-06-110 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 or can legally possess the equipment without a license.

(3) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(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.

(5) Charitable and nonprofit organizations conducting unlicensed bingo games, as allowed by RCW 9.46.0321, may possess bingo equipment without a license.

(6) 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 I.D. stamps. Licensees must report these transfers, including a copy of the inventory record, to us.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

WAC 230-14-085 Calculating markup for merchandise prizes. (1) To calculate sixty percent of total gross for merchandise prizes, operators take the amount actually paid for the prize and add to it no more than fifty percent of that cost as markup.

(2) Gift certificates from a licensee's own establishment may be used as merchandise prizes for pull-tab games but must not be included in the sixty percent payout calculation.

(3) The total cost to the operator for the purchase of a prize must not exceed ((seven hundred fifty)) twenty-five hundred dollars.

NEW SECTION

WAC 230-15-453 Using match play or similar coupons in gambling promotions. Match play coupons may be offered as gambling promotions with the following restrictions:

(1) The coupons have no value. Players cannot "double down" on the "match play" portion of the wager.

(2) Players may double down on the chip portion of the wager, not to exceed maximum wagering limits.

(3) A match play coupon is not considered part of the player's wager in determining the amount wagered. Match play coupons may be used by players who wager the maximum allowed.

(4) A match play coupon is itself a gambling promotion and cannot be awarded as a prize in a promotional contest of chance, as authorized in RCW 9.46.0356, or as a prize on a card game.

(5) Restrictions on the use of coupons must be disclosed on the coupon.

(6) Expiration dates must be included on the coupon.

(7) Match play and other similar type coupon promotions such as Lucky Bucks and Free Ace, etc., may be given to participants in a card tournament as long as they are given to all participants and are not awarded based on the outcome of the tournament.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-460 Supervision requirements for house-banked card rooms. (1) House-banked card game licensees must have at least one floor supervisor for each gambling area. Each supervisor may supervise up to seven tables. We must approve the arrangement of tables in the internal controls.

(2) Licensees must have two levels of supervision present on the business premises if more than ten tables are open. Poker tables operated in a separate gambling area are not included in the calculation of levels of supervision.

(3) A card room employee may act as a dealer and a supervisor during the same shift as long as he or she does not sign forms as both the dealer and the supervisor.

WSR 08-07-072

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 18, 2008, 10:15 a.m.]

Continuance of WSR 08-03-011.

Preproposal statement of inquiry was filed as WSR 06-16-091.

Title of Rule and Other Identifying Information: Chapter 16-89 WAC, Sheep and goat scrapie disease control, to be retitled as "sheep and goat diseases in Washington state." Subsequent to a public hearing held on December 20, 2007, the department is continuing the adoption date and comment period.

Date of Intended Adoption: April 14, 2008.

Submit Written Comments to: Teresa Norman, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by April 4, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Following the December 21, 2007, public hearing, the department is continuing this rule proposal in order to accept additional comments.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: [Department of agriculture], governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Paul Kohrs, Olympia, (360) 902-1835; Implementation and Enforcement: Dr. Leonard Eldridge, Olympia, (360) 902-1881.

March 18, 2008

Leonard E. Eldridge, DVM
State Veterinarian

WSR 08-07-075

**WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed March 18, 2008, 12:15 p.m.]

WAC 230-10-350 and 230-10-446, proposed by the gambling commission in WSR 07-18-084 appearing in issue 07-18 of the State Register, which was distributed on September 19, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 08-07-076

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed March 18, 2008, 12:15 p.m.]

WAC 388-101-3120 and 388-101-4180, proposed by the department of social and health services in WSR 07-18-094 appearing in issue 07-18 of the State Register, which was distributed on September 19, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 08-07-080

PROPOSED RULES

**UTILITIES AND TRANSPORTATION
COMMISSION**

[Docket PL-070974—Filed March 19, 2008, 8:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-059 and 07-21-146.

Title of Rule and Other Identifying Information: Chapter 480-75 WAC, Hazardous liquid, gas, oil and petroleum pipeline companies—Safety. The Washington utilities and transportation commission (UTC) has identified several rules within chapter 480-75 WAC that need to be updated to establish consistency with statutory changes made to Titles 80 and 81 RCW resulting from the passage of SSB 5225 during the 2007 legislative session. This rule making will provide amendments to definitions and add new definitions to reflect changes to state law. In addition, the penalty amount, the annual reporting date and the correct version date for adopting rules by reference have been modified to be consistent with federal rules. The rule making has been assigned Docket PL-070974.

Hearing Location(s): Commission's Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on May 15, 2008, at 1:30 p.m.

Date of Intended Adoption: May 15, 2008.

Submit Written Comments to: Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by April 25, 2008. Please include Docket PL-070974 in your communication.

Assistance for Persons with Disabilities: Contact Mary DeYoung by Tuesday, May 13, 2008, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are intended to update current rules to reflect changes in Titles 80 and 81 RCW resulting from the passage of SSB 5225 during the 2007 legislative session. The changes provide updated definitions in WAC 480-75-100 for "Hazardous liquid pipeline[", "pipeline" and "hazardous liquid pipeline company." The change in definition for "hazardous liquid pipeline company" is applicable to most of the rules in chapter 480-75 WAC. In addition, WAC 480-75-200 Application of rules, adds to the title "responsibility for contractors" and a new subsection (2) defining a company's responsibility for its contractors. WAC 480-75-250 increases the penalty amounts to be consistent with federal law, WAC 480-75-240(3) changes the quarterly fee installment dates, and WAC 480-75-999 (1)(a) changes the version date for the adoption of federal rules. In addition, rule language has been modified from the passive to active voice.

Reasons Supporting Proposal: With the passage of SSB 5225, chapter 480-75 WAC must reflect the statutory changes to be consistent with state law. In addition, UTC staff and stakeholders have discovered areas of the rules that call for minor correction, updates, deletion, and revision. This proposal would address those areas.

Statutory Authority for Adoption: RCW 80.01.040(4) and 81.88.060.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sondra Walsh, Operations Manager, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1286; Implementation and Enforcement: Carole J. Washburn, Executive Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed corrections and changes to rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The UTC is not an agency to which RCW 34.05.-

328 applies. The proposed rules are not significant legislative rules of the sort reference[d] in RCW 34.05.328(5).

March 19, 2008

Carole J. Washburn
Executive Secretary

Chapter 480-75 WAC

~~HAZARDOUS LIQUID ((GAS, OIL AND PETROLEUM)) PIPELINES ((COMPANIES))—SAFETY~~

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-100 Definitions. "Backfill" means the material filled over the pipe after the pipe is lowered into a trench.

"Bedding" means the material placed in the bottom of a trench prior to laying a pipe.

"Breakout tank" means a tank that is used to relieve surges in a hazardous liquid pipeline system, or a tank used to receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.

~~("Company," "pipeline company," or "hazardous liquid pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or carbon dioxide. A "pipeline company" does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.))~~

"Hazardous liquid" means (a) petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 CFR Part 195 and (b) carbon dioxide.

"Hazardous liquid pipeline" or "pipeline" means all parts of a pipeline facility through which hazardous liquid moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. It does not include all parts of a pipeline facility through which a hazardous liquid moves in transportation through refining or manufacturing facilities or storage or in-plant piping systems associated with such facilities, a pipeline subject to safety regulations of the United States Coast Guard, or a pipeline that serves refining, manufacturing, or truck, rail or vessel terminal facilities, if the pipeline is less than one mile long, measured outside facility grounds, and does not cross an offshore area or a waterway used for commercial navigation.

"Hazardous liquid pipeline company" or "pipeline company" means a person or entity constructing, owning, or operating a hazardous liquid pipeline, but does not include excavation contractors or other contractors that contract with a hazardous liquid pipeline company.

"Independent level alarm" means an alarm function actuated by a primary level sensing device that is separate and independent from any tank gauging equipment on the tank.

"Line pipe" or "pipe" means a tube, usually cylindrical, through which a hazardous liquid is transported from one point to another.

"Major construction" means any change in pipeline routing, either horizontally or depth, or replacement of existing pipe of one hundred feet or more in length.

"Maximum operating pressure (MOP)" means the maximum operating pressure at which a pipeline may be operated under 49 CFR Part 195.

"New pipeline" means a new hazardous liquid pipeline that did not previously exist, or an extension of an existing pipeline (~~(for)~~) of one hundred feet or longer.

~~("Operator" means a person who owns or operates pipeline facilities.)~~

"Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any political subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

~~("Pipeline," "pipeline system," or "hazardous liquid pipeline" means all parts of a pipeline facility through which hazardous liquid moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. Pipeline or pipeline system does not include process or transfer pipelines.~~

~~"Pipeline facility" means new and existing pipeline, rights of way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.)~~

"Release" means when hazardous liquid escapes from the pipeline.

"Subsoiling" means the agricultural practice of breaking compact subsoil.

"Telephonic notification" means verbal notification by telephone to the Washington utilities and transportation commission, pipeline safety division using the pipeline safety incident notification telephone number (1-888-321-9146).

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-200 Application of rules—Responsibility for contractors. (1) The rules in this chapter apply to hazardous liquid pipeline companies that are subject to the jurisdiction of the commission under chapter 81.88 RCW. The purpose of ~~(the)~~ these rules is to provide minimum safety standards and reporting requirements for the transportation of hazardous liquids by pipeline, and to set forth a regulatory fee methodology that applies to all pipeline companies subject to inspection by the commission.

(2) While the commission's hazardous liquid pipeline safety statutes and rules impose obligations on pipeline companies, a pipeline company may contract with a person to do tasks that are subject to these rules, such as excavation, construction, and maintenance. If the pipeline company's contractor (or any of its subcontractors) engages in conduct that violates commission rules applicable to the pipeline company, the pipeline company is subject to penalties and all

other applicable remedies, as if the pipeline company itself engaged in that conduct, including intentional noncompliance or other intentional violations of these rules by the contractor (or any of its subcontractors). The pipeline company is responsible for maintaining measures designed to detect intentional violations of these rules by a contractor and any of its subcontractors.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-210 Additional requirements. (1) These rules do not relieve any pipeline company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any company in appropriate circumstances, consistent with the requirements of law.

AMENDATORY SECTION (Amending Docket No. P-041344, General Order No. R-523, filed 8/4/05, effective 7/1/06)

WAC 480-75-240 Annual pipeline safety fee methodology. (1) ~~(Every hazardous liquid pipeline company subject to inspection or enforcement by the commission)~~ This rule sets forth the commission's regulatory fee methodology for hazardous liquid pipelines as that term is defined in RCW 81.88.010, and gas pipelines, as that term is defined in RCW 81.88.010. For purposes of this section, these pipelines are called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each program.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in ~~(section (2) below)~~ subsection (3) of this section.

~~((2))~~ (3) The fee will be set by general order of the commission entered before ~~(July)~~ September 1 of each year and will be collected in four equal installments payable on the first day of each ~~(calendar)~~ quarter as listed below:

1st quarter fee installment due September 1;

2nd quarter fee installment due December 1;

3rd quarter fee installment due March 1;

4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation and less any amount received from penalties collected under RCW 19.122.050. Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against pipeline company ~~(pipeline)~~ safety fees, nor will the work supported by ~~(such)~~ grants be considered a cost for purposes of calculating ~~(such)~~ fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each company's share of the total of all pipeline miles within Washington as reported by ~~((the))~~ companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fees will be allocated among companies in proportion to each company's share of the commission pipeline safety program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to ~~((the))~~ each company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee-setting purposes, any program hours related to a ~~((staff))~~ commission investigation of an incident found to be attributed to third-party damage ~~((resulting))~~ that results in penalties collected under RCW 19.122.055 will not be directly attributed to the ~~((operator))~~ owner of the damaged pipeline ~~((for fee-setting purposes))~~.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

~~((3))~~ (4) By ~~((June))~~ August 1 of each year the commission ~~((staff))~~ will mail an invoice to each company ~~((an invoice))~~.

~~((4))~~ (5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For ~~((those companies))~~ each gas pipeline company subject to RCW 81.24.010 ~~((the))~~, its portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

~~((5))~~ (6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within ~~((6))~~ six months ~~((of))~~ after the due date of the fee, file a written petition ~~((in writing))~~ with the commission requesting a refund. The petition shall state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; ~~((and any))~~ all reasons why the commission ~~((may))~~ should not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner contends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication ~~((or for brief adjudication))~~.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-250 Civil penalty for violation of chapter 81.88 RCW. ~~((+))~~ Any pipeline company that violates any ~~((public))~~ pipeline safety provision of any commission order or any rule in this chapter including those rules adopted by reference, or chapter 81.88 RCW ~~((or regulation issued~~

thereunder, required for compliance with the Federal Pipeline Safety Law, 49 U.S.C. Section 60101,)) is subject to a civil penalty not to exceed ~~((twenty-five))~~ one hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is ~~((five hundred thousand))~~ one million dollars. ~~((This subsection applies to violations of public safety requirements including any commission order or chapter 480-75 WAC.~~

~~((2) In determining the amount of the penalty, the commission will consider the appropriateness of the penalty in relation to the position of the person charged with the violation.))~~

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-75-260 Exemption for rules in chapter 480-75 WAC. ~~((+))~~ The commission may grant an exemption from ~~((the provisions of))~~ any rule in this chapter ~~((if consistent with the public interest, with the purposes underlying regulation, and with applicable statutes.~~

~~((2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for the exemption.~~

~~((3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.~~

~~((4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purpose of the rule.~~

~~((5) The commission will enter an order granting or denying the request, or setting it for hearing pursuant to chapter 480-07 WAC)) pursuant to WAC 480-07-110. Please refer to that rule for applicable procedures.~~

AMENDATORY SECTION (Amending Docket PL-061026, General Order R-541, filed 4/4/07, effective 5/5/07)

WAC 480-75-270 Damage prevention. Each ~~((operator))~~ pipeline company must comply with the provisions of chapter 19.122 RCW, to the extent those provisions apply to the ~~((operator. A failure))~~ pipeline company. A pipeline company violates this rule if the pipeline company fails to comply with ((any of the provisions of)) chapter 19.122 RCW ((is a violation of this rule)). Each day a violation persists is a separate violation of this rule. In determining whether ~~((an operator))~~ a pipeline company has complied with the provisions of chapter 19.122 RCW, the definitions contained in that chapter will apply. The definitions in chapter 480-75 WAC (other than the definition of ~~(("operator"))~~ "hazardous liquid pipeline company") do not apply.

AMENDATORY SECTION (Amending Docket PL-061026, General Order R-541, filed 4/4/07, effective 5/5/07)

WAC 480-75-300 Leak detection. (1) Pipeline companies must rapidly locate leaks from their pipeline. Pipeline companies must provide leak detection under flow and no flow conditions.

(2) Leak detection systems must be capable of detecting an eight percent of maximum flow leak within fifteen minutes or less.

(3) Pipeline companies must have a leak detection procedure and a procedure for responding to alarms. The ~~((operator))~~ pipeline company must maintain leak detection maintenance and alarm records.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-310 Geological considerations. When a pipeline company is planning to build a new pipeline, the design(s) of the new pipeline must ~~((consider))~~ reflect consideration of the potential impacts from seismic activity and earth movement.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-320 Overpressure protection. A pipeline company must conduct a surge analysis to ensure that the surge pressure does not exceed one hundred ten percent of the MOP. The pipeline company must design and operate the pressure relief system ~~((must be designed and operated as determined in))~~ consistent with the surge analysis, at or below the MOP except under surge conditions.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-330 Overfill protection. If a pipeline contains break out tanks, such tanks must have an independent level alarm.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-340 Cathodic protection test station location. Pipeline companies must ensure that each cathodically protected pipeline ~~((must have))~~ has test stations and other electrical measurement contact points that are located at pipe casings and at locations sufficient to facilitate cathodic protection testing.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-350 Design specifications for new pipeline ~~((projects)).~~ Pipeline companies must design new pipe-

lines ~~((projects must be designed))~~ in accordance with ASME B31.4 "Pipeline Transportation Systems for Liquid Hydrocarbon and Other Liquids." Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-360 Class locations. (1) This section classifies pipeline locations for the design of new pipelines. The following criteria apply to classifications under this section.

(a) A "class location unit" is an onshore area that extends 220 yards (200 meters) on either side of the centerline of any continuous ~~((+))~~ one mile (1.6 kilometers) of pipeline.

(b) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(2) Except as provided in subsection (3) of this section, pipeline locations are classified as follows:

(a) A Class 1 location is:

(i) An offshore area; or

(ii) Any class location unit that has ten or fewer buildings intended for human occupancy.

(b) A Class 2 location is any class location unit that has more than ten but fewer than forty-six buildings intended for human occupancy.

(c) A Class 3 location is:

(i) Any class location unit that has forty-six or more buildings intended for human occupancy; or

(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty or more persons on at least five days a week for ten weeks in any twelve-month period. (The days and weeks need not be consecutive.)

(d) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

(3) The pipeline company must adjust the continuous one-mile of pipeline ~~((must be adjusted to include))~~ referenced in subsection (1)(a) of this section by including all buildings in the higher class location. The class location unit must encompass the highest classification of buildings.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-370 Design factor (F) for steel pipe. Except as otherwise provided in subsections (1), (2) and (3) of this section, the design factor ~~((to be))~~ a pipeline company used in the design formula in 49 CFR Section 195.106 for new pipelines is determined in accordance with the following table. ~~((Information about))~~ The applicable version of the Code of Federal Regulations ~~((regarding the version adopted and where))~~ and how to obtain it is set out in WAC 480-75-999, Adoption by reference.

Class location	Design factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

(1) For Class 1 locations a design factor of 0.60 or less must be used in the design formula in 49 CFR Section 195.106 for steel pipe in Class 1 locations that:

(a) Crosses the right of way of an unimproved public road, without a casing;

(b) Crosses without a casing, or makes a parallel encroachment on the right of way of either a hard-surfaced road, a highway, a public street, or a railroad;

(c) Is supported by a vehicular, pedestrian, railroad, or pipeline bridge; or

(d) Is used in a fabricated assembly (including mainline valve assemblies, cross-connections, and river crossing headers).

(2) For Class 2 locations, a design factor of 0.50, or less, must be used in the design formula in 49 CFR Section 195.106 for uncased steel pipe that crosses the right of way of a hard-surfaced road, a highway, a public street, or a railroad.

(3) For Class 1 and Class 2 locations, a design factor of 0.50, or less, must be used in the design formula in 49 CFR Section 195.106 for:

(a) Steel pipe in a pump station; and

(b) Steel pipe (including a pipe riser, on a platform located offshore or in inland navigable waters).

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-380 Location of pump stations and breakout tanks for ~~((hazardous liquid))~~ pipelines. ~~((No))~~ A pipeline company shall not construct a new pump station ((will be located on any hazardous liquid pipeline or be constructed)) on the pipeline in any zoned area without prior approval of the appropriate zoning authority and ~~((acquisition of required))~~ having acquired all necessary permits. In areas not zoned, the ~~((distance between any))~~ pump station ~~((and any))~~ shall not be located closer than five hundred feet from an existing building intended for human occupancy ((and not)) (other than a building under the control of the pipeline company) ((will not be less than five hundred feet)). When locating new pump stations and breakout tanks, the ~~((operator))~~ pipeline company must consider such hazards as overhead power lines, geologic faults, areas prone to flooding, landslides, and falling rocks ((fall)). This requirement only applies ~~((prior to))~~ before the facility ((construction)) is constructed.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-508, filed 12/12/02, effective 1/12/03)

WAC 480-75-390 Valve spacing and rapid shutdown.

(1) Each pipeline company must have procedures to rapidly locate and isolate reportable releases from ~~((a))~~ its pipeline.

(2) When determining the type of valve to be used, its location, and its shut-off time, ~~((a))~~ each pipeline company must consider the following:

(a) Terrain;

(b) Geohazards;

(c) Drainage; and

(d) Type and condition of the pipe.

(3) Whenever a pipeline company installs a new rapid shutdown valve ~~((is to be installed))~~, the pipeline company must conduct a surge analysis to ensure that the surge pressure in the pipeline will not exceed one hundred ten percent of the maximum operating pressure as a result of a rapid valve closure.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-400 Backfill and ~~((bedding))~~ bed requirements. (1) ~~((For))~~ When a pipeline company constructs a new pipeline(s) or ((when conducting)) conducts maintenance ((activity for)) on an existing pipeline((s-backfilling and bedding must be provided in a manner that will)), the backfill and bed must provide firm support for the pipeline ((and in a manner)) such that neither the pipe nor the pipe coating is damaged by the backfill material or by subsequent surface activities.

(2) ~~((Where))~~ If the backfill material contains rocks or hard lumps that could damage the pipeline coating, the pipeline company must take care ((must be taken)) to protect the pipe and the pipe coating from damage ((by such means as the use of)), such as using mechanical shield material.

(3) ~~((Backfilling procedures))~~ A pipeline company's backfill practices must not cause distortion of the pipe cross-section that would be detrimental to the operation of the piping, or the passage of cleaning devices, ((or)) internal inspection devices, or other similar devices.

(4) ~~((Backfilling must be performed))~~ A pipeline company must apply backfill material in such a manner as to prevent excessive subsidence or erosion of the backfill and support material. Where a ditch is flooded, ((care must be exercised so)) the pipeline company must assure that the pipe is not floated from the bottom of the ditch prior to completing the backfill ((completion)).

(5) For open trench installations that cross paved areas subject to vehicular loading, the ~~((backfill must be compacted))~~ pipeline company must compact the backfill in layers to a minimum of ninety-five percent relative density.

(6) The bedding and backfill material a pipeline company uses must ((be)) consist of clean sand or soil and it must not contain any stones ((having a maximum dimension)) larger than one-half inch. ((Material must be placed to)) The pipeline company must place the bedding and backfill material at a minimum depth of six inches under the pipe and six inches over the top of the pipe. The remaining backfill must not contain rock larger than six inches. The pipeline company shall not use organic material ((and)) or wood ((is not permitted)) for bedding ((and)) or backfill.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-410 Coatings. Before backfilling, each pipeline company must electrically inspect all new coated pipe used to transport hazardous liquids (~~must be electrically inspected prior to backfilling~~), using a holiday detector to check for faults not observable by visual examination. The pipeline company shall operate the holiday detector (~~must be operated~~) in accordance with the manufacturer's instructions and at the voltage level appropriate for the electrical characteristics of the pipeline (~~system~~) being tested.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-420 Hydrostatic test requirements. The following minimum requirements apply to a pipeline company when it conducts a hydrostatic test of a new or existing (~~hazardous liquid~~) pipeline (~~s while being hydrostatically tested must have, at a minimum, the following~~):

(1) (~~When~~) If a pipeline company uses a manifold (~~is used~~) for hydrostatic testing, (~~then~~) the company must provide an isolation valve (~~must be provided~~) between the pressure testing manifold and the pipeline being tested. The isolation valve must be rated for the manifold test pressure when in the closed position. The pipeline company must separately pressure (~~testing~~) test the manifold used in the actual pressure test (~~must be separately pressure tested~~) to at least 1.2 times the pipeline test pressure, but not less than the discharge pressure of the pump used for the pressure testing.

(2) (~~When~~) If a pipeline company uses a pressure relief valve (~~is used~~) to protect the pipe, (~~then the pressure relief~~) each such valve (~~s~~) must be of adequate capacity and set to relieve at ten percent above the hydrostatic test pressure. The (~~relief valves~~) pipeline company must (~~be calibrated~~) calibrate the relief valve within one month prior to the (~~hydrotest~~) hydrostatic test.

(3) The pipeline company may use a bleed valve (~~may be provided~~) to protect the pipeline from overpressure. When a pipeline company uses a bleed valve (~~is used, it~~), the valve must be readily accessible in case immediate depressurization is required.

(4) (~~A test chart or other recording method that shows that the pressure was maintained at the minimum test pressure throughout the entire test must be documented for all hydrostatic tests. A company representative must sign and date the test to certify the validity of the test. All equipment such as hoses, piping, and other equipment used to hydrostatically test the pipe must be rated for at least the target pressure. Each hydrostatic test of a pipeline must be documented to show~~) All equipment such as hoses, piping, and other equipment used to hydrostatically test the pipe must be rated for at least the target pressure.

(5) The pipeline company must maintain documents identifying how each hydrostatic test was conducted. Each document must be signed by a person with sufficient knowledge, certifying that the document contains accurate informa-

tion about the test. The documents must contain the following information:

(a) The date of the test (~~date~~);

(b) (~~Signature of the certifying agent~~) A test chart or other record that shows that the pressure was maintained at the minimum test pressure throughout the entire test;

(c) Beginning and ending times of the test;

(d) Beginning and ending temperatures; and

(e) Highest and lowest pressure achieved.

(~~5~~) (6) The pipeline company must conspicuously post precautions such as warning signs (~~must be posted~~) indicating that a hazardous liquid pipeline is under test conditions.

(~~6~~) (~~Companies~~) (7) The pipeline company must notify (~~public officials who have~~) the local government and fire department with jurisdiction (~~encompassing~~) in the area affected by the (~~pipeline~~) hydrostatic test.

(~~7~~) (~~No additional~~) (8) The pipeline company shall not add any water (~~is allowed to be added~~) to the pipeline (~~one~~) after the hydrostatic test has started. (~~As~~) Because pressure varies significantly with changing test water temperatures, each (~~operator~~) pipeline company must take into consideration temperature variations in the test water before accepting the test results.

(~~8~~) (~~Before conducting a hydrostatic test, a~~) (9) The pipeline company (~~needs to consider~~) must comply with applicable rules of the Washington state department of ecology (~~regulations for~~) addressing disposal of testing water.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500 and R-502, filed 8/26/02 and 9/20/02, effective 9/26/02 and 10/21/02)

WAC 480-75-430 Welding procedures. (1) (~~For new and existing pipelines, all~~) Each pipeline company must use welding procedures (~~and welders must be qualified to~~) specified in the API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code and each pipeline company must qualify its welders according to these standards. Information about (~~the API~~) these standards (~~and the ASME edition adopted~~), and where to obtain them, are set out in WAC 480-75-999, Adoption by reference. Each welder qualification test result must be recorded and kept for a period of five years, and:

(a) (~~Operators~~) To qualify or requalify a welder or to qualify a welding procedure, each pipeline company must use testing equipment (~~necessary to measure~~) capable of measuring the essential variables used during (~~welder qualification or requalification, and also for procedure qualification or requalification~~) the test. Each pipeline company must record all essential variables (~~must be recorded as~~) performed during the (~~welding~~) qualification or requalification.

(b) Each pipeline company must have the appropriate written qualified welding procedures (~~must be on-site~~) at the site where the welding is being performed.

(2) Each welder (~~s~~) used by a pipeline company must carry appropriate identification and qualification cards showing the name of welder, (~~their~~) qualifications, the date (~~of~~) qualification (~~expiration~~) expires, and the name of the pipe-

line company whose procedures ~~((were followed))~~ the welder used for the qualification. Each welder~~((s))~~'s identification and qualification card~~((s))~~ will be subject to commission inspection at all times when ~~((personnel are))~~ a welder is working on ~~((facilities))~~ a facility subject to the commission's pipeline safety jurisdiction.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-440 Pipeline repairs. Each pipeline company must make pipeline repairs ~~((must be made))~~ in accordance with ASME B31.4 "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids." Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference.

AMENDATORY SECTION (Amending Docket PL-061026, General Order R-541, filed 4/4/07, effective 5/5/07)

WAC 480-75-450 Construction specifications. ~~((Operators))~~ Each pipeline company must assure that any new pipeline construction conforms to the requirements of ASME B31.4. ~~((Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference.))~~ The longitudinal seams of connecting pipe joints must be offset by at least two inches. In addition, the longitudinal seams must be located on the upper half of the pipe when laid in an open trench. Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-460 Welding inspection requirements. Each pipeline company must inspect all new girth welds on new or repaired sections of pipe ~~((must be one hundred percent inspected))~~ by radiography or automatic ultrasonic testing in accordance with API 1104. Pipeline companies must keep a log of each weld inspected and keep all inspection records for the life of the pipeline. Information about the API standards adopted ~~((and))~~ including where to obtain ~~((it are))~~ them is set out in WAC 480-75-999, Adoption by reference. ~~((Companies must keep a log of each weld inspected and keep all inspection records for the life of the pipeline.))~~

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-500 Moving and lowering hazardous liquid pipelines. ~~((Prior to moving or lowering any hazardous liquid pipeline, hazardous liquid pipeline companies must prepare a study.))~~ A pipeline company must prepare a study before it moves any line pipe to determine whether ~~((the proposed action))~~ moving the line pipe will cause an unsafe condition. Moving the line pipe includes lowering the line pipe. This study must be reviewed and approved by a

person designated by the pipeline company who is qualified to review the study ~~((, and retained in the company's files))~~. The pipeline company must retain a copy of the study for the life of the pipeline. The study must include pipe stress calculations based on API RP 1117 "Movement of In-Service Pipelines." Information about the API standards adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-510 Remedial action for corrosion deficiencies. Pipeline companies must initiate remedial action as necessary to correct ~~((deficiencies))~~ any deficiency observed during corrosion monitoring, ~~((but no later than))~~ within ninety days after ~~((acknowledging))~~ the pipeline company detects the ~~((deficiencies))~~ deficiency.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-520 Inspections during excavation. Whenever a pipe is exposed for any reason, the ~~((operator))~~ pipeline company must examine the pipe for evidence of mechanical damage or external corrosion, including inspecting the coating for evidence of damage. The pipeline company must evaluate all mechanical damage ~~((must be evaluated and repaired))~~ and repair it as necessary, in accordance with company repair procedures. ~~((Coating damage))~~ The pipeline company must ~~((be repaired prior to reburying the pipeline))~~ repair all coating damage before the pipeline is reburied. If the ~~((operator))~~ pipeline company finds active corrosion, general corrosion, or corrosion that has caused a leak, the ~~((operator))~~ pipeline company must investigate further to determine the extent of corrosion. The pipeline company must ~~((be inspected))~~ also inspect the pipeline prior to and during the backfilling of the exposed section. The ~~((results))~~ pipeline company must prepare a report of this inspection ~~((must be documented))~~ and its results and ~~((maintained))~~ maintain that report for the life of the pipeline.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-530 Right of way inspections. The pipeline company must schedule right of way inspections ~~((must be scheduled))~~ at least once each calendar week. If weather impedes the ability to conduct a fly-over inspection for a consecutive two week period, the weather condition must be noted and the pipeline company must inspect the right of way inspection ~~((must be driven or walked))~~ by motor vehicle or walking the area, within ~~((the))~~ a two week period.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-540 Pipeline markers and above ground facilities. The pipeline company must place proper pipeline markers ~~((must be placed where hazardous liquid pipelines))~~ wherever the line pipe and any associated facilities are exposed. For all ~~((hazardous liquid))~~ pipelines attached to bridges or otherwise spanning an area, the pipeline company must ~~((have))~~ place pipeline markers so that they are visible and readable at both ends of the suspended pipeline. Each ~~((operator))~~ pipeline company must inspect ~~((at))~~ each marker(s) annually ~~((Pipeline))~~ , and within thirty days of each inspection, replace each marker(s) that ~~((are found))~~ is damaged or missing ~~((must be replaced within thirty days))~~.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-550 Change in class location. ~~((Companies))~~ Each pipeline company complying with WAC 480-75-360 and 480-75-370 must reevaluate ~~((their))~~ its maximum operating pressure when there is a change in class location. The pipeline company must reevaluate the class location ~~((must be reevaluated))~~ periodically, but not less often than once every five years.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-600 Maps, drawings, and records of hazardous liquid facilities. (1) ~~((All companies))~~ Each pipeline company must prepare, maintain, and provide to the commission ~~((s))~~ upon request, copies of maps, drawings, and records that pertain to the pipeline company's hazardous liquid pipeline ~~((facilities))~~. ~~((The maps, drawings, and records))~~ These documents must be of sufficient scale and detail ~~((as is necessary))~~ to show the size and type of material of all facilities.

(2) Each pipeline company must make books, records, reports, and other information available to the commission, so the commission or its authorized representatives can determine whether pipeline the company is in compliance with state and federal regulations.

(3) ~~((When pipeline facilities are modified,))~~ The pipeline company shall assure that all construction records, ~~((revision to))~~ maps, and operating history documents are current and made available to appropriate pipeline operations personnel ~~((must be updated within six months))~~.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-610 Reporting requirements for proposed construction. (1) At least forty-five days ~~((prior to))~~ before starting any major construction of any ~~((hazardous liq-~~

~~uid))~~ pipeline intended to be operated at twenty percent or more of the specified minimum yield strength of the pipe used, ~~((a report))~~ the pipeline company must ~~((be filed))~~ file a report with the commission setting forth the proposed route and the specifications for such pipeline. ~~((The forty-five-day reporting requirement may be waived in the event of an emergency. In the event of an emergency, the company must notify the commission as soon as practical.))~~ The report must include, but is not limited to, the following items:

(a) Description and purpose of the proposed ~~((pipeline))~~ construction;

(b) Pipe specifications and route map;

(c) Maximum operating pressure for which the pipeline is being constructed;

(d) Location and construction details of all river crossings or other unusual construction requirements encountered en route; i.e., places where pipe will be exposed or it is impractical to provide required cover, bridge crossings, lines to be laid parallel to railroads or state highways and encroachments, and other areas requiring special or unusual design and construction considerations;

(e) Corrosion control plan that includes the specifications for coating and for wrapping;

(f) Welding specifications and welding inspection methods and procedures required during construction of the pipeline;

(g) Required bending procedures; and

(h) Location and specification of all mainline block valves indicating whether the valves will be operated by manual or remote control. Indicate other auxiliary equipment to be installed as a part of the pipeline system to be constructed.

(2) For pipelines operating under twenty percent specified minimum yield strength, ~~((companies))~~ a pipeline company must submit to the commission a written notice at least forty-five days prior to the proposed construction. The notice must include a project description and timeline.

(3) The commission may waive the forty-five-day reporting requirement in an emergency.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-620 Pressure testing reporting requirements. If a pipeline company uses pressure testing ~~((is to be used))~~ as part of an effort to increase the maximum operating pressure of ~~((at))~~ the pipeline, ~~((companies))~~ the pipeline company must file a report with the commission at least forty-five days prior to pressure testing. The report must include the change in the maximum operating pressure and ~~((include the))~~ information ~~((required to qualify the pipeline for))~~ justifying a higher operating pressure.

AMENDATORY SECTION (Amending Docket PL-061026, General Order R-541, filed 4/4/07, effective 5/5/07)

WAC 480-75-630 Incident reporting. (1) ~~((Every))~~ Each pipeline company must give ~~((prompt))~~ telephonic notice to the commission within two hours of discovery of an

incident involving that company's pipeline, such as a release of a hazardous liquid (~~resulting~~), that results in:

- (a) A fatality;
- (b) Personal injury requiring hospitalization;
- (c) Fire or explosion not intentionally set by the (~~operator~~) pipeline company;
- (d) Spills of five gallons or more of product from the pipeline;
- (e) Damage to the property of the pipeline company and others of a combined total cost exceeding twenty-five thousand dollars (automobile collisions and other equipment accidents not involving hazardous liquid or hazardous-liquid-handling equipment need not be reported under this rule);
- (f) A significant occurrence in the judgment of the pipeline company, even though it does not meet the criteria of (a) through (e) of this subsection;
- (g) The news media reports the occurrence, even though it does not meet the criteria of (a) through (f) of this subsection.

(2) Each pipeline company that has an incident described in subsection (1) of this section shall send a written report (~~must be sent~~) to the commission within (~~one month~~) thirty calendar days of the incident. The report must include the following:

- (a) Name(s) and address(es) of any person or persons injured or killed or whose property was damaged;
- (b) The extent of injuries and damage;
- (c) A description of the incident including date, time, and place;
- (d) A description and maximum operating pressure of the (~~hazardous liquid facilities~~) pipeline implicated in the incident and the system operating pressure at the time of the incident;
- (e) The date and time the (~~hazardous liquid facility~~) pipeline returns to safe operations; and
- (f) The date, time, and type of any temporary or permanent repair.

(3) (~~An operator~~) A pipeline company must give the commission telephonic notification within twenty-four hours of emergency situations including emergency shutdowns, material defects, or physical damage that impairs the serviceability of the pipeline.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-640 Depth-of-cover survey. For pipelines constructed after April 1, 1970 (~~Every five years~~), each pipeline company must conduct a depth-of-cover survey (~~s must be conducted~~) in its pipeline rights of way every five years to ensure the minimum depth-of-cover as required by subsections (1) and (2) of this section has been maintained for the entire pipeline. In areas subject to erosion and subsiding, the survey (~~period is~~) must be conducted every three years.

(1) Unless specifically exempted in this section, each pipeline company must bury all pipe (~~must be buried~~) so that it is below the level of cultivation. Except as provided in subsection (2) of this section, the pipe must be installed so

that the cover between the top of the pipe and the ground level, road bed, river bottom, or sea bottom, as applicable, complies with the following table:

Location	Cover (inches) For normal excavation	Cover (inches) For rock excavation
Industrial, commercial, and residential areas	36	30
Crossings of inland bodies of water with a width of at least 100 ft. from high water mark to high water mark	48	18
Drainage ditches at public roads and railroads	36	36
Deepwater port safety zone	48	24
Any other area	30	18

Note: Rock excavation is any excavation that requires blasting or removal by equivalent means.

(2) (~~Less~~) Cover less than the minimum required by subsection (1) of this section may be used if:

- (a) It is impracticable for the pipeline company to comply with the minimum cover requirements; and
- (b) The pipeline company provides additional protection (~~is provided that is~~) equivalent to the minimum required cover.

AMENDATORY SECTION (Amending Docket PL-061026, General Order R-541, filed 4/4/07, effective 5/5/07)

WAC 480-75-650 Annual reports. (~~Operators~~) Each pipeline company must file with the commission the following (~~annual~~) reports (~~with the commission~~) no later than (~~April 1 for~~) June 15 of each year, applicable to the preceding calendar year:

(1) A copy of Pipeline and Hazardous Materials Safety Administration (PHMSA) F-7000.1-1 annual report required by the PHMSA, Office of Pipeline Safety.

(2) A report titled, "Hazardous Liquid Annual Report Form" which can be obtained from the Pipeline Safety Section of the commission. The annual report must include in detail the following information:

- (a) Interstate and intrastate pipeline mileage in Washington state; and
- (b) A list of reportable and nonreportable safety-related conditions as defined in 49 CFR Section 195.55.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-660 (~~Operations safety plan requirements~~) Procedural manual for operations, maintenance,

and emergencies. (1) Each pipeline company must prepare (an operations safety plan (plan) that demonstrates the pipeline system is designed, constructed, operated, and periodically modified to provide for protection of the public and the environment. Facility operations must follow the plan. The plan must be thorough and contain enough information, analysis, and supporting documentation to demonstrate the company's ability to meet the requirements of this chapter. The plan may be incorporated into a company's existing operation, maintenance, or emergency plan as required by 49 CFR 195.402.

(2) A log sheet must be included in the plan to record amendments. The log sheet must include the date the old section was eliminated, any new sections that were added, the date, the initials of the individual making the change, and the signature of the person responsible for reviewing the amendment. A description of the amendment(s) and its purpose must be included.

(a) At a minimum, the plan must include the following:

(i) The requirements in chapter 480-75 WAC;

(ii) A schedule of inspection and testing of all the mechanical components and electronic components within the pipeline system;

(iii) Structural integrity of all pipelines determined through pressure testing, in-line inspection surveys, or other appropriate techniques;

(iv) Failsafe systems including emergency shutdown and isolation procedures;

(v) Emergency management training for operators;

(vi)) and follow a procedural manual that includes the following:

(a) Procedures required in 49 CFR Section 195.402;

(b) Procedures for responding to earthquakes ((that must include)), including a threshold for line shutoff, and procedures for integrity monitoring prior to restart; and

((vii)) (c) Procedure for assessing the potential for impacts on the pipeline system due to landslides. ((Operators)) Pipeline companies with facilities located within potential landslide areas must develop monitoring and remediation procedures for ensuring that pipeline integrity is maintained in these areas.

((3) Companies must submit a plan to the commission within twelve months after the adoption of this rule. New companies must submit a plan to the commission no later than sixty days prior to startup.

The plan must be submitted to:

Washington Utilities and Transportation Commission
Pipeline Safety Division
P.O. Box 47250

1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

(4) Amendments to the plan must be submitted to the commission within thirty days of the change.

(5) Companies must ensure that appropriate personnel are trained and familiar with the plan's content.) (2) Each pipeline company shall submit a copy of its current procedural manual to the commission and must submit any revisions to the procedural manual to the commission within thirty days of the procedural manual change. A new pipeline

company must submit its procedural manual no later than sixty days prior to startup.

AMENDATORY SECTION (Amending Docket A-060464, General Order No. R-535, filed 6/28/06, effective 7/29/06)

WAC 480-75-999 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. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, Parts 195 and 199 including all appendices and amendments except for 49 CFR Sections 195.0((;-)) and 195.1, and 49 CFR Sections 199.1 and 199.2, published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2005)) 2007.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-630 (Incident reporting), and WAC 480-75-660 (Operations safety plan requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 1998 edition.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from The American Society of Mechanical Engineers, Park Avenue New York, New York.

(3) The 2001 edition of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** 19th edition.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 19th edition are available from the Office of API Publishing Services in Washington DC.

(5) The commission adopts **API RP standard 1117** Second Edition, August 1996.

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Second Edition are available from Global Engineering Documents in Englewood, Colorado.

WSR 08-07-081
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket PG-070975—Filed March 19, 2008, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-060 and 07-21-147.

Title of Rule and Other Identifying Information: Chapter 480-93 WAC, Gas companies—Safety. The Washington utilities and transportation commission (UTC) has identified several rules in chapter 480-93 WAC that need to be updated to establish consistency with statutory changes made to Titles 80 and 81 RCW resulting from the passage of SSB 5225 during the 2007 legislative session. This rule making will provide amendments to update definitions and in addition update the penalty rule WAC 480-93-223 to be consistent with federal law, delete a requirement in WAC 480-93-200, modify the quarterly fee installment dates in WAC 480-93-240(3) and update the reference date in the adoption by reference rule WAC 480-93-999 (1)(a).

Hearing Location(s): Commission's Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on May 15, 2008, at 1:30 p.m.

Date of Intended Adoption: May 15, 2008.

Submit Written Comments to: Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by April 25, 2008. Please include Docket PG-070975 in your communication.

Assistance for Persons with Disabilities: Contact Mary DeYoung by Tuesday, May 13, 2008, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are intended to update current rules to reflect changes in Titles 80 and 81 RCW resulting from the passage of SSB 5225 during the 2007 legislative session. The changes provide updated definitions in WAC 480-93-005 for "gas pipeline company" and the addition of two new definitions "emergency notification line" and a definition for "line pipe or pipe." The change in definition for "gas pipeline company" is applicable to most of the rules in chapter 480-93 WAC. In addition, WAC 480-93-007 Application of rules, adds to the title "responsibility for contractors" and a new subsection (3) defining a company's responsibility for its contractors. Deletion of the existing WAC 480-93-200 (1)(g) eliminates the requirement to report an incident based solely on news media coverage. WAC 480-93-223 increases the penalty amounts to be consistent with federal law, WAC 480-93-240(3) changes the quarterly fee installment dates, and WAC 480-93-999 (1)(a) updates the version date for the adoption by reference of federal rules. In addition rule language has been modified from the passive to active voice.

Reasons Supporting Proposal: With the passage of SSB 5225, chapter 480-93 WAC must reflect the statutory changes to be consistent with state law. In addition, UTC staff and stakeholders have discovered areas of the rules that

call for minor correction, updates, deletion, and revision. This proposal would address those areas.

Statutory Authority for Adoption: RCW 80.01.040(4) and 81.88.065.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sondra Walsh, Operations Manager, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1286; and Implementation and Enforcement: Carole J. Washburn, Executive Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed corrections and changes to rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.95.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The UTC is not an agency to which RCW 34.05.-328 applies. The proposed rules are not significant legislative rules of the sort reference[d] in RCW 34.05.328(5).

March 19, 2008

Carole J. Washburn

Executive Secretary

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-005 Definitions. (1) **"Bar hole"** means a hole made in the soil or paving for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(2) **"Building"** means any structure that is normally or occasionally entered by humans for business, residential, or other purposes and where gas could accumulate.

(3) **"Business district"** means an area where the public regularly congregates or where the majority of the buildings on either side of the street are regularly utilized, for financial, commercial, industrial, religious, educational, health, or recreational purposes.

(4) **"CFR"** means the Code of Federal Regulations.

(5) **"Combustible gas indicator" (CGI)** means a device capable of detecting and measuring gas concentrations in air.

(6) **"Commission"** means the Washington utilities and transportation commission.

(7) **"Enclosed space"** means any subsurface structure of sufficient size that could accommodate a person and within which gas could accumulate, e.g., vaults, catch basins, and manholes.

(8) **"Emergency notification line"** means 1-888-321-9146.

(9) **"Follow-up inspection"** means an inspection performed after a repair has been completed in order to determine the effectiveness of the repair.

~~((9))~~ (10) **"Gas"** means natural gas, flammable gas, or gas that is toxic or corrosive.

~~((10))~~ (11) **"Gas associated substructures"** means those devices or facilities utilized by ~~(an operator)~~ a gas pipeline company which are not intended for storing, transporting, or distributing gas, such as valve boxes, vaults, test boxes, and vented casing pipe.

~~((11))~~ (12) **"Gas pipeline"** means all parts of a pipeline facility through which gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. "Gas pipeline" does not include any pipeline facilities, other than a master meter system, owned by a consumer or consumers of the gas, located exclusively on the consumer or consumers' property, and none of the gas leaves that property through a pipeline.

(13) **"Gas pipeline company"** means ~~(as defined in RCW 80.04.010, every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state)~~ a person or entity constructing, owning or operating a gas pipeline for transporting gas. "Gas pipeline company" includes a person or entity owning or operating a master meter system. "Gas pipeline company" does not include excavation contractors or other contractors that contract with a pipeline company.

~~((12))~~ (14) **"High occupancy structure or area"** means a building or an outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty or more persons on at least five days a week for ten weeks in any twelve-month period. (The days and weeks need not be consecutive.)

~~((13))~~ (15) **"Indication"** means a response indicated by a gas detection instrument that has not been verified as a reading.

~~((14))~~ (16) **"LEL"** means the lower explosive limit of the gas being transported.

~~((15))~~ (17) **"Line pipe" or "pipe"** means a tube, usually cylindrical, through which a hazardous liquid or gas is transported from one point to another.

(18) **"MAOP"** means maximum allowable operating pressure.

~~((16))~~ (19) **"Master meters system"** ~~(is defined as set forth in 49 CFR § 191.3)~~ means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by any other means, such as by rents.

~~((17))~~ **"Operator":**

(a) For purposes of chapter 480-93 WAC, the term "operator" means:

~~(i) Every gas distribution company that has tariffs on file with the commission;~~

~~(ii) Every city or town that owns, controls, operates, or manages any gas plant in this state; and~~

~~(iii) Every other person or corporation transporting gas by pipeline, or having for one or more of its principal purposes the construction, maintenance, or operation of pipelines for transporting gas in this state; even though such person or corporation does not deliver, sell, or furnish any such gas to any person or corporation within this state. The terms "person" and "corporation" are defined in RCW 80.04.010. "Transporting gas by pipeline" means transmission or distribution of gas through a pipe.~~

~~(b) A single entity may qualify as an operator under one or more of the provisions of this subsection.~~

~~(c) The term "operator" includes operators of master meter systems, as defined in this section.~~

~~(18))~~ (20) **"Prompt action"** means to dispatch qualified personnel without undue delay.

~~((19))~~ (21) **"Psig"** means pounds per square inch gauge.

~~((20))~~ **"Public service company"** is defined in RCW 80.04.010.

~~(21))~~ (22) **"Reading"** means a repeatable representation on a combustible gas indicator or equivalent instrument expressed in percent LEL or gas-air ratio.

~~((22))~~ (23) **"Record(s)"** means any electronic or paper document, map, data base, report or drawing created by or kept by ~~(an operator)~~ a gas pipeline company.

~~((23))~~ (24) **"Sniff test"** means a qualitative test utilizing both threshold and readily detectable methods for determining proper concentrations of odorant.

~~((24))~~ (25) **"Transmission line"** means a gas pipeline as defined in 49 CFR § 192.3 on the date specified in WAC 480-93-999.

~~((25))~~ (26) **"Weak link"** means a device or method used when pulling polyethylene pipe to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

~~((26))~~ (27) Other terms that correspond to those used in 49 CFR Parts 191, 192 and 199 (Minimum Federal Safety Standards for Gas Pipelines) must be construed as used therein on the date specified in WAC 480-93-999.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-007 Application of rules—Responsibility for contractors. (1) This chapter applies to the following activities of ~~(operators)~~ each gas pipeline company: The construction, operation, maintenance, and safety of gas facilities used in the gathering, storage, distribution, and transmission of gas in this state.

(2) ~~(This chapter does not apply to customer-owned facilities, where the customer is the end user, and the customer-owned facilities are on the customer's side of the distribution meter. Customer-owned transmission lines are subject to the rules in this chapter.~~

~~(3))~~ This chapter, with the exception of WAC 480-93-240, does not apply to ~~((those operators of gas facilities))~~ gas pipeline systems exclusively under federal jurisdiction for compliance with pipeline safety regulations.

~~(3) While the commission's gas pipeline safety statutes and rules impose obligations on each gas pipeline company, a gas pipeline company may contract with a person to do tasks that are subject to these rules, such as excavation, construction, and maintenance. If the gas pipeline company's contractor (or any of its subcontractors) engages in conduct that violates commission rules applicable to the gas pipeline company, the gas pipeline company is subject to penalties and all other applicable remedies, as if the gas pipeline company itself engaged in that conduct.~~

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-008 Additional requirements. (1) These rules do not relieve any ~~((operator))~~ gas pipeline company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any ~~((operator))~~ gas pipeline company in appropriate circumstances, consistent with the requirements of law.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-013 Covered tasks. (1) Background. 49 CFR §§ 192.803 through 192.809 prescribe the requirements associated with qualifications for ~~((operator))~~ gas pipeline company personnel to perform "covered tasks." 49 CFR § 192.801 ~~((defines))~~ contains a definition of "covered task." In WAC 480-93-999, the commission adopts 49 CFR §§ 192.801 through 192.809. ~~((2))~~ However, in this section, the commission includes "new construction" in the definition of "covered task."

(2) Accordingly, for the purpose of this chapter, the commission defines a covered task that will be subject to the requirements of 49 CFR §§ 192.803 through 192.809 as an activity, identified by the ~~((operator))~~ gas pipeline company, that:

- (a) Is performed on a gas pipeline ~~((facility))~~;
 - (b) Is an operations, maintenance, or new construction task;
 - (c) Is performed as a requirement of Part 192 CFR; and
 - (d) Affects the operation or integrity of the gas pipeline.
- (3) In all other respects, the requirements of 49 CFR §§ 192.801 through 192.809 apply to this chapter.

(4) The equipment and facilities used by a gas pipeline company for training and qualification of employees must be similar to the equipment and facilities on which the employee will perform the covered task.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-015 Odorization of gas. (1) ~~((Operators transporting gas by pipeline))~~ Each gas pipeline company must odorize the gas in its pipeline at a concentration in air of at least one-fifth of the lower explosive limit, so that the gas is readily detectable by a person with a normal sense of smell.

(2) ~~((Operators))~~ Each gas pipeline company must use an odorant testing instrument when conducting sniff tests. Sniff tests must be performed at least once monthly. Master meter ~~((operators who))~~ systems that comply with 49 CFR § 192.625(f) are exempt from this requirement.

(3) ~~((Operators))~~ Each gas pipeline company must take prompt action to investigate and remediate odorant concentrations that do not meet the minimum requirements of subsection (1) of this section.

(4) ~~((Operators))~~ Each gas pipeline company must follow the odorant testing instrument manufacturer's recommendations for maintaining, testing for accuracy, calibrating and operating ~~((odorant testing))~~ such instruments. When the manufacturer does not provide a recommendation, ~~((operators))~~ each gas pipeline company must conduct accuracy checks and calibrate such instruments at least once annually, if the instrument is outside specified tolerances ~~((at least once annually))~~.

(5) ~~((Operators))~~ Each gas pipeline company must keep all records of odorant usage, sniff tests performed, and odorant testing instrument calibration for five years.

(6) Exception. This rule does not apply to gas pipelines ~~((that transport gas))~~ where the odorant would make the gas unfit for its intended purpose.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-017 Filing requirements for design, specification, and construction procedures. (1) Any ~~((operator))~~ gas pipeline company intending to construct or operate a gas pipeline ~~((facility))~~ in this state must file all applicable construction procedures, designs, and specifications used for each gas pipeline ~~((facility))~~ with the commission at least forty-five days prior to the initiation of construction activity. All procedures must detail the acceptable types of materials, fittings, and components for the different types of facilities in the ~~((operator's))~~ gas pipeline company's system.

(2) ~~((With the exception of))~~ Except in an emergency ~~((situations))~~, a gas pipeline company must submit to the commission for review, at least forty-five days prior to construction, any construction plans that do not conform with a gas pipeline company's existing and accepted construction procedures, designs, and specifications on file with the commission ~~((must be submitted to the commission for review at least forty-five days prior to the initiation of construction activity))~~.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-018 Records. (1) ~~((Operators))~~ Each gas pipeline company must maintain records sufficient to demonstrate compliance with all requirements of 49 CFR §§ 191, 192 and chapter 480-93 WAC.

(2) ~~((Operators))~~ Each gas pipeline company must give the commission access to records for review during an inspection and must provide the commission copies of ~~((requested))~~ records upon request.

(3) ~~((Operators))~~ Each gas pipeline company must maintain a list of forms and data bases, including examples where applicable, that specify what records the ~~((operator))~~ company maintains. ~~((Operators))~~ Each gas pipeline company must make this list available to the commission upon request.

(4) ~~((Operators))~~ Each gas pipeline company must record and maintain records of the actual value of any required reads, tests, surveys or inspections performed. The records must include the name of the person who performed the work and the date the work was performed. The records must also contain information sufficient to determine the location and facilities involved. Examples of the values to be recorded include, but are not limited to, pipe to soil potential reads, rectifier reads, pressure test levels, and combustible gas indicator reads. A gas pipeline company may not record a range of values ~~((may not be recorded))~~ unless the measuring device being used provides only a range of values.

(5) ~~((Operators))~~ Each gas pipeline company must update its records within six months of ~~((completion of))~~ when it completes any construction activity and make ~~((them))~~ such records available to appropriate company operations personnel.

(6) If ~~((an operator))~~ a gas pipeline company believes a record provided to the commission is confidential as that term is defined in WAC 480-07-160(2), the ~~((operator will))~~ gas pipeline company must follow the procedures in WAC 480-07-160 for designating and treating that record as confidential.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-020 Proximity considerations. (1) Each ~~((operator))~~ gas pipeline company must submit a written request and receive commission approval prior to:

(a) Operating any gas pipeline ~~((facility))~~ at greater than five hundred psig ~~((that))~~ if the gas pipeline is within five hundred feet of any of the following places:

(i) A building that is in existence or under construction prior to the date authorization for construction is filed with the commission, ~~((and that))~~ if the building is not owned and used by the petitioning ~~((operator))~~ gas pipeline company in its gas operations; or

(ii) A high occupancy structure or area that is in existence or under construction prior to the date authorization for construction is filed with the commission; or

(iii) A public highway, as defined in RCW 81.80.010(3).

(b) Operating any gas pipeline ~~((facility))~~ at greater than two hundred fifty psig, up to and including five hundred psig, ~~((that))~~ if the gas pipeline is ~~((operated))~~ within one hundred feet of either of the following places:

(i) A building that is in existence or under construction prior to the date authorization for construction is filed with the commission, ~~((and that))~~ if the building is not owned and used by the petitioning ~~((operator))~~ gas pipeline company in its gas operations; or

(ii) A high occupancy structure or area that is in existence or under construction prior to the date authorization for construction is filed with the commission.

(2) For proposed new construction of pipelines having the characteristics listed in subsection (1)(a) or (b) of this section, ~~((operators))~~ each gas pipeline company must ~~((provide documentation proving))~~ demonstrate to the commission that it is not practical for the gas pipeline company to select an alternate route that will avoid such locations and ~~((further provide documents that demonstrate))~~ that the ~~((operator))~~ gas pipeline company has considered the possibility of the future development of the area and has designed ~~((their))~~ its gas pipeline ~~((facilities))~~ accordingly.

(3) During the review process, ~~((operators))~~ each gas pipeline company must provide maps and records to the commission showing the exact location of the gas pipeline and the shortest direct distance to the places described in subsection (1)(a) and (b) of this section. Upon request of the commission, the ~~((operator))~~ gas pipeline company must provide the maintenance, construction, and operational history of the pipeline system and an aerial photograph showing the exact location of the gas pipeline in reference to places listed in subsection (1)(a) and (b) of this section.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-040 Location of gas compressor stations on gas pipelines. (1) Each gas pipeline company must locate gas compressor stations that are designed to operate at pressures in excess of two hundred fifty psig, and that have an installed capacity equal to or greater than one thousand horsepower, ~~((must be located))~~ at least five hundred feet away from any existing buildings that are not under the gas pipeline company's control ~~((of the operator))~~.

(2) Each gas pipeline company must locate gas compressor stations that are designed to operate at pressures in excess of two hundred fifty psig, and that have an installed capacity of less than one thousand horsepower ~~((must be located))~~ at least two hundred fifty feet away from any existing buildings that are not under the gas pipeline company's control ~~((of the operator))~~.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-080 Welder and plastic joiner identification and qualification. (1) All welding procedures and welders, except welders listed in (a) of this subsection, must

be qualified to API Standard 1104 or section IX of the ASME Boiler and Pressure Vessel Code.

(a) Oxyacetylene welders may qualify under 49 CFR § 192 Appendix C, but may only weld the following size pipe:

(i) Nominal two-inch or smaller branch connections to nominal six-inch or smaller main or service pipe.

(ii) Nominal two-inch or smaller below ground butt welds.

(iii) Nominal four-inch or smaller above ground manifold and meter piping operating at 10 psig or less.

~~((iv))~~ (b) Appendix C welders must be requalified at least twice annually, but not to exceed seven and one-half months between qualification tests.

~~((b))~~ (c) When testing welders or qualifying procedures, ~~((operators))~~ each gas pipeline company must use the ~~((necessary))~~ testing equipment necessary to measure the amperage, voltage, and speed of travel. All essential variables, as defined by the applicable procedure, must be recorded and documented as performed during the welder and procedure testing.

~~((e))~~ (d) For the purposes of ~~((b))~~ (c) of this subsection, "essential variable" is defined as any variable in the welding procedure, which, according to the procedure being used, would require the requalification of the procedure if changed from or performed outside a specified range. "Speed of travel" is defined as the actual per pass welding time in minutes divided by the length of the weld in inches.

~~((d))~~ (e) Qualified written welding procedures must be located on-site where welding is being performed.

(2) Personnel qualified to join plastic pipe must be requalified at least once annually, but not to exceed fifteen months between qualifications.

(a) Qualified written plastic joining procedures must be located on-site where plastic joining is being performed.

(b) Plastic joiners must be requalified under an applicable procedure, if during any twelve-month period that person has not made any joints under that procedure.

(c) In order to ensure compliance with (b) of this subsection and Title 49 CFR Part 192.285(c), each ~~((operator))~~ gas pipeline company must either have a method of tracking production joints or requalify each person qualified to join plastic pipe at a frequency not to exceed twelve months. ~~((This))~~ The method used to track production joints must be outlined in the ~~((operator's))~~ gas pipeline company's procedures manual. ~~((Production joints need to be tracked only to the extent that shows compliance with this requirement. Operators may elect not to track production joints, in which case personnel qualified to join plastic pipe must be requalified at a frequency not to exceed twelve months.))~~

(3) Welders and plastic joiners must carry appropriate identification and qualification cards or certificates showing the name of the welder or joiner, their qualifications, the date of qualification and the ~~((operator))~~ gas pipeline company whose procedures were followed for the qualification. Welder and plastic joiner qualification cards are subject to commission inspection at all times when qualified personnel are working on facilities subject to commission jurisdiction.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-100 Valves. (1) Each ~~((operator))~~ gas pipeline company must have a written valve maintenance program detailing the valve selection process, inspection, maintenance, and operating procedures. The written program must detail which valves will be maintained under 49 CFR § 192.745, 49 CFR § 192.747, and this subsection. The written program must also outline how the ~~((operator))~~ gas pipeline company will monitor and maintain valves during construction projects to ensure accessibility. The following criteria and locations must be incorporated in the written program. The written program shall explain how each of the following are considered in selecting which valves require annual inspections and maintenance under 49 CFR § 192.747:

- (a) Each pressure regulating station.
- (b) Principal feeds into business districts.
- (c) Geographical size of the area to be isolated.
- (d) Number of potential customers affected.
- (e) ~~((Pipeline))~~ Line pipe size and operating pressures.
- (f) Class locations.
- (g) Potential threats including, but not limited to, earthquakes, floods, and landslides.
- (h) Emergency response time.
- (i) High occupancy structures or areas.
- (j) ~~((Pipeline))~~ Line pipe material: For example steel, polyethylene, or cast iron.

(2) Each ~~((operator))~~ gas pipeline company must have a written service valve installation and maintenance program detailing the valve selection process, inspection, maintenance, and operating procedures. The written program must detail which new services will be required to have valves installed and maintained under this section. Service valve installation requirements do not apply to existing services (they are not retroactive). Existing service valves that historically have not been maintained but are deemed necessary for maintenance by the written valve maintenance program must be maintained in accordance with subsection (3) of this section (service valve maintenance requirements are retroactive). The written program shall explain how each of the following criteria and/or locations are considered in selecting which services will have valves installed and/or maintained under this ~~((section))~~ subsection:

- (a) Services to churches, schools, hospitals.
 - (b) Service line length and size.
 - (c) Service line pressure.
 - (d) Services to buildings occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate.
 - (e) Services to commercial or industrial buildings or structures.
 - (f) Services to high occupancy structures or areas.
- (3) All service valves selected for inspection in the program required in subsection (2) of this section must be operated and maintained at least once annually, but not to exceed fifteen months between operation and maintenance.

(4) Each ~~((operator))~~ gas pipeline company must select which valves to inspect based on the unique operating conditions of the ~~((operator's))~~ company's pipeline system(s).

(5) Each ~~((operator))~~ gas pipeline company must install and maintain valves for the purpose of minimizing the hazards resulting from a gas pipeline emergency and to aid in the timely control of an uncontrolled release of gas. In determining the minimum number and spacing of valves, the ~~((operator's))~~ gas pipeline company's primary objective shall be the protection of life and property. The ~~((operator))~~ gas pipeline company must consider this objective in conjunction with the criteria listed in subsections (1) and (2) of this section. ~~((Operators))~~ Each gas pipeline company must also incorporate ~~((their))~~ its valve programs established in subsections (1) and (2) of this section into their emergency plan and other plans and procedures designed to protect life and property in the event of an emergency.

(6) ~~((Operators))~~ Each gas pipeline company must fully implement the requirements of this section within one year of the adoption date of this rule.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-110 Corrosion control. (1) ~~((Operators))~~ Each gas pipeline company must record and retain a record of each cathodic protection test, survey, or inspection required by 49 CFR Subpart I, and chapter 480-93 WAC. Each gas pipeline company must keep all records of each test, survey, or inspection ~~((must be kept))~~ for a minimum of five years, except those records specified in 49 CFR § 192.491(c) ~~((requiring retention))~~ which the gas pipeline company must retain for the life of the gas pipeline facility.

(2) Each ~~((operator))~~ gas pipeline company must complete remedial action within ninety days to correct any cathodic protection deficiencies known and indicated by any test, survey, or inspection. An additional thirty days may be allowed for remedial action if due to circumstances beyond the ~~((operator's))~~ gas pipeline company's control ~~((it is not possible to))~~ the company cannot complete remedial action within ninety days. Each ~~((operator))~~ gas pipeline company must be able to provide documentation to the commission indicating that remedial action was started in a timely manner and that all efforts were made to complete remedial action within ninety days. (Examples of circumstances allowing ~~((operators))~~ each gas pipeline company to exceed the ninety-day time frame include right of way permitting issues, availability of repair materials, or unusually long investigation or repair requirements.)

(3) Cathodic protection equipment and instrumentation must be maintained, tested for accuracy, calibrated, and operated in accordance with the manufacturer's recommendations. When there are no manufacturer's recommendations, then instruments must be tested for accuracy at an appropriate schedule determined by the ~~((operator))~~ gas pipeline company.

(4) Each ~~((operator's))~~ gas pipeline company's procedures manual must have written procedures explaining how cathodic protection related surveys, reads, and tests will be conducted. Examples of such procedures include, but are not limited to, how to determine IR drop (as defined in 49 CFR § 192 Appendix D), how to conduct electrical surveys, how to

test casings for electrical isolation, how to test casings for shorted conditions, and how to measure and interpret 49 CFR § 192 Appendix D criteria.

(5) ~~((Operators))~~ Each gas pipeline company must conduct inspections or tests for electrical isolation between metallic pipeline casings and metallic pipelines at least once annually, but not to exceed fifteen months between inspections or tests. The test or inspection must also determine whether the pipeline has adequate levels of cathodic protection at the casing to pipeline interface. These requirements do not apply to unprotected copper inserted in ferrous pipe.

(a) For each casing installed prior to September 5, 1992, that does not have test leads, the ~~((operator))~~ gas pipeline company must be able to demonstrate that other test or inspection methods are acceptable and that test lead wires are not necessary to monitor for electrical isolation and adequate cathodic protection levels.

(b) Whenever electrical isolation tests or inspections indicate that a possible shorted condition exists between a casing and a pipeline, the ~~((operator))~~ gas pipeline company must conduct a follow-up test within ninety days to determine whether an actual short exists. The ~~((operator's))~~ gas pipeline company's procedures manual must have a level or threshold that would indicate a potential shorted condition and must also detail the method of determining whether the casing is actually shorted to the pipeline.

(c) The ~~((operator))~~ gas pipeline company must clear the shorted condition where practical.

(d) Whenever a short exists between a ~~((pipeline))~~ line pipe and casing, the ~~((operator))~~ gas pipeline company must perform a leak survey within ninety days of discovery and at least twice annually thereafter, but not to exceed seven and one-half months between leak surveys until the shorted condition is eliminated.

(6) ~~((Operators))~~ Each gas pipeline company must record the condition of all underground metallic facilities each time the facilities are exposed.

(7) ~~((Operators))~~ Each gas pipeline company must have a written program to monitor for indications of internal corrosion. The program must also have remedial action requirements for areas where internal corrosion is detected.

(8) On all cathodically protected pipelines, the ~~((operator))~~ gas pipeline company must take a cathodic protection test reading each time an employee or representative of the ~~((operator))~~ gas pipeline company exposes the facility and the protective coating is removed.

(9) Each ~~((operator))~~ gas pipeline company must have a written atmospheric corrosion control monitoring program. The program must have time frames for completing remedial action.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-115 Casing of ~~((pipelines))~~ line pipes.

(1) Whenever ~~((an operator))~~ a gas pipeline company installs a steel ~~((pipeline))~~ line pipe in a casing, the casing must be bare steel.

(2) For casings installed after September 5, 1992, ~~((operators))~~ each gas pipeline company must attach separate test lead wires to each casing without vents, and to the steel gas pipeline to verify that no electric short exists between the two, and that an adequate level of cathodic protection is applied to the steel ~~((pipeline))~~ line pipe.

(3) Whenever ~~((an operator))~~ a gas pipeline company installs a main or transmission line in a casing or conduit of any type material, the ~~((operator))~~ gas pipeline company must seal the casing ends to prevent or slow the migration of gas in the event of a leak.

(4) Whenever ~~((an operator))~~ a gas pipeline company installs a service line in a casing or conduit, the ~~((operator))~~ gas pipeline company must seal the casing at the end nearest the building wall to prevent or slow the migration of gas towards the building in the event of a leak.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-124 Pipeline markers. (1) Each gas pipeline company must place pipeline markers ~~((must be placed))~~ at the following locations:

(a) Where practical, over pipelines operating above two hundred fifty psig;

(b) Over mains and transmission lines crossing navigable waterways (custom signage may be required to ensure visibility);

(c) Over mains and transmission lines at river, creek, drainage ditch, or irrigation canal crossings where hydraulic scouring, dredging, or other activity could pose a risk to the pipeline (custom signage may be required to ensure visibility);

(d) Over gas pipelines at railroad crossings;

(e) At above ground gas pipelines ~~((and pipeline facilities-))~~ except service risers ~~((and))~~ meter set assemblies, and ~~((operator))~~ gas pipeline company owned piping downstream of the meter set assembly ~~((are exempt from this requirement))~~. The minimum lettering size requirements located in 49 CFR § 192.707 (d)(1) do not apply to services;

(f) Over mains located in Class 1 and 2 locations;

(g) Over transmission lines in Class 1 and 2 locations, and where practical, over transmission lines in Class 3 and 4 locations; and

(h) Over mains and transmission lines at interstate, U.S. and state route crossings where practical.

(2) ~~((Where markers are required at))~~ If practical, the gas pipeline company must place markers on both sides of any crossing(s) listed in subsection (1) of this section ~~((they must be placed on both sides where practical))~~.

(3) Where markers are required on buried gas pipelines, ~~((operators must, if practical, place them))~~ they must be placed approximately five hundred yards apart and at points of horizontal deflection ~~((of the pipeline))~~ if practical.

(4) Where gas pipelines are attached to bridges or otherwise span an area, ~~((operators))~~ each gas pipeline company must place pipeline markers at both ends of the suspended pipeline. ~~((Operators))~~ Each gas pipeline company must con-

duct surveys of pipeline markers required by this subsection at least annually, not to exceed fifteen months.

(5) ~~((Operators))~~ Each gas pipeline company must replace markers that are reported damaged or missing within forty-five days.

(6) Surveys of pipeline markers not associated with subsection (4) of this section must be conducted at least every five calendar years but not to exceed sixty-three months, to ensure that markers are visible and legible.

(a) ~~((The operator))~~ Each gas pipeline company must keep on file the last two surveys, or all surveys for the past five years, whichever number of surveys is greater.

(b) Survey records must include a description of the system and area surveyed.

(7) ~~((Operators))~~ Each gas pipeline company must have records such as maps ~~((;))~~ or drawings ~~((or other))~~ sufficient ~~((records indicating))~~ to indicate class locations and other areas where pipeline markers are required.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-130 Multistage pressure regulation.

Where gas pressures are reduced in two or more stages, ~~((an operator))~~ each gas pipeline company must install the necessary regulators and equipment in such a manner as to provide protection between regulator stages. The purpose of this rule is to minimize the potential dangers of failures of one stage of regulator equipment resulting from fire, explosion, or damage of any kind, from adversely affecting the operation of the other stage or stages of regulation. ~~((Operators))~~ Each gas pipeline company must ensure, when practical to do so, that there is a minimum of fifty feet of separation between regulator stages.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-140 Service regulators. (1) ~~((Operators))~~ To ensure proper operation of service regulators, each gas pipeline company must install, operate, and maintain service regulators in accordance with federal and state regulations, and in accordance with the manufacturer's recommended installation and maintenance practices ~~((to insure proper operation))~~.

(2) ~~((Operators))~~ Each gas pipeline company must inspect and test service regulators and associated safety devices during the initial turn-on, and when a customer experiences a pressure problem. Testing must include determining the gas regulator's outlet set pressure at a specified flow rate. ~~((Operators))~~ Each gas pipeline company must use pressure gauges downstream of the regulator during testing. Safety devices such as fracture discs are not required to be tested.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-155 Increasing maximum allowable operating pressure. (1) If a gas pipeline company wants to uprate to a MAOP greater than sixty psig, the company must submit to the commission for review, at least forty-five days before uprating ((to a MAOP greater than sixty psig, each operator must submit to the commission for review)), a written plan of procedures including all applicable specifications with drawings of the affected pipeline systems. At a minimum, the plan must include the following:

(a) A list of all affected gas pipeline facilities, including pipes, fittings, valves, and other affected equipment, with the manufacturer's specified maximum operating pressure limits, their specified minimum yield strength (SMYS) at the intended MAOP, and any other applicable specifications or limitations;

(b) Original design and construction standards;

(c) Original pressure test records;

(d) Previous operating pressures identifying the dates and lengths of time at that pressure;

(e) Records of all leaks, regardless of cause, and the dates and methods of repair;

(f) Where the pipeline is being uprated to a MAOP that produces a hoop stress of twenty percent or more of the SMYS, records of the original welding standards and welders;

(g) Maintenance records of all affected regulator stations and system relief valves for the past three years or three most recent inspections, whichever is longer;

(h) Where applicable, relief valve capacities at the proposed MAOP compared to regulator flow capacities, with calculations;

(i) Cathodic protection readings of the affected gas pipeline and facilities, including rectifier readings, for the past three years or three most recent inspections, whichever is longer; and

(j) Any additional information that the commission may deem necessary to evaluate the pressure increase.

(2) Uprates must be based on a previous or current pressure test that will substantiate the intended MAOP.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-160 Reporting requirements of proposed construction. (1) Each ~~((operator))~~ gas pipeline company must file a proposed construction report with the commission at least forty-five days prior to construction or replacement of any segment of a gas transmission pipeline equal to or greater than one hundred feet in length. Emergency repairs are exempt from this section.

(2) The report must describe the proposed route and the specifications for the pipeline and must include, but is not limited to, the following items:

(a) Description and purpose of the proposed pipeline;

(b) Route map showing the type of construction to be used throughout the length of the line, and delineation of

class location as defined in 49 CFR Part 192.5, and incorporated boundaries along the route. Aerial photographs must be submitted upon request;

(c) Location and specification of principal valves, regulators, and other auxiliary equipment to be installed as a part of the pipeline system to be constructed ~~((The operator must submit aerial photographs upon request))~~;

(d) MAOP for the gas pipeline being constructed;

(e) Location and construction details of all river crossings or other unusual construction requirements encountered en route, e.g., places where pipe will be exposed or it is impractical to provide required cover, bridge crossings, lines to be laid parallel to railroads or state highways, including encroachments, and any other areas requiring special or unusual design and construction considerations;

(f) Proposed corrosion control program to be followed including specifications for coating and wrapping, and the method to ensure the integrity of the coating using holiday detection equipment;

(g) Welding specifications; and

(h) Bending procedures to be followed if needed.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-170 Tests and reports for gas pipelines.

(1) ~~((Operators))~~ Each gas pipeline company must notify the commission in writing at least three business days prior to the commencement of any pressure test of a gas pipeline that will have a MAOP that produces a hoop stress of twenty percent or more of the specified minimum yield strength of the pipe used. Pressure test procedures must be on file with the commission or submitted at the time of notification.

(a) The pressure tests of any such gas pipeline built in Class 3 or Class 4 locations, as defined in 49 CFR § 192.5, or within one hundred yards of a building, must be at least eight hours in duration.

(b) When the test medium is to be a gas or compressible fluid, each ~~((operator))~~ gas pipeline company must notify the appropriate public officials so that adequate public protection can be provided for during the test.

(c) In an emergency situation where it is necessary to maintain continuity of service, the requirements of subsection (1) of this section and subsection (1)(a) of this section may be waived by notifying the commission by ~~((telephone))~~ calling the emergency notification line (see WAC 480-93-005(8)) prior to performing the test.

(2) The minimum test pressure for any steel service line or main, regardless of the intended operating pressure, must be determined by multiplying the intended MAOP by a factor determined in accordance with the table located in 49 CFR § 192.619 (a)(2)(ii).

(3) ~~((Operators))~~ Each gas pipeline company must perform pressure tests for all new or replacement gas pipeline installations.

(4) All service lines that are broken, pulled, or damaged, resulting in the interruption of gas supply to the customer, must be pressure tested from the point of damage to the ser-

vice termination valve (generally the meter set) prior to being placed back into service.

(5) ~~((Operators))~~ Each gas pipeline company may only use pretested pipe when it is not feasible to conduct a pressure test.

(6) ~~((Operators))~~ Each gas pipeline company must perform soap tests at the tie-in joints at not less than the current operating pressure of the gas pipeline.

(7) ~~((Operators))~~ Each gas pipeline company must keep records of all pressure tests performed for the life of the pipeline and must document the following information:

- (a) ~~((Operator's))~~ Gas pipeline company's name;
- (b) Employee's name;
- (c) Test medium used;
- (d) Test pressure;
- (e) Test duration;
- (f) Line pipe size and length;
- (g) Dates and times; and
- (h) Test results.

(8) Where feasible, ~~((operators))~~ each gas pipeline company must install and backfill plastic pipe prior to pressure testing to expose any potential damage that could have occurred during the installation and backfill process.

(9) ~~((Where))~~ When a gas pipeline company performs multiple pressure tests ~~((are performed))~~ on a single installation, ~~((operators))~~ the gas pipeline company must maintain a record of each test. An example of a single installation with multiple tests would be any continuous on-going job or installation such as a new plat or long main installation where more than one pressure test was conducted during construction.

(10) Pressure testing equipment must be maintained, tested for accuracy, or calibrated, in accordance with the manufacturer's recommendations. When there are no manufacturer's recommendations, then pressure testing equipment must be tested for accuracy at an appropriate schedule determined by the ~~((operator))~~ gas pipeline company. Test equipment must be tagged with the calibration or accuracy check expiration date. The requirements of this section also apply to equipment such as pressure charts, gauges, dead weights or other devices used to test, monitor or check system pressures or set-points.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-175 Moving and lowering metallic gas pipelines. (1) A gas pipeline company may not move or lower cast iron pipe or metallic pipe with mechanical or threaded joints.

(2) Except ~~((those pipelines detailed))~~ for the pipe referenced in subsection (1) of this section, a gas pipeline company may move or lower metallic line pipe with an MAOP of sixty psig or less, which has a nominal diameter of two inches or less, if the gas pipeline company can certify that no undue stresses will be placed on the pipeline and that it can be moved or lowered in a safe manner. The gas pipeline company must consider factors such as the type of materials, proximity to fittings, joints, and welds, and any other factors

that could place undue stress on the gas pipeline or create an unsafe condition.

(3) Before moving or lowering a gas pipeline other than the line pipe described in subsection ~~((3))~~ (2) of this section, each ~~((operator))~~ gas pipeline company must prepare a study ~~((prior to moving or lowering any metallic pipeline))~~ to determine whether ~~((the proposed action))~~ moving or lowering will cause an unsafe condition. ~~((This study))~~ The gas pipeline company's engineering department must ~~((be reviewed and approved by the operator's engineering department and retained in the operator's files))~~ review, approve, and retain the study for the life of the pipeline. ~~((This requirement does not apply to cast iron pipelines, which may not be lowered, or to copper pipelines-))~~ The study must ~~((include, but is not limited to, the following criteria))~~ analyze the following factors:

- (a) The required deflection of the pipe;
- (b) The diameter, wall thickness, and grade of pipe;
- (c) The characteristics of the pipeline;
- (d) The terrain and class location;
- (e) The present condition of the pipeline;
- (f) The anticipated stresses of the pipeline including the safe allowable stress limits; and
- (g) The toughness of the steel.

~~((2)) Pipelines with mechanical or threaded joints must not be moved or lowered.~~

~~((3)) Pipelines operating at sixty psig or less which have a nominal diameter of two inches or less may be moved or lowered without the required study, if the operator can certify that no undue stresses will be placed on the pipeline and that it can be moved or lowered in a safe manner. The operator must consider factors such as the type of materials, proximity to fittings, joints, and welds, and any other factors that could place undue stress on the pipeline or create an unsafe condition.~~

(4) The gas pipeline company must conduct a leak survey ~~((must be conducted))~~ within thirty days from the date the company moves or lowers any gas pipeline ~~((has been moved or lowered))~~ under the provisions of subsection ~~((3))~~ (2) of this section.

AMENDATORY SECTION (Amending Docket No. PG-050933, General Order No. R-524, filed 11/23/05, effective 12/24/05)

WAC 480-93-178 Protection of plastic pipe. (1) ~~((Every operator))~~ Each gas pipeline company must have detailed written procedures for the storage, handling, and installation of plastic pipelines. Except for joining procedures, and unless the ~~((operator))~~ gas pipeline company has more stringent procedures, the ~~((storage, handling, and installation of all))~~ company must store, handle, and install plastic pipe ~~((must be))~~ in accordance with the latest applicable manufacturer's recommended practices.

(2) The gas pipeline company must follow the manufacturer's recommendation for maximum cumulative ultraviolet light exposure limit for plastic pipe ~~((is two years, or the manufacturer's recommended limit))~~. ~~((The acceptable time limit must be detailed in the operator's))~~ If there is no such recommendation, the gas pipeline company must not expose plastic

pipe to ultraviolet light for more than two years. Each gas pipeline company must include the applicable ultraviolet exposure time limit in its procedures manual.

(3) Each gas pipeline company must install a weak link on each plastic pipe that is pulled through the ground by mechanical means ~~((must have a weak link installed that will))~~, to ensure the pipe will not be damaged by excessive tensile forces.

(4) When ~~((installing))~~ a gas pipeline company installs plastic pipelines parallel to other underground utilities, ~~((operators))~~ it must ensure there is a minimum of twelve inches of separation from the other utilities. Where a minimum twelve inches of separation is not possible, ~~((operators))~~ a gas pipeline company must take adequate precautions, such as inserting the plastic pipeline in conduit, to minimize any potential hazards resulting from the close proximity to the other utilities.

(5) When ~~((installing))~~ a gas pipeline company installs plastic pipelines perpendicular to other underground utilities, ~~((operators))~~ it must ensure there is a minimum of six inches of separation from the other utilities. Where a minimum six inches of separation is not possible, ~~((an operator))~~ a gas pipeline company must take adequate precautions, such as inserting the plastic pipeline in conduit, to minimize any potential hazards resulting from the close proximity to the other utilities.

(6) Except for approved steel encased plastic pipe, and except where allowed by (b) of this subsection, ~~((the maximum time limit that))~~ a gas pipeline company may temporarily install plastic pipe ~~((may be temporarily installed))~~ above ground ~~((is))~~ for no longer than thirty days.

(a) During such temporary installations, ~~((operators))~~ the gas pipeline company must monitor and protect above ground plastic pipe from potential damage.

(b) ~~((Operators))~~ A gas pipeline company may install above ground plastic pipe for periods longer than thirty days if ~~((they have))~~ it has a written monitoring program and ~~((notify))~~ if it notifies the commission by telephone using the emergency notification line (see WAC 480-93-005(8)) prior to exceeding the thirty-day time limit.

(7) Plastic pipe must be bedded in a suitable material as recommended by the pipe manufacturer. Unless otherwise permitted by the manufacturer, plastic pipe must be bedded in an essentially rock-free material.

(8) Plastic pipe may not be squeezed more than one time in the same location.

(9) Plastic pipe must not be squeezed within twelve inches or three pipe diameters, whichever is greater, from any joint or fitting.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-180 Plans and procedures. (1) Each ~~((operator))~~ gas pipeline company must have and follow a gas pipeline plan and procedure manual (manual) for operation, maintenance, inspection, and emergency response activities that is specific to the ~~((operator's))~~ gas pipeline company's system. The manual must include plans and proce-

dures for meeting all applicable requirements of 49 CFR §§ 191, 192 and chapter 480-93 WAC, and any plans or procedures used by ~~((an operator's))~~ a gas pipeline company's associated contractors.

(2) The manual must be filed with the commission forty-five days prior to the operation of any gas pipeline. ~~((Operators))~~ Each gas pipeline company must file revisions to the manual with the commission annually. The commission may, after notice and opportunity for hearing, require that a manual be revised or amended. Applicable portions of the manual related to a procedure being performed on the pipeline must be retained on-site where the activity is being performed.

(3) The manual must be written in detail sufficient for a person with adequate training to perform the tasks described. For example, a manual should contain specific, detailed, step-by-step instructions on how to maintain a regulator or rectifier, conduct a leak survey or conduct a pressure test.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-185 Gas leak investigation. (1) ~~((Operators))~~ Each gas pipeline company must ~~((promptly))~~ investigate any ~~((notification of a))~~ odor, leak, explosion, or fire, which may involve its gas pipelines ~~((or other gas facilities, received from any outside source such as a police or fire department, other utility, contractor, customer, or the general public))~~, promptly after receiving notification. Where the investigation reveals a leak, the ~~((operator))~~ gas pipeline company must grade the leak in accordance with WAC 480-93-186, and take appropriate action. The ~~((operator))~~ gas pipeline company must retain the leak investigation record for the life of the pipeline.

(2) In the event of an explosion, fire, death, or injury, the ~~((operator))~~ gas pipeline company must not remove any suspected gas facility until the commission or the lead investigative authority has designated the release of the gas facility. Once the situation is made safe, the ~~((operator))~~ gas pipeline company must keep the facility intact until directed by the lead investigative authority.

(3) When leak indications are found to originate from a foreign source or facility such as gasoline vapors, sewer, marsh gas, or from customer-owned piping, the ~~((operator))~~ gas pipeline company must take appropriate action to protect life and property. Leaks that represent an on-going, potentially hazardous situation must be reported promptly to the owner or ~~((operator))~~ gas pipeline company of the source facility and, where appropriate, to the police department, fire department, or other appropriate governmental agency. If the property owner or an adult person occupying the premises is not available, the ~~((operator))~~ gas pipeline company must, within twenty-four hours of the leak investigation, send by first-class mail, addressed to the person occupying the premises, a letter explaining the results of the investigation. The ~~((operator))~~ gas pipeline company must keep a record of each letter sent for five years.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-186 Leak evaluation. (1) Based on an evaluation of the location and/or magnitude of a leak, the ~~((operator))~~ gas pipeline company must assign one of the leak grades defined in WAC 480-93-18601 to establish the leak repair priority. ~~((An operator))~~ A gas pipeline company may use an alphabetical grade classification, i.e., Grade A for Grade 1, Grade B for Grade 2, and Grade C for Grade 3 if it has historically used such a grading designation. ~~((Operators))~~ Each gas pipeline company must apply the same criteria used for initial leak grading when reevaluating leaks.

(2) Each ~~((operator))~~ gas pipeline company must establish a procedure for evaluating the concentration and extent of gas leakage. When evaluating any leak, the ~~((operator))~~ gas pipeline company must determine and document the perimeter of the leak area. If the perimeter of the leak extends to a building wall, the ~~((operator))~~ gas pipeline company must extend the investigation inside the building. Where the reading is in an unvented, enclosed space, the ~~((operator))~~ gas pipeline company must consider the rate of dissipation when the space is ventilated and the rate of accumulation when the space is resealed.

(3) The ~~((operator))~~ gas pipeline company must check the perimeter of the leak area with a combustible gas indicator. The ~~((operator))~~ gas pipeline company must perform a follow-up inspection on all leak repairs with residual gas remaining in the ground as soon as practical, but not later than thirty days following the repair.

(4) Grade 1 and 2 leaks can only be downgraded once to a Grade 3 leak without a physical repair. After a leak has been downgraded once, the maximum repair time for that leak is twenty-one months.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-18601 Leak classification and action criteria—Grade—Definition—Priority of leak repair. (1) A "Grade 1 leak" is a leak that represents an existing or probable hazard to persons or property and requiring prompt action, immediate repair, or continuous action until the conditions are no longer hazardous.

(a) Prompt action in response to a Grade 1 leak may require one or more of the following:

- (i) Implementation of the ~~((operator's))~~ gas pipeline company's emergency plan pursuant 49 CFR § 192.615;
- (ii) Evacuating the premises;
- (iii) Blocking off an area;
- (iv) Rerouting traffic;
- (v) Eliminating sources of ignition;
- (vi) Venting the area;
- (vii) Stopping the flow of gas by closing valves or other means; or
- (viii) Notifying police and fire departments.

(b) Examples. Grade 1 leaks requiring prompt action include, but are not limited to:

(i) Any leak, which in the judgment of ~~((operating))~~ gas pipeline company personnel at the scene, is regarded as an immediate hazard;

(ii) Escaping gas that has ignited unintentionally;

(iii) Any indication of gas that has migrated into or under a building or tunnel;

(iv) Any reading at the outside wall of a building or where the gas could potentially migrate to the outside wall of a building;

(v) Any reading of eighty percent LEL or greater in an enclosed space;

(vi) Any reading of eighty percent LEL, or greater in small substructures not associated with gas facilities where the gas could potentially migrate to the outside wall of a building; or

(vii) Any leak that can be seen, heard, or felt and which is in a location that may endanger the general public or property.

(2) A "Grade 2 leak" is a leak that is recognized as being not hazardous at the time of detection but justifies scheduled repair based on the potential for creating a future hazard.

(a) ~~((Operators))~~ Each gas pipeline company must repair or clear Grade 2 leaks within fifteen months from the date the leak is reported. If a Grade 2 leak occurs in a segment of pipeline that is under consideration for replacement, an additional six months may be added to the fifteen months maximum time for repair provided above. In determining the repair priority, ~~((operators))~~ each gas pipeline company should consider the following criteria:

(i) Amount and migration of gas;

(ii) Proximity of gas to buildings and subsurface structures;

(iii) Extent of pavement; and

(iv) Soil type and conditions, such as frost cap, moisture and natural venting.

(b) ~~((Operators))~~ Each gas pipeline company must reevaluate Grade 2 leaks at least once every six months until cleared. The frequency of reevaluation should be determined by the location and magnitude of the leakage condition.

(c) Grade 2 leaks vary greatly in degree of potential hazard. Some Grade 2 leaks, when evaluated by the criteria, will require prompt scheduled repair within the next five working days. Other Grade 2 leaks may require repair within thirty days. The ~~((operator))~~ gas pipeline company must bring these situations to the attention of the individual responsible for scheduling leakage repair at the end of the working day. Many Grade 2 leaks, because of their location and magnitude, can be scheduled for repair on a normal routine basis with periodic reevaluation as necessary.

(d) When evaluating Grade 2 leaks, ~~((operators))~~ each gas pipeline company should consider leaks requiring action ahead of ground freezing or other adverse changes in venting conditions, and any leak that could potentially migrate to the outside wall of a building, under frozen or other adverse soil conditions.

(e) Examples. Grade 2 leaks requiring action within six months include, but are not limited to:

(i) Any reading of forty percent LEL or greater under a sidewalk in a wall-to-wall paved area that does not qualify as

a Grade 1 leak and where gas could potentially migrate to the outside wall of a building;

(ii) Any reading of one hundred percent LEL or greater under a street in a wall-to-wall paved area that does not qualify as a Grade 1 leak and where gas could potentially migrate to the outside wall of a building;

(iii) Any reading less than eighty percent LEL in small substructures not associated with gas facilities and where gas could potentially migrate creating a probable future hazard;

(iv) Any reading between twenty percent LEL and eighty percent LEL in an enclosed space;

(v) Any reading on a pipeline operating at thirty percent of the specified minimum yield strength or greater in Class 3 or 4 locations that does not qualify as a Grade 1 leak; or

(vi) Any leak that in the judgment of ~~((operating))~~ gas pipeline company personnel at the scene is of sufficient magnitude to justify scheduled repair.

(3) A "Grade 3 leak" is a leak that is not hazardous at the time of detection and can reasonably be expected to remain not hazardous.

(a) ~~((Operators))~~ Each gas pipeline company should reevaluate Grade 3 leaks during the next scheduled survey, or within fifteen months of the reporting date, whichever occurs first, until the leak is regraded or no longer results in a reading.

(b) Examples. Grade 3 leaks requiring reevaluation at periodic intervals include, but are not limited to:

(i) Any reading of less than eighty percent LEL in small gas associated substructures, such as small meter boxes or gas valve boxes; or

(ii) Any reading under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-187 Gas leak records. Each ~~((operator))~~ gas pipeline company must prepare and maintain permanent gas leak records. The leak records must contain sufficient data and information to permit the commission to assess the adequacy of the ~~((operator's))~~ gas pipeline company's leakage program. Gas leak records must contain, at a minimum, the following information:

(1) Date and time the leak was detected, investigated, reported, and repaired, and the name of the ~~((employee(s)))~~ person conducting the investigation;

(2) Location of the leak (sufficiently described to allow ready location by other qualified personnel);

(3) Leak grade;

(4) Pipeline classification (e.g., distribution, transmission, service);

(5) If reported by an outside party, the name and address of the reporting party;

(6) Component that leaked (e.g., pipe, tee, flange, valve);

(7) Size and material that leaked (e.g., steel, plastic, cast iron);

(8) Pipe condition;

(9) Type of repair;

(10) Leak cause;

(11) Date pipe installed (if known);

(12) Magnitude and location of CGI readings left; and

(13) Unique identification numbers (such as serial numbers) of leak detection equipment.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-188 Gas leak surveys. (1) ~~((Operators))~~ Each gas pipeline company must perform gas leak surveys using a gas detection instrument covering the following areas and circumstances:

(a) Over all mains, services, and transmission lines including the testing of the atmosphere near other utility (gas, electric, telephone, sewer, or water) boxes or manholes, and other underground structures;

(b) Through cracks in paving and sidewalks;

(c) On all above ground piping (may be checked with either a gas detection instrument or with a soap solution);

(d) Where a gas service line exists, ~~((#))~~ the gas pipeline company must conduct a leak survey ~~((must be conducted))~~ at the building wall at the point of entrance, using a bar hole if necessary; and

(e) Within all buildings where gas leakage has been detected at the outside wall, at locations where escaping gas could potentially migrate into and accumulate inside the building.

(2) Each gas pipeline company must maintain, test for accuracy, calibrate and operate gas detection instruments ~~((must be maintained, tested for accuracy, calibrated, and operated))~~ in accordance with the manufacturer's recommendations. If there are no written manufacturer's recommendations or schedules, then the gas pipeline company must test such instruments ~~((must be tested))~~ for accuracy at least monthly, but not to exceed forty-five days between testing, and ~~((include testing))~~ at least twelve times per year. The gas pipeline company must recalibrate or remove from service any such instrument that ~~((fails its))~~ does not meet applicable tolerances ~~((must be calibrated or removed from service))~~. Records of accuracy checks, calibration and other maintenance performed must be maintained for five years.

(3) Each gas pipeline company must conduct gas leak surveys ~~((must be conducted))~~ according to the following minimum frequencies:

(a) Business districts - at least once annually, but not to exceed fifteen months between surveys. All mains in the right of way adjoining a business district must be included in the survey;

(b) High occupancy structures or areas - at least once annually, but not to exceed fifteen months between surveys;

(c) Gas pipelines operating at or above two hundred fifty psig - at least once annually, but not to exceed fifteen months between surveys;

(d) Where the gas system has cast iron, wrought iron, copper, or noncathodically protected steel - at least twice annually, but not to exceed seven and one-half months between surveys; and

(e) Unodorized gas pipelines - at least monthly.

(4) Each gas pipeline company must conduct special leak surveys (~~(must be conducted)~~) under the following circumstances:

(a) Prior to paving or resurfacing, following street alterations or repairs where gas (~~(facilities)~~) pipelines are under the area to be paved, and where damage could have occurred to gas (~~(facilities)~~) pipelines;

(b) In areas where substructure construction occurs adjacent to underground gas (~~(facilities)~~) pipelines, and damage could have occurred to the gas (~~(facilities, operators)~~) pipeline, each gas pipeline company must perform a gas leak survey following the completion of construction, but prior to paving;

(c) Unstable soil areas where active gas (~~(lines)~~) pipelines could be affected;

(d) In areas and at times of unusual activity, such as earthquake, floods, and explosions; and

(e) After third-party excavation damage to services, (~~(operators)~~) each gas pipeline company must perform a gas leak survey from the point of damage to the service tie-in.

(5) Each gas pipeline company must keep leak survey records (~~(must be kept)~~) for a minimum of five years. At a minimum, survey records must contain the following information:

(a) Description of the system and area surveyed (including maps and leak survey logs);

(b) Survey results;

(c) Survey method;

(d) Name of the (~~(employee)~~) person who performed the survey;

(e) Survey dates; and

(f) Instrument tracking or identification number.

(6) Each (~~(operator)~~) gas pipeline company must perform self audits of the effectiveness of its leak detection and recordkeeping programs. (~~(Operators)~~) Each gas pipeline company must maintain records of the self audits for five years. Self audits must be performed as frequently as necessary, but not to exceed three years between audits. At a minimum, self audits should ensure that:

(a) Leak survey schedules meet the minimum federal and state safety requirements for gas pipelines;

(b) Consistent evaluations of leaks are being made throughout the system;

(c) Repairs are made within the time frame allowed;

(d) Repairs are effective; and

(e) Records are accurate and complete.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-200 Reporting requirements (~~(for operators of gas facilities)~~). (1) (~~(Every operator)~~) Each gas pipeline company must give notice to the commission by telephone using the emergency notification line (see WAC 480-93-005(8)) within two hours of discovering an incident or hazardous condition arising out of its operations that results in:

(a) (~~(Results in)~~) A fatality or personal injury requiring hospitalization;

(b) (~~(Results in)~~) Property damage (~~(-to the property of the operator and others of a combined total exceeding)~~) valued at more than fifty thousand dollars;

(c) (~~(Results in)~~) The evacuation of a building, or a high occupancy structure or area;

(d) (~~(Results in)~~) The unintentional ignition of gas;

(e) (~~(Results in)~~) The unscheduled interruption of service furnished by any (~~(operator)~~) gas pipeline company to twenty-five or more distribution customers;

(f) (~~(Results in)~~) A pipeline or system pressure exceeding the MAOP plus ten percent or the maximum pressure allowed by proximity considerations outlined in WAC 480-93-020; or

(g) (~~(Results in the news media reporting the occurrence;~~ ~~or~~

~~(h) Is)~~) A significant occurrence, in the judgment of the (~~(operator)~~) gas pipeline company, even though it does not meet the criteria of (a) through (g) of this subsection.

(2) (~~(Operators)~~) Each gas pipeline company must give notice to the commission by telephone using the emergency notification line (see WAC 480-93-005(8)) within twenty-four hours of (~~(occurrence of every)~~) each incident or hazardous condition arising out of its operations that results in:

(a) The uncontrolled release of gas for more than two hours;

(b) The taking of a high pressure supply or transmission pipeline or a major distribution supply gas pipeline out of service;

(c) A gas pipeline (~~(or system)~~) operating at low pressure dropping below the safe operating conditions of attached appliances and gas equipment; or

(d) A gas pipeline (~~(or system)~~) pressure exceeding the MAOP.

(3) Routine or planned maintenance and operational activities of the (~~(operator)~~) gas pipeline company that result in operator-controlled plant and equipment shut downs, reduction in system pressures, flaring or venting of gas, and normal leak repairs are not reportable items under this section.

(4) (~~(Operators)~~) Each gas pipeline company must provide to the commission a written report within thirty days of the initial telephonic report required under subsections (1) and (2) of this section. At a minimum, the written reports must include the following:

(a) Name(s) and address(es) of any person or persons injured or killed, or whose property was damaged;

(b) The extent of such injuries and damage;

(c) A description of the incident or hazardous condition including the date, time, and place, and reason why the incident occurred. If more than one reportable condition arises from a single incident, each must be included in the report;

(d) A description of the gas (~~(facilities)~~) pipeline involved in the incident or hazardous condition, the system operating pressure at that time, and the MAOP of the facilities involved;

(e) The date and time the (~~(operator)~~) gas pipeline company was first notified of the incident;

(f) The date and time the (~~(operators')~~) gas pipeline company's first responders arrived on-site;

(g) The date and time the gas (~~(facility)~~) pipeline was made safe;

(h) The date, time, and type of any temporary or permanent repair that was made;

(i) The cost of the incident to the (~~(operator)~~) gas pipeline company;

(j) Line type;

(k) City and county of incident; and

(l) Any other information deemed necessary by the commission.

(5) (~~(Operators)~~) Each gas pipeline company must submit a supplemental report if required information becomes available after the thirty-day report is submitted.

(6) (~~(Operators)~~) Each gas pipeline company must provide to the commission a copy of each failure analysis report completed or received by the (~~(operator)~~) gas pipeline company, concerning any incident or hazardous condition due to construction defects or material failure within five days of completion or receipt of such report.

(7) (~~(Operators)~~) Each gas pipeline company must file with the commission the following annual reports no later than March 15 for the preceding calendar year:

(a) A copy of every Pipeline and Hazardous Materials Safety Administration (PHMSA) F-7100.1-1 and F-7100.2-1 annual report required by U.S. Department of Transportation, Office of Pipeline Safety.

(b) A report titled, "Damage Prevention Statistics." The Damage Prevention Statistics report must include in detail the following information:

(i) Number of gas-related one-call locate requests completed in the field;

(ii) Number of third-party damages incurred; and

(iii) Cause of damage, where cause of damage is classified as one of the following:

(A) Inaccurate locate;

(B) Failure to use reasonable care;

(C) Excavated prior to a locate being conducted; or

(D) Excavator failed to call for a locate.

(c) A report detailing all construction defects and material failures resulting in leakage. (~~(Operators)~~) Each gas pipeline company must categorize the different types of construction defects and material failures anticipated for their system. The report must include the following:

(i) Types and numbers of construction defects; and

(ii) Types and numbers of material failures.

(8) (~~(Operators)~~) Each gas pipeline company must file with the commission, and with appropriate officials of all municipalities where (~~(operator)~~) gas pipeline companies have facilities, the names, addresses, and telephone numbers of the responsible officials of the (~~(operator)~~) gas pipeline company who may be contacted in the event of an emergency. In the event of any changes in (~~(operator)~~) such personnel, the (~~(operator)~~) gas pipeline company must immediately notify (~~(immediately)~~) the commission and municipalities.

(9) (~~(Operators)~~) Each gas pipeline company must send to the commission, by e-mail, daily reports of construction and repair activities. Reports may be faxed only if the (~~(operator)~~) gas pipeline company does not have e-mail capability. Reports must be received no later than 10:00 a.m. each day of

the scheduled work, and must include both (~~(operator)~~) gas pipeline company and contractor construction and repair activities. Report information must be broken down by individual crews and the scheduled work must be listed by address, as much as practical. To the extent possible the reports will only contain construction and repair activity scheduled for that day, but they may include a reasonable allowance for scheduling conflicts or disruptions.

(10) When (~~(an operator)~~) a gas pipeline company is required to file a copy of a DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form with the U.S. Department of Transportation, Office of Pipeline Safety, the (~~(operator)~~) gas pipeline company must simultaneously submit a copy of the form to the commission.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-223 Civil penalty for violation of RCW 80.28.210 and commission gas safety rules. (~~(1)~~) Any gas company that violates any provisions of chapter 480-93 WAC has failed to construct and/or maintain its facilities in a safe and efficient manner in violation of RCW 80.28.210, and is subject to a civil penalty under RCW 80.28.212.

(a) ~~The maximum civil penalty under RCW 80.28.212 for violations by a gas company of any provision of chapter 480-93 WAC (other than WAC 480-93-160 and 480-93-200 (1)(h)) is twenty-five thousand dollars for each violation for each day that the violation persists up to a maximum civil penalty of five hundred thousand dollars for a related series of violations.~~

(b) ~~The maximum civil penalty under RCW 80.28.212 for violations by a gas company of WAC 480-93-160 or 480-93-200 (1)(h) is one thousand dollars for each violation for each day that the violation persists, up to a maximum civil penalty of two hundred thousand dollars for a related series of violations.~~

(c) ~~The commission may compromise any civil penalty issued under RCW 80.28.212.~~

(2) ~~In addition to a civil penalty under RCW 80.28.212, any public service company that violates RCW 80.28.210 or any rule issued thereunder, may also be subject to civil penalties under RCW 80.04.405 and/or 80.04.380.~~

(3) ~~Any officer, agent, or employee of any public service company who aids or abets in the violations of RCW 80.28.210 or any rule issued thereunder, is subject to a civil penalty under RCW 80.04.405.~~

(4) ~~Any officer, agent, or employee of any public service company violating RCW 80.28.210 or who procures or aids and abets such a violation, may be subject to civil penalties under RCW 80.04.385.~~

(5) ~~Any corporation other than a public service company that is subject to RCW 80.28.210 and that violates any provision of chapter 480-93 WAC, has failed to construct and/or maintain its facilities in a safe and efficient manner in violation of RCW 80.28.210, and is subject to a civil penalty under RCW 80.04.387.)~~ Any gas pipeline company that violates any pipeline safety provision of any commission order or any rule in this chapter including those rules adopted by refer-

ence, or chapter 81.88 RCW is subject to a civil penalty not to exceed one hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is one million dollars.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-230 Exemptions from rules in chapter 480-93 WAC. The commission may grant an exemption from the provisions of any rule in this chapter ~~((consistent with))~~. The standards and ~~((according to the))~~ procedures for seeking an exemption are set forth in WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules.)

AMENDATORY SECTION (Amending Docket No. P-041344, General Order No. R-523, filed 8/4/05, effective 7/1/06)

WAC 480-93-240 Annual pipeline safety fee methodology. (1) ~~((Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission))~~ This rule sets forth the commission's fee methodology for the annual regulatory fee paid by gas pipelines as that term is defined in RCW 81.88.010 and hazardous liquid pipelines as that term is defined in RCW 81.88.010. For the purposes of this section, these gas pipelines are called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each company.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in subsection (3) of this section ~~((2) below))~~.

~~((2))~~ (3) The fee will be set by general order of the commission entered before ~~((July))~~ September 1 of each year and will be collected in four equal installments payable on the first day of each ~~((calendar))~~ quarter as listed below:

1st quarter fee installment due September 1;

2nd quarter fee installment due December 1;

3rd quarter fee installment due March 1;

4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation and less any amount received from penalties collected under RCW 19.122.050. Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by ~~((such))~~ grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each gas pipeline company's share of the total of all pipeline miles within Washington as reported by ~~((the))~~ companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fee commission's annual pipeline safety program allotment will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee setting purposes, any program hours related to a ~~((staff))~~ commission investigation of an incident attributed to third-party damage ~~((resulting))~~ that results in penalties collected under RCW 19.122.055 will not be directly attributed to the ~~((operator))~~ owner of the damaged gas pipeline ~~((for fee setting purposes))~~.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

~~((3))~~ (4) By ~~((June))~~ August 1 of each year the commission staff will mail an invoice to each company ~~((an invoice))~~.

~~((4))~~ (5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For ~~((those companies))~~ each gas pipeline company subject to RCW 80.24.010, ~~((the))~~ their portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

~~((5))~~ (6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within 6 months ~~((of))~~ after the due date of the fee, file a petition in writing with the commission requesting a refund. The petition must state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; ~~((and any))~~ all reasons why the commission may not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner contends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

AMENDATORY SECTION (Amending Docket PG-061027, General Order R-544, filed 8/23/07, effective 9/23/07)

WAC 480-93-250 Damage prevention. Each ~~((operator))~~ gas pipeline company must comply with chapter 19.122 RCW, including:

(1) Subscribe to the appropriate one-number locator service;

(2) Provide, upon receipt of locate notice, reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities;

(3) Respond with locate markings within two business days after receipt of the notice or within a time mutually agreed upon between the operator and the excavator requesting the utility locate information.

AMENDATORY SECTION (Amending Docket A-060464, General Order No. R-535, filed 6/28/06, effective 7/29/06)

WAC 480-93-999 Adoption by reference. In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. ~~((For))~~ Each regulation or standard ~~((the commission is adopting by reference))~~ is listed ~~((the))~~ by publication, publisher, ~~((the))~~ scope of what the commission is adopting, ~~((the))~~ effective date of the regulation or standard ~~((the commission is adopting))~~, the place within the commission's rules the regulation or standard is referenced, and where to obtain the ~~((availability of the publication in which the))~~ regulation or standard ~~((is found))~~.

(1) Parts 191, 192, 193, and 199 of Title 49 Code of Federal Regulations, ~~((cited as 49 CFR, Parts 191, 192, 193, and 199))~~ including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on October 1, ~~((2005))~~ 2007, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 199.1. ~~((However))~~ In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 CFR § 192.801(b)(2).

(b) This publication is referenced in WAC 480-93-005, 480-93-080, 480-93-100, 480-93-110, 480-93-124, 480-93-155, 480-93-170, 480-93-180, and 480-93-18601.

(c) The Code of Federal Regulations is published by the federal government. Copies of Title 49 Code of Federal Regulations are available from most Government Printing Offices, including the Seattle office of the Government Printing Office, as well as from various third-party vendors and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

(2) Section IX of the ASME Boiler and Pressure Vessel Code.

(a) The commission adopts the 2001 edition of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2001 edition) are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York, and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (19th edition).

(a) The commission adopts the 19th edition of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (19th edition) are available from the Office of API Publishing Services in Washington DC, and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

WSR 08-07-082

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 19, 2008, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-146.

Title of Rule and Other Identifying Information: Chapter 16-324 WAC, Rules for the certification of seed potatoes. The department is proposing to revise the current seed potato certification rule by repealing the requirement for PVY testing for Generation 1 lots.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, Conference Room 259, Olympia, WA 98504-2560, on April 23, 2008, at 9:00 a.m.

Date of Intended Adoption: April 30, 2008.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by April 23, 2008.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 16, 2008, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to revise the current seed potato certification rule by repealing the requirement for PVY testing for Generation 1 lots because of changes in the US-Canada necrotic virus management plan. The PVY testing for Generation 1 seed potato lots was required in the US-Canada necrotic virus management plan. The management plan was recently revised to repeal this requirement because of changes in the genetic make-up of PVY.

Reasons Supporting Proposal: This testing is now an unnecessary expense for growers enrolled in the voluntary certification program.

Statutory Authority for Adoption: Chapters 15.14 and 34.05 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the pro-

posed revisions and has concluded that there are no additional costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 19, 2008

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 07-11-010, filed 5/3/07, effective 6/3/07)

WAC 16-324-385 Production requirements. (1) A grower is not eligible to produce nuclear, generation 1, or generation 2 seed potatoes, if ring rot has been detected on his or her farm during the previous two years.

(2) Prenuclear class.

(a) Prenuclear seed lots must be derived from disease tested micropropagated plants. All testing methods and laboratories must be approved by the department.

(b) A minimum of one percent (and not less than twenty samples) of prenuclear seed produced in a greenhouse must be tested and found free of potato virus X (PVX), potato virus Y (PVY), potato virus S (PVS), potato leafroll virus (PLRV), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg), and *Clavibacter michiganense* ssp. *sependonicum* (ring rot).

(c) The department will inspect all facilities used in the production of prenuclear class seed potatoes on a periodic basis. Department approval is necessary in order to utilize these facilities.

(3) Nuclear class.

(a) Nuclear class seed potatoes must be propagated entirely from prenuclear plants.

(b) Each nuclear class seed lot must be distinctly separated in storage and in the field.

(c) If a ground rig is used for spraying, wide enough spacing between rows must be left, so that tires will not touch plants during the growing season.

(d) Growers must plant cut seed and single drop seed separately, with single drop seed identified.

(4) Generations 1, 2, 3, 4 and 5.

(a) Growers must leave a distinct separation of at least six feet unplanted or planted to some other crop between lots of seed potatoes from different classes. A similar separation must be left between different varieties, unless the varieties are readily distinguishable by visual observation.

(b) When more than one lot of seed potatoes is planted in the same field, growers must stake or mark the identity of each lot.

~~((c) All generation 1 lots must be sampled and tested under the department's supervision for PVY at a rate of four hundred plants for every ten lots. For farms with fewer than ten generation 1 lots, a minimum of four hundred plants must be sampled and tested.))~~

WSR 08-07-085

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 19, 2008, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-106.

Title of Rule and Other Identifying Information: The department is amending WAC 388-538-063 Mandatory enrollment in managed care for GAU clients.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on April 22, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 23, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 15, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending the rule to meet requirements of the 2007-2009 state omnibus operating budget which provides for funding to add a mental health service component to the general assistance unemployable (GAU) medical care services care management project. GAU clients enrolled in a managed care plan in designated counties may receive mental health services and care coordination on a limited basis, subject to available funding from the legislature and an appropriate delivery system. The GAU scope of care and GAU medical/financial eligibility requirements are not changing.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: 2007-2009 state omnibus operating budget (section 209 (13)-(14), chapter 522, Laws of 2007).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Amanda Bennett, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1646.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The content of the rule is explicitly and specifically dictated by section 209(14), Laws of 2007. Under RCW 34.05.328 (5)(b)(v), a cost-benefit analysis is not required.

March 12, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-538-063 (~~(Mandatory enrollment in managed care for GAU clients)~~) **GAU clients residing in a designated mandatory managed care plan county.** (1) ~~(The purpose of this section is to describe the department's managed care requirement for general assistance unemployable (GAU) clients mandated by the Laws of 2003, chapter 25, section 209(15))~~ In Laws of 2007, chapter 522, section 209 (13) and (14), the legislature authorized the department to provide coverage of certain medical and mental health benefits to clients who:

(a) Receive medical care services (MCS) under the general assistance unemployable (GAU) program; and

(b) Reside in a county designated by the department as a mandatory managed care plan county.

(2) The only sections of chapter 388-538 WAC that apply to GAU clients described in this section are incorporated by reference into this section.

(3) ~~(To receive department-paid medical care,)~~ GAU clients who reside in a county designated by the department as a mandatory managed care plan county must enroll in a managed care plan as required by WAC 388-505-0110(7) ((when they reside in a county designated as a mandatory managed care plan county)) to receive department-paid medical care. A GAU client enrolled in an MCO plan under this section is defined as a GAU enrollee.

(4) GAU clients are exempt from mandatory enrollment in managed care if they(~~:~~

~~(a))~~ are American Indian or Alaska Native (AI/AN)(~~:~~) and

~~((b))~~ meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants.

(5) ~~(In addition to subsection (4),)~~ The department ((with)) exempts a GAU client from mandatory enrollment in managed care ((or end an enrollee's enrollment in managed care in)):

(a) If the GAU client resides in a county that is not designated by the department as a mandatory MCO plan county; or

(b) In accordance with WAC 388-538-130(3) ((and 388-538-130(4))).

(6) The department ends a GAU enrollee's enrollment in managed care in accordance with WAC 388-538-130(4).

(7) On a case-by-case basis, the department may grant a GAU client's request for exemption from managed care or a GAU enrollee's request to end enrollment when, in the department's judgment:

(a) The client or enrollee has a documented and verifiable medical condition; and

(b) Enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

~~((7))~~ (8) The department enrolls GAU clients in managed care effective on the earliest possible date, given the requirements of the enrollment system. The department does not enroll clients in managed care on a retroactive basis.

~~((8))~~ (9) Managed care organizations (MCOs) that contract with the department to provide services (~~for~~) to GAU clients must meet the qualifications and requirements in WAC 388-538-067 and 388-538-095 (3)(a), (b), (c), and (d).

~~((9))~~ (10) The department pays MCOs capitated premiums for GAU enrollees based on legislative allocations for the GAU program.

~~((10))~~ (11) GAU enrollees are eligible for the scope of care as described in WAC 388-501-0060 for medical care services (MCS) programs. ((Other scope of care provisions that apply:))

(a) A (~~client~~) GAU enrollee is entitled to timely access to medically necessary services as defined in WAC 388-500-0005;

(b) MCOs cover the services included in the managed care contract for GAU enrollees. MCOs may, at their discretion, cover services not required under the MCO's contract for GAU enrollees;

(c) The department pays providers on a fee-for-service basis for the medically necessary, covered medical care services not covered under the MCO's contract for GAU enrollees; ((and))

(d) A GAU enrollee may obtain:

(i) Emergency services in accordance with WAC 388-538-100; and

(ii) Mental health services in accordance with this section.

~~((11))~~ (12) The department does not pay providers on a fee-for-service basis for services covered under the MCO's contract for GAU enrollees, even if the MCO has not paid for the service, regardless of the reason. The MCO is solely responsible for payment of MCO-contracted ((health care)) healthcare services that are:

(a) Provided by an MCO-contracted provider; or

(b) Authorized by the MCO and provided by nonparticipating providers.

~~((12))~~ (13) The following services are not covered for GAU enrollees unless the MCO chooses to cover these services at no additional cost to the department:

(a) Services that are not medically necessary;

(b) Services not included in the medical care services scope of care, unless otherwise specified in this section;

(c) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions; and

(d) Services received from a nonparticipating provider requiring prior authorization from the MCO that were not authorized by the MCO.

~~((13))~~ (14) A provider may bill a GAU enrollee for noncovered services described in subsection (12) of this section, if the requirements of WAC 388-502-0160 and 388-538-095(5) are met.

(15) Mental health services and care coordination are available to GAU enrollees on a limited basis, subject to available funding from the legislature and an appropriate delivery system.

(16) A care coordinator (a person employed by the MCO or one of the MCO's subcontractors) provides care coordination to a GAU enrollee in order to improve access to mental health services. Care coordination may include brief, evidenced-based mental health services.

(17) To ensure a GAU enrollee receives appropriate mental health services and care coordination, the department requires the enrollee to complete at least one of the following assessments:

(a) A physical evaluation;

(b) A psychological evaluation;

(c) A mental health assessment completed through the client's local community mental health agency (CMHA) and/or other mental health agencies;

(d) A brief evaluation completed through the appropriate care coordinator located at a participating community health center (CHC);

(e) An evaluation by the client's primary care provider (PCP); or

(f) An evaluation completed by medical staff during an emergency room visit.

(18) A GAU enrollee who is screened positive for a mental health condition after completing one or more of the assessments described in subsection (17) of this section may receive one of the following levels of care:

(a) **Level 1.** Care provided by a care coordinator when it is determined that the GAU enrollee does not require Level 2 services. The care coordinator will provide the following, as determined appropriate and available:

(i) Evidenced-based behavioral health services and care coordination to facilitate receipt of other needed services.

(ii) Coordination with the PCP to provide medication management.

(iii) Referrals to other services as needed.

(iv) Coordination with consulting psychiatrist as necessary.

(b) **Level 2.** Care provided by a contracted provider when it is determined that the GAU enrollee requires services beyond Level 1 services. A care coordinator refers the GAU enrollee to the appropriate provider for services:

(i) A regional support network (RSN) contracted provider; or

(ii) A contractor-designated entity.

(19) Billing and reporting requirements and payment amounts for mental health services and care coordination provided to GAU enrollees are described in the contract between the MCO and the department.

(20) The total amount the department pays in any biennium for services provided pursuant to this section cannot exceed the amount appropriated by the legislature for that biennium. The department has the authority to take whatever actions necessary to ensure the department stays within the appropriation.

(21) Nothing in this section shall be construed as creating a legal entitlement to any GAU client for the receipt of

any medical or mental health service by or through the department.

(22) An MCO may refer enrollees to the department's patient review and coordination (PRC) program according to WAC 388-501-0135.

~~((14))~~ (23) The grievance and appeal process found in WAC 388-538-110 applies to GAU enrollees described in this section.

~~((15))~~ (24) The hearing process found in chapter 388-02 WAC and WAC 388-538-112 applies to GAU enrollees described in this section.

WSR 08-07-098

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed March 19, 2008, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-01-101.

Title of Rule and Other Identifying Information: WAC 296-62-095 Heat-related illness in the outdoor environment.

Hearing Location(s): Comfort Inn - Tumwater, 1620 74th Avenue S.W., Tumwater, WA 98501, on April 28, 2008, at 1:00 p.m.; at the Quality Inn Baron Suites, 100 East Kellogg Road, Bellingham, WA 98226, on April 29, 2008, at 1:00 p.m.; at the Yakima Clarion Hotel and Conference Center, 1507 North First Street, Yakima, WA 98901, on April 30, 2008, at 9:00 a.m.; at the Red Lion Hotel Richland - Hanford House, 802 George Washington Way, Richland, WA 99352, on April 30, 2008, at 2:00 p.m.; and at the Red Lion Hotel at the Park, West 303 North River Drive, Spokane, WA 99201, on May 1, 2008, at 1:00 p.m.

Date of Intended Adoption: June 4, 2008.

Submit Written Comments to: Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, e-mail scij235@lni.wa.gov, fax (360) 902-5619, by May 2, 2008. In addition to written comments, the department will accept comments submitted to fax (360) 902-5619. Comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by April 14, 2008, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New sections WAC 296-62-095 Heat-related illness in the outdoor environment, 296-62-09510 Scope and purpose, 296-62-09520 Definitions, 296-62-09530 Employer responsibility, 296-62-09540 Drinking water, 296-62-09550 Responding to signs and symptoms of heat-related illness, and 296-62-09560 Information and training.

The Washington state Constitution mandates that "the legislature shall pass laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health." In enacting chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA), the Washington legislature found "that personal

injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the Industrial Insurance Act. Therefore, in the public interest for welfare of the people of the state of Washington and in order to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature... in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state...."²

WISHA mandates that the director of L&I shall "[p]rovide for the promulgation of health and safety standards and the control of conditions in all work places concerning... harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity."³

On July 18, 2005, a farm worker collapsed while cutting weeds with a machete in hop fields near Yakima. He died, and the coroner ruled that the cause of death was heat stroke. L&I investigated the death and later cited and fined the company for an inadequate safety program, not providing drinking water, and lack of training for workers. The safety program should have included a plan to prevent heat stress by providing rest breaks, shade, worker hydration and administrative controls such as a work-rest regimen.

The citation was issued December 23, 2005, and the subsequent appeal was affirmed with a negotiated penalty of \$3,000. L&I did not seek criminal sanctions since the violations cited were not considered willful (a prerequisite for a referral to a county prosecuting attorney).

Immediately following this workplace death, L&I heard from farm worker advocates that they were very concerned about this fatality and that they wanted an emergency rule issued similar to California's emergency heat-stress rule. L&I responded by issuing a hazard alert to the agriculture industry, and then proceeded with a study to determine what was needed to protect workers for the 2006 summer season.

L&I reviewed the workers' compensation injury and illness claims from 1995 through 2005 and found that one other person had died from heat stress in Washington (a lawn-service employee working in the Yakima area). The study also found approximately four hundred fifty workers' compensation claims for heat-related illness during the same time period. These fatalities may have been prevented with rules that are more protective of workers.

Based on this information, L&I evaluated its existing rules to determine if they adequately addressed heat-related illness. After this evaluation, L&I believed that these fatalities and illnesses may have been prevented with rules that are more protective of workers. In *Rios v. Dept. of L&I*, the Washington supreme court concluded that L&I must consider rule making for recognized work place hazards.⁴

During that time, L&I held extensive meetings with business and labor representatives and worker advocates, and began developing an awareness and education campaign that would occur over the summer of 2006 regardless of the final

decision regarding adopting a rule. Worker advocate groups felt very strongly about the heat-stress issue and didn't believe this emergency rule was specific enough. On the other hand, some employers wanted no rule at all.

In the end, L&I concluded that the best approach was to adopt an emergency rule that extended an existing rule on indoor work in hot temperatures (WAC 296-62-09013) to include outdoor work. The emergency rule was effective June 1, 2006, and remained in place for one hundred twenty days.

The 2006 emergency rule stated that every employer must evaluate their workplace and have procedures in place if their employees will be at risk from heat-related illnesses. They were required to look at things such as adequate water and shade, how to recognize heat stress, and what to do about it.

That summer, L&I launched a coordinated hazard-awareness campaign with business and labor organizations concentrating on businesses most affected by hot weather, such as construction (especially road work) and agriculture. As part of regularly scheduled inspections and consultations in affected industries, L&I staff also visited farms and other employers throughout the summer to make sure they were protecting their workers from heat-related illness.

In the summer of 2006, Washington state suffered the loss of two employees due to heat-related illness.

- On May 18, 2006, an employee passed away as a result of heat-related illness he developed on July 12, 2004. The employee was a roofer and collapsed while working. He arrived at the emergency room with a core temperature of 108°F. The employee did return to consciousness but never fully recovered. At the time of his death, he was awaiting a liver transplant.
- On June 26, 2006, at approximately 2:30 p.m., a laborer/pipefitter became ill on an excavation project in Carson, Washington. The crew had been working since 8:30 a.m., and the ambient temperature rose throughout the day to over 100°F. He was transported to Emmanuel Hospital in Portland, Oregon, where he died five days later, on July 1, 2006.

After the expiration of the 2006 emergency rule, L&I consulted with DOSH compliance and consultation staff and held a stakeholder meeting to discuss the experiences with the emergency rule and preproposal draft issues. In addition, on January 26, 2007, L&I received a petition for rule making from Columbia Legal Services with specific recommendations for permanent rule requirements and content.

From January to April 2007, L&I drafted, revised and circulated a draft rule. During this time, the draft rule was widely distributed to stakeholders for comment. In addition, L&I solicited input from stakeholders through several stakeholder discussions then updated the draft based on stakeholder input. This language was posted on the L&I web site and circulated to stakeholders that same day. Before the adoption of the second emergency rule, L&I met with business representatives to discuss the draft language. L&I updated the language as a result of this discussion.

Based on this input, L&I developed a draft rule that was significantly different from the emergency rule language

adopted during the summer of 2006. This new language clearly communicated L&I's expectations while allowing employers the ability to create heat-related illness procedures that will be most effective for their worksites. The draft rule was sent to stakeholders for a review process. L&I also held a stakeholder meeting.

While L&I planned to continue development of a permanent heat-related illness rule, it was important to have a rule that provided clear expectations to employers in place during the summer of 2007. This rule was intended to reduce or eliminate the number of serious incidents and fatalities by increasing worker protection from heat-related illness while L&I continued the permanent rule-making process. An emergency rule was necessary to ensure protection of workers during the summer months when there is a greater risk for heat-related illness. In addition, L&I provided awareness training for employers over the summer.

On June 5, 2007, L&I filed a second emergency rule. Additional training materials and courses were offered. Also during the summer, L&I developed and distributed public service announcements for HRI prevention in Washington state. L&I conducted two hundred forty-two HRI consultation visits for employers and seven hundred seven compliance inspections. No employee HRI deaths occurred in 2007.

From August 9, 2007, through September 14, 2007, L&I solicited comments on the emergency rule language. L&I also held stakeholder meetings to discuss the rule language in Yakima, Spokane, Tumwater, and Bellevue. After L&I reviewed the stakeholder input, the emergency rule language was updated based on the comments received.

This updated draft was discussed with a group of business and labor representatives in November 2007. As a result of this discussion, L&I developed a draft for proposal.

¹Wash. Const. art. 2 § 35.

²RCW 49.17.010.

³RCW 49.17.050(4).

⁴Hillis, 131 Wn.2d at 383.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

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

Small Business Economic Impact Statement

The division of occupational safety and health (DOSH) of the Washington state department of labor and industries (L&I) is proposing a new rule under WAC 296-62-095 that will govern heat-related illness in the outdoor environment. The overarching scope and purpose of the proposed rule is set forth in WAC 296-62-09510, which reads as follows: "The provisions of this rule apply to all employers with one or

more employees performing work in an outdoor environment. It requires employers to implement workplace practices designed to reduce to the extent feasible the risks of heat-related illness resulting from outdoor exposure to temperature, humidity, and other environmental factors, or any combination thereof."

The following small business economic impact statement (SBEIS) was prepared in compliance with the Regulatory Fairness Act (RFA), RCW 19.85.040, and provides an analysis of the likely cost per full-time equivalent (FTE) for small businesses compared to large businesses associated with implementation of WAC 296-62-095. In particular, the following rule provisions were analyzed:

- WAC 296-62-09530 Employer responsibility.
- WAC 296-62-09540 Drinking water.
- WAC 296-62-09550 Responding to signs and symptoms of heat-related illness.
- WAC 296-62-09560 Information and training.

1. Assessing Costs:

1.1 Cost Survey Methodology - As part of both the cost-benefit analysis and the SBEIS, L&I estimated the probable costs of compliance for Washington businesses if the draft proposed heat-related illness permanent rule were adopted. Primarily, the assessment of quantifiable costs occurred in three steps discussed below: (1) Developing and implementing a sampling strategy, (2) designing and sending out a cost survey to employers, and (3) estimating the monetized costs for the various components of the draft proposed rule that may have an economic impact.

1.2 Sampling Plan - The development of the sampling strategy for the heat-related illness cost survey required an unusual amount of care due to the nature of the injuries and illnesses the rule seeks to prevent. That is, while it might seem appropriate to sample those industries known to have the highest number of heat-related illness workers' compensation claims¹, heat-related illness may be an underlying cause for primary diagnoses related to accidents. In other words, these accident-related injuries may really be a function of heat-related illness symptoms workers were experiencing prior to the accident (such as dizziness, or orthostatic intolerance, Kenefick and Sawka, 2007) (see state of Washington office of the governor, 2007). For instance, in their study of heat-related illness among workers in Italy, Morabito and colleagues (2006) note that "some occupational injuries might be induced by a previous lipothymia or loss of consciousness due to environmental factors, but discharge data only contains the ICD classification of traumatism in the principal diagnoses."² While more suggestive than conclusive, the authors also found that, in each of the study months, the greatest number of reported work-related accidents happened on days when the daytime apparent temperature was between 76.6 and 81.5°F (Morabito, et al., 2006). This is consistent with Ramsey, et al.'s (1983) findings that unsafe work behavior increases in warmer temperatures. The authors also report findings from previous studies suggesting a relationship between environmental temperature and injury rates, whereby injuries are more common at both colder and warmer temperatures (that is, the relationship between the two variables is that of a U-shaped curve).

In addition, L&I assumes that exposure to heat-related illness hazards may be slightly more evenly distributed across industries and businesses employing outdoor employees than the workers' compensation claims rates by industry would suggest. For one thing, the heat-related illness claims reported by Bonauto and colleagues (2006) and broken out by industry were representative of *both* outdoor and indoor workers (though 78.5% were outdoor workers). In addition, L&I chose to develop a sampling strategy that accounts for the possibility that certain industries may actually have outdoor employees exposed to heat-related illness hazards in greater numbers than their claims rates would suggest. This could happen, for example, in industries where HRI is more likely to be the first and perhaps undiagnosed of what are really two workplace injuries or illnesses (e.g., in industries where HRI may be more likely to result in a workplace accident). Another example of when one might expect true *exposure* rates to be concealed by an examination of *claims* rates is when particular industries have already been taking steps all along to prevent heat-related illness such that exposure is actually greater than their HRI claims rates would suggest. This is all to say that the sampling frame was developed based on the industries in which workers were thought to be exposed to HRI hazards rather than on workers' compensation claims data.

Another consideration was the side of the state in which employers were located. This was important given that a disproportionate share of heat-related illness claims occur in eastern Washington. That is, while eastern Washington represents only 22% of the employed population, it represents 47% of HRI claims (Bonauto, et al., 2006). However, this factor was ultimately not considered in the development of the sampling frame, because employees in western Washington are in some ways at more risk even though they may face less overall exposure to HRI hazards. For example, a recent HRI fatality occurred in western Washington in the city of Vancouver, which has relatively more variation in temperature during the summer months. This temperature variation subjects employees in western Washington to *greater* risk in some sense, in that they are less likely to be acclimatized to the heat, a factor that is known to predispose individuals to HRI (Bonauto, et al., 2007; Bonauto, et al., 2006; Morabito, et al., 2006; Epstein, et al., 1999; Bricknell, 1996; Gardner, et al., 1996).

The sampling strategy involved the following three steps, each of which will be reviewed in more detail below: (1) Determining the appropriate sample size, (2) building the appropriate sampling frame based on likely exposure of outdoor employees to HRI hazards, and (3) using proportionate stratified random sampling to select the number of businesses within each industry sector that would be randomly selected.

1.3 Sample Size - In determining the appropriate sample size needed to get valid estimates for the cost of compliance with the draft proposed HRI rule, L&I considered a couple of factors; namely, the desired level of confidence and uncertainty in the cost estimates, and the anticipated response rate. Each of these is discussed below.

The department first considered the level of confidence and uncertainty it was willing to accept in order to ensure the most rigorous and statistically valid compliance cost esti-

mates. L&I chose conventional levels, 95% confidence with $\pm 5\%$ uncertainty. It next considered the size of the business account population from which the sample would be selected. After screening out locations that had closed, L&I pulled addresses and industry information for 230,715 physical locations of Washington businesses from its administrative data warehouse (refreshed as of April 3, 2007).

Given that the department did not know key population characteristics (mean, variance, and standard deviation) with respect to each parameter of interest, the desired sample size was estimated based on a formula that assumes an infinitely large population.³ It uses the most conservative estimate of probability ($p = .5$), as well as the desired precision (95% confidence level; $\pm 5\%$ uncertainty). One can make similar calculations using the actual known population size ($N = 230,715$ for all physical locations open and active as of April 3, 2007), but will get essentially the same result for the desired sample size ($n = 384$ using known N^4 as opposed to $n = 385$ assuming an infinitely large N).

In determining the requisite sample size, L&I also took into account the relatively low response rates it has historically reported for surveys to businesses regarding the costs of proposed rule making.⁵ This was done by reviewing a number of economic analyses and rule-making files involving surveys conducted over the past decade. Table A-1 in the appendix of the cost-benefit analysis presents a summary of the findings, including sample size, sampling methods, number of respondents, and response rate for each survey. Of the nine self-administered, mail-in cost surveys included in this review, sample sizes ranged from three hundred twenty-three to five thousand six hundred forty-four and response rates ranged from 8% to 25%.

The final determination of sample size employed the above information to attain a desired sample size given that population parameters with respect to cost are unknown, the desirable confidence level is 95% (with $\pm 5\%$ uncertainty), and response rates for surveys of this nature tend to range from 8 to 25%. It also took into account the fact that the sampling frame is perhaps not as efficiently targeted as L&I would have liked given the somewhat allusive nature of heat-related illness exposure noted earlier (methods for deriving the sampling frame are discussed below). L&I ultimately chose a sample size of five thousand five hundred because it is sufficient to yield statistically significant cost estimates, assuming a 7% response rate and conventional levels for statistical validity. That is, if assumptions were to hold, one would expect a returned sample size of three hundred eighty-five, which would allow for statistically valid estimates of the overall cost of compliance. Yet there is most likely nonresponse bias in terms of who responded to the survey and who did not. This issue is discussed in section 6.2 of the cost-benefit analysis.

1.4 Sampling Frame - In building the sampling frame from which businesses would be randomly selected, L&I began with the total population of all open and active physical locations in the department's administrative database, including both state fund and self-insured employers. It then excluded industries from the sampling frame in three phases. First, industry sectors at the 2-digit NAICS-level were eliminated if they were unlikely to have any outdoor employees

exposed to HRI hazards. Likewise, industries were eliminated at the 3- and then 6-digit NAICS-levels if they were unlikely to have outdoor employees exposed to HRI hazards (see Figure A-1 in the appendix of the cost-benefit analysis for a complete list of industries excluded from the sampling frame). Given the broad scope of the rule and the nature of heat-related illness hazards for outdoor workers, it was not possible to zero in on the exact industries likely to be impacted by this draft proposed rule. Instead, the sampling frame reflects those specific industries thought to be most likely to have outdoor workers. It is important to note that businesses in industries not included in the sampling frame will still need to be in compliance with the proposed heat-related illness rule if it is adopted and they employ outdoor workers in the summer months. Similarly, businesses in industries included in the sampling frame will not be subject to the rule if they do not employ any outdoor workers.

1.5 Proportionate Stratified Random Sampling - In conjunction with determining the desired sample size and the appropriate sampling frame, L&I also considered which sampling method would yield the most accurate cost estimates. The objective was to randomly select employers such that industries that received surveys were represented proportionate to their share of the overall sampling frame. Given this, L&I employed proportionate stratified random sampling by industry. This method allowed the department to create strata at the industry-level that were assumed to be somewhat homogenous with respect to the likely costs of implementing the draft proposed heat-related illness rule, thus helping to reduce sampling variability (Pedhazur & Schmelkin, 1991: 331). To do this, L&I first determined what percentage of the overall sampling frame (N = 87,351) each 2-digit industry sector comprised. It then determined the sample size needed for each industry by multiplying that industry's proportion of the sampling frame by the overall desired sample size (n = 5,500). To see the resulting sample sizes by industry, please refer to Table A-2 in the appendix of the cost-benefit analysis.

In order to randomly select businesses, L&I used an online random number generator (<http://www.random.org>) to obtain a list of random numbers for each industry that was the exact number of the sample size for each industry. Next, the department numbered each business within each industry from 1 to n and used Vlookup in Excel to "grab" each business account that corresponded to a randomly generated number. This process of selection was not perfect, however, as the list of random numbers drew randomly *with replacement* such that there were some duplicate random draws. As a result, one of each duplicate pair was removed, as well as any accounts for which the department did not have a mailing address.⁶ In the end, five thousand two hundred and six surveys were sent to employers, rather than the five thousand five hundred originally planned. This is because one hundred forty-two businesses in the randomly selected lists were found to be missing physical location addresses or to be closed. In addition, another one hundred fifty-two were one of a duplicate randomly drawn pair that was eliminated from the list. (Please see Table A-2 in the appendix of the cost-benefit analysis.)

1.6 Survey - The cost survey sent to randomly selected businesses provided respondents with information about the existing standard (if one indeed existed) and then told them what the proposed rule requires and what this means for them. In order to establish a baseline, the survey then asked respondents to answer questions about what they were doing in 2006 to be in compliance with existing standards (such as chapter 296-800 WAC, Safety and health core rules). If respondents were *not* doing something in 2006 that is part of the proposed rule, the survey asked what they would do to be in compliance if the rule were adopted. It also asked whether there would be an additional cost to their business and, if so, how much it would likely be. (Please see Figure A-2 in the appendix of the cost-benefit analysis for a copy of the survey that was sent.)

The survey was sent by mail to randomly selected business[es] ("Attn: business safety manager") on June 4, 2007. Given that it asked respondents to estimate current and future costs, it was important to clarify that current costs referred to costs in the absence of any HRI rule. Since the HRI emergency rule for the summer of 2007 took effect at around the same time as the survey was disseminated to randomly selected businesses,⁷ L&I sent a follow-up postcard indicating that survey respondents should think of their "current" activities and associated costs as what they were doing *prior* to the emergency rule taking effect. This is the best tool L&I had to communicate to employers the assumptions they should make in order to arrive at the best baseline cost estimates possible. That said, it is noteworthy that many of the survey recipients that called L&I's economic analyst were actually not familiar with the emergency rules from 2006 or 2007 and also had not heard about the draft proposed permanent rule.

1.7 Response Rate - Between June 11 and July 13, 2007, L&I received eight hundred four completed surveys from businesses of the five thousand two hundred six surveys sent. Of those sent, seven hundred twenty are presumed to have been undeliverable because the follow-up postcard was "returned to sender."⁸ In addition, nine survey recipients contacted L&I by mail, e-mail, or phone to inform the department that their businesses had either closed or were not operational in 2006 (the year for which costs were to be estimated). All told, the response rate for completed surveys of the five thousand two hundred six sent was 15% (eight hundred four out of five thousand two hundred six) and the response rate for those presumed to have been successfully delivered to active accounts was 18% (eight hundred four out of four thousand four hundred seventy-seven). Of the eight hundred four respondents, four hundred eighty-three businesses (or 60%) reported that they had employees who worked outdoors in 2006. Respondents were instructed to only continue answering the survey if they had outdoor employees in 2006, so it is important to note that the four hundred eighty-three "useable" surveys represent 9% of the total surveys sent, 11% of those presumed to have been successfully delivered, and 60% of the eight hundred four completed surveys that L&I received. (Please see Table A-5 in the appendix of the cost-benefit analysis, which accounts for all the surveys sent.)

Of the four hundred eighty-three survey respondents who had outdoor employees in 2006, response rates by industry varied some from what L&I would have expected based on the sampling frame shown in Table A-2 in the appendix of the cost-benefit analysis.⁹ That said, some industry-specific response rates were roughly proportionate to the number of surveys sent to that industry. For example, the construction industry represented 37.5% of surveys sent and 40.6% of respondents with outdoor employees. Yet other industries appear to have been represented more (or less) heavily in the pool of respondents relative to the sampling plan. For example, the agriculture, forestry, fishing, and hunting industry represented about 10.5% of the sampling frame but 18.2% of respondents. This may suggest that this industry sector is more likely to have outdoor employees relative to other industries in the sampling frame. It is also worth noting that a relatively high proportion of respondents with outdoor workers fell into the "other" category (about 19.3%). This may be explained by the fact that some respondents likely did not think any of the industry categories presented as options on the survey adequately reflected the nature of their work. (Please refer to Table A-3 and Table A-4 in the appendix of the cost-benefit analysis for a detailed breakdown of response rate by industry.)

Of the four hundred eighty-three respondents with outdoor workers in 2006, four hundred thirty-three supplied sufficient information to determine whether or not they were a small business. Of those four hundred thirty-three, approximately 89% (three hundred eighty-five) were small businesses, defined in the Regulatory Fairness Act (chapter 19.85 RCW) as any business entity that has fifty or fewer employees. This is roughly comparable to the percentage of Washington businesses statewide that meet this definition (about 86%). In order to determine whether or not a business was small, the department considered responses to two questions: (1) The reported number of full-time equivalents (FTEs) in 2006, and (2) the reported number of part-time hours temporary/seasonal or part-time workers worked in 2006. A calculation was then made to convert part-time hours to FTEs by dividing the total number of part-time hours reported for a given business by two thousand eighty. FTEs and converted FTEs were then summed and small businesses were determined to be those in which the sum of these two fields was equal to or less than fifty FTEs. One caveat is that if respondents did not complete the question asking how many FTEs they had in 2006, they were not included as part of the four hundred thirty-three respondents supplying sufficient information. If, however, only the field for part-time annual hours was missing or a legitimate skip, the reported number of FTEs was used to determine if the business was small or not.

2. Assessing Economic Impact by Size of Business -

This SBEIS considers the median cost per FTE per business for each component of the proposed HRI rule. Upper bound cost estimates were obtained using data from survey respondents who reported there would be an additional cost of a given component of the rule, provided a quantitative cost estimate, and also provided enough information such that the department could calculate firm size. Lower bound cost estimates were obtained using this same data, but also including data from respondents who reported that a given component

would cost the same or less to implement in the future. For respondents reporting that cost would be the same or less, the department assigned a \$0 cost. Given the greater data requirements per respondent (e.g., number of FTEs) required for the SBEIS, the sample sizes will not match up exactly with those presented in the cost-benefit analysis. This is because there was greater opportunity for missing data due to item nonresponse in the case of the SBEIS.

The Regulatory Fairness Act, RCW 19.85.040(1), requires that in determining whether a proposed rule will disproportionately impact small businesses, the department compare "the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules..." This comparison can be made based on the cost per FTE. Conveniently, the number of returned surveys with outdoor workers L&I received was four hundred eighty-three and the number of businesses that reported having fifty-one or more employees was forty-eight. Since forty-eight is approximately 10% of four hundred eighty-three, the costs to all of these bigger businesses have been included in this analysis and are compared to all the other businesses that responded (the latter of whom had fifty or fewer employees).

The upper bound estimates in the following sections are distinct from the upper bound estimates presented in the cost-benefit analysis in that those presented here include respondents who provided inconsistent responses (suggesting bias). This is because the purpose here is to get the best estimate of the extent to which there may be a disproportionate impact on small businesses rather than to get the most accurate cost estimate. As a result, the upper bound estimates presented here are likely inflated but work from the assumption that they are inflated in the same direction and to the relatively same extent for both small and big businesses.

2.1. IDENTIFYING AND EVALUATING TEMPERATURE AND OTHER FACTORS:

2.1.1. Upper Bound Cost Per FTE Estimate - On the survey sent to employers, question 6b asked respondents whether there would be a cost to put in place measures to identify and evaluate temperature and environmental factors if this proposed rule component were adopted. Approximately thirty-four employers reported that there would be an additional cost to their business to take steps to identify and evaluate temperature and environmental factors if the draft proposed HRI rule were adopted. Of these thirty-four respondents, only three businesses had more than fifty employees, while thirty-one of these respondents had fifty or fewer employees. Of the three businesses with fifty-one or more employees who reported an additional cost, the median daily cost per FTE was \$1.48. The corresponding cost for the thirty-one small businesses was \$2.20 per FTE per day. In light of this, the upper bound cost per FTE is estimated to be approximately 1.5 times greater for small businesses compared to businesses with fifty-one or more employees.

<p>Upper Bound - Survey Questions 6b and 6c: Cost Per Day Per FTE to Identify and Evaluate Environmental Factors (Employers Responding 'MORE' to 6b)</p>

	Small Businesses	Not Small Businesses
Mean	11.50	1.19
Standard Error	4.41	0.39
Median	2.20	1.48
Standard Deviation	24.58	0.67
Sample Variance	604.14	0.45
Skewness	3.00	-1.58
Range	99.98	1.25
Minimum	0.03	0.42
Maximum	100.00	1.67
Sum	356.57	3.58
Count	31.00	3.00
Confidence Level (95.0%)	9.02	1.68

2.1.2. Lower Bound Cost Per FTE Estimate - The lower bound estimate is also based on question 6b from the survey, which asked respondents whether there would be a cost to put in place measures to identify and evaluate temperature and environmental factors. Approximately four hundred fourteen employers with outdoor workers answered the question and reported that it would cost "less," the "same," or "more" if the draft proposed HRI rule were adopted. Of these four hundred fourteen respondents, forty-six businesses had more than fifty-one or more employees, while three hundred sixty-eight of these respondents had fifty or fewer employees. Of the forty-six businesses with fifty-one or more employees, the median daily cost per FTE was \$0. The corresponding cost for the three hundred sixty-eight small businesses was also \$0 per FTE per day. In light of this, the lower bound cost per FTE is estimated to be approximately the same for small businesses as compared to businesses with fifty-one or more employees.

Lower Bound: Survey Questions 6, 6b, and 6c: Cost Per Day Per FTE to Identify and Evaluate Environmental Factors (Employers Responding 'LESS,' 'SAME' or 'MORE' to 6b)		
	Small Businesses	Not Small Businesses
Mean	1.09	0.08
Standard Error	0.42	0.05
Median	0.00	0.00
Mode	0.00	0.00
Standard Deviation	8.11	0.33
Sample Variance	65.81	0.11
Kurtosis	108.86	19.06
Skewness	10.06	4.44
Range	100.00	1.67
Minimum	0.00	0.00
Maximum	100.00	1.67
Sum	402.18	3.58

	Small Businesses	Not Small Businesses
Count	368.00	46.00
Confidence Level (95.0%)	0.83	0.10

2.2. PREVENTING, CONTROLLING, AND CORRECTING HRI HAZARDS:

2.2.1 Upper Bound Cost Per FTE Estimate - On the survey sent to employers, question 7b asked respondents whether there would be a cost to prevent, control, and correct HRI hazards if this draft proposed rule component were adopted. Approximately forty-two employers reported that there would be an additional cost to their business to take steps to prevent, control, and correct HRI hazards if the draft proposed HRI rule were adopted. Of these forty-two respondents, only four businesses had fifty-one or more employees, while thirty-eight of these respondents had fifty or fewer employees. Of the four businesses with fifty-one or more employees who reported an additional cost, the median daily cost per FTE was \$3.15. The corresponding cost for the thirty-eight small businesses was \$6.83 per FTE per day. In light of this, the upper bound cost per FTE is estimated to be approximately 2.2 times greater for small businesses compared to businesses with fifty-one or more employees.

Upper Bound – Survey Questions 7b and 7c: Cost Per Day Per FTE to Prevent, Control, and Correct HRI Hazards (Employers Reporting 'MORE' to 7b)		
	Small Businesses	Not Small Businesses
Mean	32.60	7.43
Standard Error	11.66	5.29
Median	6.83	3.15
Standard Deviation	71.86	10.57
Sample Variance	5163.55	111.80
Kurtosis	27.55	3.70
Skewness	4.96	1.90
Range	432.50	22.89
Minimum	0.83	0.27
Maximum	433.33	23.16
Sum	1238.90	29.72
Count	38.00	4.00
Confidence Level (95.0%)	23.62	16.82

2.2.2 Lower Bound Cost Per FTE Estimate - The lower bound estimate is also based on question 7b from the survey, which asked respondents whether there would be a cost to put in place measures to prevent, control, and correct HRI hazards if this draft proposed rule component were adopted. Approximately four hundred thirteen employers reported that it would cost "less," the "same," or "more." Of these four hundred thirteen respondents, forty-four businesses had fifty-one or more employees, while three hundred sixty-nine of these respondents had fifty or fewer employees. Of the forty-four businesses with fifty-one or more employees, the median daily cost per FTE was \$0. The correspond-

ing cost for the three hundred sixty-nine small businesses was also \$0 per FTE per day. In light of this, the lower bound cost per FTE is estimated to be approximately the same for small businesses as compared to businesses with fifty-one or more employees.

Lower Bound – Survey Questions 7b and 7c: Cost Per Day Per FTE to Prevent, Control, and Correct HRI Hazards (Employers Reporting 'LESS,' 'SAME,' or 'MORE' to 7b)		
	Small Businesses	Not Small Businesses
Mean	3.36	0.68
Standard Error	1.29	0.53
Median	0.00	0.00
Mode	0.00	0.00
Standard Deviation	24.85	3.53
Sample Variance	617.62	12.47
Kurtosis	245.97	40.73
Skewness	14.62	6.30
Range	433.33	23.16
Minimum	0.00	0.00
Maximum	433.33	23.16
Sum	1238.90	29.72
Count	369.00	44.00
Confidence Level (95.0%)	2.54	1.07

2.3. DRINKING WATER:

2.3.1. Upper Bound Cost Per FTE Estimate - On the survey sent to employers, question 11 asked respondents whether there would be an additional cost to provide one quart of water per employee per hour per day if this draft proposed rule component were adopted. Approximately one hundred five employers reported that there would be an additional cost to their business to provide this water. Of these one hundred five respondents, thirteen businesses had fifty-one or more employees, while ninety-two of these respondents had fifty or fewer employees. Of the thirteen businesses with fifty-one or more employees who reported an additional cost, the median daily cost per FTE was \$0.33. The corresponding cost for the ninety-two small businesses was \$2.48 per FTE per day. In light of this, the upper bound cost per FTE is estimated to be approximately 7.5 times greater for small businesses compared to businesses with fifty-one or more employees.

Upper Bound – Survey Questions 11 and 11a: Cost Per Day Per FTE to Provide 1 Quart of Water Per Outdoor Employee Per Hour Per Day (Employers Reporting 'MORE' to 11)		
	Small Businesses	Not Small Businesses
Mean	12.19	1.85
Standard Error	5.58	0.63
Median	2.48	0.33

	Small Businesses	Not Small Businesses
Standard Deviation	53.50	2.28
Sample Variance	2862.77	5.18
Kurtosis	78.14	-0.89
Skewness	8.59	0.95
Range	499.98	5.85
Minimum	0.02	0.09
Maximum	500.00	5.93
Sum	1121.64	23.99
Count	92.00	13.00
Confidence Level (95.0%)	11.08	1.38

2.3.2. Lower Bound Cost Per FTE Estimate - The lower bound estimate is also based on question 11 from the survey, which asked respondents whether there would be a cost to provide one quart of water per employee per hour per day if this draft proposed rule component were adopted. Approximately three hundred sixty employers reported that it would cost "less," the "same," or "more." Of these three hundred sixty respondents, forty businesses had fifty-one or more employees, while three hundred twenty of these respondents had fifty or fewer employees. Of the forty businesses with fifty-one or more employees, the median daily cost per FTE was \$0. The corresponding cost for the three hundred twenty small businesses was also \$0 per FTE per day. In light of this, the lower bound cost per FTE is estimated to be approximately the same for small businesses as compared to businesses with fifty-one or more employees.

Lower Bound – Survey Questions 11 and 11a: Cost Per Day Per FTE to Provide 1 Quart of Water Per Outdoor Employee Per Hour Per Day (Employers Reporting 'LESS,' 'SAME,' or 'MORE' to 11)		
	Small Businesses	Not Small Businesses
Mean	3.37	0.60
Standard Error	1.16	0.24
Median	0.00	0.00
Mode	0.00	0.00
Standard Deviation	20.67	1.54
Sample Variance	427.21	2.36
Kurtosis	129.97	6.25
Skewness	10.72	2.72
Range	288.00	5.93
Minimum	0.00	0.00
Maximum	288.00	5.93
Sum	1077.53	23.99
Count	320.00	40.00
Confidence Level (95.0%)	2.27	0.49

2.4. RESPONDING TO SIGNS AND SYMPTOMS OF HRI:

2.4.1. Upper Bound Cost Per FTE Estimate - On the survey sent to employers, question 13 asked respondents

whether there would be an additional cost to cool employees experiencing the signs of symptoms of heat-related illness if this proposed rule component were adopted. Approximately twenty-five employers reported that there would be an additional cost to their business. Of these twenty-five respondents, five businesses had fifty-one or more employees, while twenty of these respondents had fifty or fewer employees. Of the five businesses with fifty-one or more employees who reported an additional cost, the median daily cost per FTE was \$0.74. The corresponding cost for the twenty small businesses was \$5.78 per FTE per day. In light of this, the upper bound cost per FTE is estimated to be approximately 7.8 times greater for small businesses compared to businesses with fifty-one or more employees.

Upper Bound – Survey Questions 13b and 13c: Cost Per Day (in Dollars) to Cool Employees Experiencing Signs and Symptoms of HRI (Employers Reporting 'MORE' to 13b)		
	Small Businesses	Not Small Businesses
Mean	193.30	1.27
Standard Error	169.15	0.60
Median	5.78	0.74
Standard Deviation	756.44	1.33
Sample Variance	572200.82	1.78
Kurtosis	19.79	0.41
Skewness	4.44	1.13
Range	3399.77	3.28
Minimum	0.23	0.05
Maximum	3400.00	3.33
Sum	3866.03	6.33
Count	20.00	5.00
Confidence Level (95.0%)	354.02	1.65

2.4.2. Lower Bound Cost Per FTE Estimate - The lower bound estimate is also based on question 13 from the survey, which asked respondents whether there would be a cost to cool employees experiencing the signs of symptoms of heat-related illness. Approximately four hundred six employers reported that it would cost "less," the "same," or "more." Of these four hundred six respondents, forty-five businesses had fifty-one or more employees, while three hundred sixty-one of these respondents had fifty or fewer employees. Of the forty-five businesses with fifty-one or more employees, the median daily cost per FTE was \$0. The corresponding cost for the three hundred sixty-one small businesses was also \$0 per FTE per day. In light of this, the lower bound cost per FTE is estimated to be approximately the same for small businesses as compared to businesses with fifty-one or more employees.

Lower Bound: Survey Questions 13b and 13c: Cost Per Day (in Dollars) to Cool Employees Experiencing Signs and Symptoms of HRI (Employers Reporting 'LESS,' 'SAME,' or 'MORE' to 13b)		
	Small Businesses	Not Small Businesses
Mean	10.71	0.14
Standard Error	9.44	0.08
Median	0.00	0.00
Mode	0.00	0.00
Standard Deviation	179.33	0.57
Sample Variance	32160.34	0.32
Kurtosis	357.33	24.69
Skewness	18.86	4.84
Range	3400.00	3.33
Minimum	0.00	0.00
Maximum	3400.00	3.33
Sum	3866.03	6.27
Count	361.00	45.00
Confidence Level (95.0%)	18.56	0.17

2.5. INFORMATION AND TRAINING:

2.5.1. Upper Bound Cost Per FTE Estimate - On the survey sent to employers, question 14 asked respondents whether there would be an additional cost to provide information and training on HRI if this proposed rule component were adopted. Question 14a asked those who responded "yes" how much they spent on information and training in 2006. Question 15 asked all respondents how much it would likely cost to provide HRI information and training in the future if the draft proposed rule were adopted. Approximately two hundred sixty employers provided sufficient information to subtract current costs from future costs (or use future costs alone for those who responded "no" to question 14). Of these two hundred sixty respondents, thirty-three businesses had fifty-one or more employees, while two hundred twenty-seven of these respondents had fifty or fewer employees. Of the thirty-three businesses with fifty-one or more employees who reported an additional cost, the median *annual* cost per FTE was \$5.75. The corresponding cost for the two hundred twenty-seven small businesses was \$50.00 per FTE per year. In light of this, the upper bound cost per FTE is estimated to be approximately 8.7 times greater for small businesses compared to businesses with fifty-one or more employees.

Upper Bound – Survey Questions 14, 14a, and 15: Annual Cost (in Dollars) to Provide Training on the Prevention of Heat-Related Illness (Employers' Future - Current Reported Costs)		
	Small Businesses	Not Small Businesses
Mean	193.88	17.95
Standard Error	41.48	6.41
Median	50.00	5.75

	Small Businesses	Not Small Businesses
Mode	0.00	0.00
Standard Deviation	624.91	36.83
Sample Variance	390511.03	1356.50
Kurtosis	55.54	13.57
Skewness	5.51	3.52
Range	9539.90	184.88
Minimum	-2901.60	-0.84
Maximum	6638.30	184.04
Sum	44010.08	592.41
Count	227.00	33.00
Confidence Level (95.0%)	81.73	13.06

2.5.2. Lower Bound Cost Per FTE Estimate¹⁰ - The lower bound estimate is based on questions 14 and 15 from the survey, which asked respondents whether there would be a cost to provide HRI information and training to employees if this draft proposed rule component were adopted. Approximately one hundred fifty-four employers reported that they were not providing information and training on HRI in 2006. Of these one hundred fifty-four respondents, fifteen businesses had fifty-one or more employees, while one hundred thirty-nine of these respondents had fifty or fewer employees. Of the fifteen businesses with fifty-one or more employees, the median *annual* cost per FTE was \$12. The corresponding cost for the one hundred thirty-nine small businesses was \$67 per FTE per year. In light of this, the lower bound cost per FTE is estimated to be approximately 5.6 times greater for small businesses as compared to businesses with fifty-one or more employees.

Lower Bound – Survey Questions 14 and 15: Annual Cost (in Dollars) to Provide Training on the Prevention of Heat-Related Illness (Employers Reporting 'NO' to 14)		
	Small Businesses	Not Small Businesses
Mean	341	15
Standard Error	115	5
Median	67	12
Standard Deviation	1352	18
Sample Variance	1827695	315
Kurtosis	55	10
Skewness	7	3
Range	12480	73
Minimum	0	1
Maximum	12480	74
Sum	47442	232
Count	139	15
Confidence Level (95.0%)	227	10

3. REDUCING THE COST FOR SMALL BUSINESSES: The department is taking the following steps to reduce the costs of the rule on small businesses:

(1) **Reduced fines for small businesses.** RCW 49.17.-180 addresses the civil penalties for WISHA citations. RCW 49.17.180(7) requires the department give consideration in the penalty assessment to factors including the size of the employer's business. The WAC code that spells out the specific process for penalty adjustments including employer size is WAC 296-900-14015 (see Table 5).

(2) **Enhanced outreach and education to small businesses.** The department will make a concerted effort to focus its education and outreach campaign on small businesses. This will include providing employers with materials, such as draft language to insert in their accident prevention plans (APPs) and free HRI training materials and train-the-trainer meetings.

4. SMALL BUSINESS INVOLVEMENT IN THE RULE-MAKING PROCESS: The department has made a considerable effort to involve small businesses and their representative agencies at various points in the rule-making process, beginning in 2005. Most recently, the department held stakeholder meetings in Tumwater, Bellevue, Yakima, and Spokane to hear from the business community, many of whom were small businesses. There was also a public comment period around this time. In addition, L&I recently held two separate stakeholder meetings in Tumwater in November 2007.

5. INDUSTRIES LIKELY TO BE REQUIRED TO COMPLY WITH THE RULE: Table A-1 in the appendix of this SBEIS includes a list of all the industries included in the sampling frame for the cost survey. Some of these industries, and some businesses within industries, will not have outdoor workers and thus will not be required to comply with the draft proposed HRI rule. Moreover, the rule was revised after the survey was conducted such that employees with only incidental exposure to outdoor HRI hazards are not covered by this rule. As a result, this list likely overstates the scope of the rule with respect to covered industries.

6. NUMBER OF JOBS CREATED OR LOST: The department does not anticipate that any jobs will be created or lost as a result of compliance with the proposed HRI rule. This is because the requirements are such that employers will be able to meet them using existing staff and without the need to hire additional staff. Similarly, there is no reason to suspect that employers would need to dismiss employees as a result of the draft proposed HRI rule.

For a copy of the appendices, contact L&I or go to the web site www.lni.wa.gov.

¹ See Table IIb on p. 6 of Bonauto, et al. (2007) for a list of HRI claims in Washington state from 1995-2005 broken out by industry sector at the 6-digit NAICS level.
² Note that ICD refers to the International Classification of Diseases published by the World Health Organization.
³ $n = [p*q] / [.05/1.96]^2$.
⁴ Sample size for known population size calculated using an online sample size calculator available at the following web site: <http://www.surveysystem.com/sscalc.htm>.
⁵ Reasons for the relatively low response to the regulatory cost surveys are unknown; however, L&I assumes that some or all of the following factors may be at play: (1) Employers may not see any clear benefit to participating, (2) due to the ever-changing nature of businesses and the potential lag time in updating our administrative data base, samples may include incorrect and outdated contact information, and (3) despite L&I's assurances to the contrary, employers may fear that the information they provide will

be used against them in the form of citations, fines, or other enforcement measures.

- 6 Surveys were sent to the physical location address rather than the quarterly reporting address, the latter of which is used for accounting purposes. This was done to ensure that the person best able to answer questions pertaining to a particular site's costs would be the person receiving the survey. However, this created some problems in survey delivery. For example, some businesses appear to use a P.O. box for mailing and do not receive mail at their physical location. Some of these businesses did not receive the survey but should have.
- 7 An emergency rule pertaining to heat-related illness in the outdoor environment was adopted on June 5, 2007, and became effective June 18, 2007.
- 8 This is approximate and quite likely an underestimate. Some businesses contacted the department to say they received the postcard but not the survey and L&I resent them the survey. Presumably some employers received the postcard but not the survey and did not contact the department to request the survey.
- 9 Note the distinction in the definition of "industry" in the sampling frame as compared to the survey responses. Industry in the case of the sampling frame refers to the 2-digit North American Industrial Classification System (NAICS) industry sector. Industry in the case of the survey responses means the industry category presented on the survey that the respondent felt best described their firm's operations. Respondents may not have classified their businesses in the way that L&I employees trained in assigning NAICS codes to businesses may have, so there will likely be some natural discrepancy between the sampling frame and the surveys. For example, a disproportionate number of respondents classified themselves as "other," but upon reading the description they provided, it was apparent they should have been classified as another industry in the list provided to them.
- 10 Note that the section of the survey that asked about training costs was structured differently than the other sections in that there was not an opportunity to answer that it would cost less, the same, or more. Rather, respondents were asked to estimate current costs if they were already providing HRI training. In addition, all respondents were asked to estimate future costs. The different structure of this question may explain why it, unlike the other questions, resulted in a median lower bound cost greater than \$0 for both small and nonsmall businesses.

A copy of the statement may be obtained by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail scij235@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail scij235@lni.wa.gov.

March 19, 2008
 Judy Schurke
 Director

NEW SECTION

WAC 296-62-095 Heat-related illness in the outdoor environment.

NEW SECTION

WAC 296-62-09510 Scope and purpose. (1) WAC 296-62-095 through 296-62-09560 applies to all employers with one or more employees performing work in an outdoor environment. It requires employers to implement workplace practices designed to reduce to the extent feasible the risks of

heat-related illness resulting from outdoor exposure to temperature, humidity, and other environmental factors, or any combination thereof.

(2) The requirements of WAC 296-62-09540, Drinking water, and 296-62-09550, Responding to signs and symptoms of heat-related illness, apply to outdoor work environments where employees are or may be exposed to a condition listed in Table 1.

Table 1

To determine the temperature trigger, select the type of clothing or PPE the employee is wearing and whether the work is being performed in the direct sun or the shade.

	Work in direct sun	Work in shade
Work clothes	89°F	96°F
Double-layer woven clothes (e.g., cotton coveralls on top of summer clothes)	77°F	87°F
Vapor barrier (e.g., encapsulating suit or turn out gear)	52°F	62°F

Note: The trigger temperatures in Table 1 are based on a dew point of 50°F and were developed for use by the state of Washington.

(3) WAC 296-62-095 through 296-62-09560 does not apply to incidental exposure.

(4) WAC 296-62-095 through 296-62-09560 supplements industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer shall comply with the requirements under these sections.

NEW SECTION

WAC 296-62-09520 Definitions. (1) **Acclimatization** means the body's temporary adaptation to work in the heat that occurs as a person is exposed to it.

(2) **Drinking water** means potable water. Water packaged as a consumer product is acceptable.

(3) **Environmental factors for heat-related illness** means working conditions that increase the susceptibility for heat-related illness including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, and personal protective equipment worn by employees.

(4) **Heat-related illness** means a medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(5) **Heat-related illness hazard** means when environmental factors present a condition listed in WAC 296-62-09510(2) Table 1.

(6) **Incidental exposure** means employees performing work activities in an outdoor environment for a total of fifteen minutes or less in a sixty minute period. This applies every hour during the work shift.

(7) **Outdoor environment** means an environment where work activities are conducted outside. Environments such as vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment when the environmental factors are not managed by engineering controls. Construction activity is considered work in an indoor environment when the outside walls and roof are erected.

(8) **Personal factors for heat-related illness** means factors that affect hydration or other physiological responses to heat.

NEW SECTION

WAC 296-62-09530 Employer responsibility. The employer must establish, implement, and maintain written procedures to reduce to the extent feasible the risks of heat-related illness which include the following elements:

(1) Identification and evaluation of temperature, humidity, and other environmental factors associated with heat-related illness;

(2) Provisions to reduce to the extent feasible the risks of heat-related illness which include the following elements:

- The provision of rest breaks as needed to reduce to the extent feasible the risks of heat-related illness; and
- Encouraging frequent consumption of water, as described in WAC 296-62-09560 (2)(e) Information and training.

(3) Procedures for responding to signs or symptoms of possible heat-related illness and accessing medical aid;

(4) Employees are responsible for monitoring their own personal factors for heat-related illness, including ensuring they consume adequate water.

NEW SECTION

WAC 296-62-09540 Drinking water. When environmental factors present a condition listed in WAC 296-62-09510(2) Table 1, drinking water must be provided and made readily available in sufficient quantity to provide at least one quart per employee per hour. Employers may begin the shift with smaller quantities of drinking water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour.

NEW SECTION

WAC 296-62-09550 Responding to signs and symptoms of heat-related illness. (1) When environmental factors present a condition listed in WAC 296-62-09510(2) Table 1, employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature. Examples include the following: The provision of shaded rest areas, misting stations, or temperature controlled environments (for example, air conditioned trailers).

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

NEW SECTION

WAC 296-62-09560 Information and training. All training must be provided, in a language the employee understands, prior to outdoor work in conditions that may present heat-related illness hazards, and at least annually thereafter.

(1) Employee training. Training in the following topics must be provided to all employees who may be exposed to a heat-related illness hazard.

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, water consumption, alcohol consumption, caffeine consumption, nicotine use, and use of prescription and nonprescription medications that affect hydration or other physiological responses to heat;

(c) The employer's procedures for identifying, evaluating, and controlling exposure;

(d) The importance of removing personal protective equipment that increases exposure to heat-related illness hazards during all breaks when feasible;

(e) The importance of frequent consumption of small quantities of water. One quart or more over the course of an hour may be necessary when the work environment is hot and employees may be sweating more than usual in the performance of their duties;

(f) The importance of acclimatization;

(g) The different types of heat-related illness and the common signs and symptoms of heat-related illness;

(h) The importance of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers;

(i) The employer's procedures for responding to symptoms of possible heat-related illness, including how emergency medical services will be provided should they become necessary; and

(j) The purpose and requirements of this standard.

(2) Supervisor training. Prior to supervising employees who are working in conditions that may present heat-related illness hazards, supervisors must have training on the following topics:

(a) The information required to be provided in subsection (1) of this section;

(b) The procedures the supervisor is to follow to implement the applicable provisions in this section;

(c) The procedures the supervisor is to follow when an employee exhibits signs or symptoms consistent with possible heat-related illness, including emergency response procedures;

(d) Procedures for moving employees to a place where they can be reached by an emergency medical service provider, if necessary; and

(e) How to provide clear and precise directions to the emergency medical provider who needs to find the work site.

WSR 08-07-099
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed March 19, 2008, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-062 and 07-16-065.

Title of Rule and Other Identifying Information: Amending chapter 246-817 WAC, Credentialing and scope of practice requirements for dental assistants and expanded function dental auxiliaries.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on May 1, 2008, at 5:45 p.m.

Date of Intended Adoption: May 1, 2008.

Submit Written Comments to: Jennifer Bressi, P.O. Box 47867, Olympia, WA 98507, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by April 15, 2008.

Assistance for Persons with Disabilities: Contact Jennifer Bressi by April 15, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules provide clear credentialing requirements for registration of dental assistants (DAs) and licensure of expanded function dental auxiliaries (EFDAs). Proposed changes and new sections also provide detailed scope of practice for DAs and EFDAs. Licensing standards for education and examination are proposed for EFDAs.

Reasons Supporting Proposal: Legislation passed in 2007, SHB 1099, requires persons practicing as DAs to obtain a registration with the department of health (DOH). Legislation additionally requires persons practicing as EFDAs to be licensed with DOH. The legislation also requires rules to be established for DA and EFDA services related to patient care and laboratory duties. The proposed rules establish minimum competency for credentialing and detailed dental services allowable.

Statutory Authority for Adoption: RCW 18.260.120 and 18.32.0365.

Statute Being Implemented: Chapter 18.260 RCW.

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

Name of Proponent: Department of health, dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jennifer Bressi, 310 Israel Road S.E., Tumwater, WA 98504, (360) 236-4893; and Enforcement: Allen Spaulding, 310 Israel Road S.E., Tumwater, WA 98504, (360) 236-4863.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule

would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Bressi, P.O. Box 47867, Olympia, WA 98504, phone (360) 236-4893, fax (360) 664-9077, e-mail jennifer.bressi@doh.wa.gov.

March 19, 2008

Jennifer Bressi

Health Services Consultant 3

NEW SECTION

WAC 246-817-190 Dental assistant registration. To be eligible for registration as a dental assistant you must:

- (1) Provide a completed application on forms provided by the secretary;
- (2) Pay applicable fees as defined in WAC 246-817-990;
- (3) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and
- (4) Provide any other information determined by the secretary.

NEW SECTION

WAC 246-817-195 Licensure requirements for expanded function dental auxiliaries (EFDAs). To be eligible for licensure as an EFDA in Washington an applicant must:

- (1) Provide a completed application on forms provided by the secretary;
- (2) Pay applicable fees as defined in WAC 246-817-990;
- (3) Provide evidence of:
 - (a) Completion of a dental assisting education program accredited by the Commission on Dental Accreditation (CODA); or
 - (b) Obtain the Dental Assisting National Board (DANB) certified dental assistant credential, earned through pathway II, which includes:
 - (i) A minimum of three thousand five hundred hours of experience as a dental assistant within a continuous twenty-four through forty-eight month period;
 - (ii) Employer-verified knowledge in areas as specified by DANB;
 - (iii) Passage of DANB certified dental assistant examination; and
 - (iv) An additional dental assisting review course, which may be provided on-line, in person or through self-study; or
 - (c) A Washington limited license to practice dental hygiene; or
 - (d) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school.
- (4) Except for applicants qualified under subsection (3)(d) of this section, provide evidence of completing an EFDA education program approved by the commission where training includes:

(a) In a didactic, clinical and laboratory model to the clinically competent level required for close supervision:

(i) In placing and finishing composite restorations on a typodont and on clinical patients; and

(ii) In placing and finishing amalgam restorations on a typodont and on clinical patients; and

(iii) In taking final impressions on a typodont; and

(b) In a didactic, clinical and laboratory model to the clinically competent level required for general supervision:

(i) In performing coronal polish, fluoride treatment, and sealants on a typodont and on clinical patients; and

(ii) In providing patient oral health instructions; and

(iii) In placing, exposing, processing, and mounting dental radiographs; and

(c) The basic curriculum shall require didactic, laboratory, and clinical competency for the following:

(i) Tooth morphology and anatomy;

(ii) Health and safety (current knowledge in dental materials, infection control, ergonomics, mercury safety, handling);

(iii) Placement and completion of an acceptable quality reproduction of restored tooth surfaces—laboratory and clinic only;

(iv) Radiographs (covered in path II)—laboratory and clinic only;

(v) Ethics and professional knowledge of law as it pertains to dentistry, dental hygiene, dental assisting, and EFDA;

(vi) Current practices in infection control;

(vii) Health history alerts;

(viii) Final impression;

(ix) Matrix and wedge;

(x) Rubber dam;

(xi) Acid etch and bonding;

(xii) Occlusion and bite registration;

(xiii) Temporary restorations;

(xiv) Dental emergencies;

(xv) Risk management and charting;

(xvi) Intra-oral anatomy;

(xvii) Pharmacology; and

(xviii) Bases, cements, liners and sealers.

(5) Except for applicants qualified under subsection (3)(d) of this section, attain a passing score on:

(a) A written restorations examination approved by the commission; and

(b) A clinical restorations examination approved by the commission.

(6) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8.

(7) Provide any other information determined by the secretary.

NEW SECTION

WAC 246-817-200 Licensure without examination for expanded function dental auxiliary (EFDA). To be eligible for a license as an EFDA without examination you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-990;

(3) Provide evidence of:

(a) A current license in another state with substantially equivalent licensing standards as determined by the commission; or

(b) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school.

(4) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and

(5) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-817-210 Expired (~~(license)~~) credential. (1) If the (~~(license)~~) credential has expired for three years or less, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the (~~(license)~~) credential has expired for over three years, the practitioner must:

(a) Comply with the current statutory conditions;

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-510 Definitions for WAC 246-817-501 through 246-817-570. (1) "Close supervision" means that a licensed dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. A dentist shall be physically present in the treatment facility while the procedures are performed. Close supervision does not require a dentist to be physically present in the operator; however, an attending dentist must be in the treatment facility and be capable of responding immediately in the event of an emergency.

(2) "Coronal polishing" means a procedure limited to the removal of plaque and stain from exposed tooth surfaces, utilizing an appropriate rotary instrument with rubber cap or brush and a polishing agent.

This procedure shall not be intended or interpreted as an oral prophylaxis as defined in WAC 246-817-510 a procedure specifically reserved to performance by a licensed dentist or dental hygienist. Coronal polishing may, however, be performed by dental assistants under close supervision as a portion of the oral prophylaxis. In all instances, however, a licensed dentist shall determine that the teeth need to be polished and are free of calculus or other extraneous material prior to performance of coronal polishing by a dental assistant.

(3) "Debridement at the periodontal surgical site" means curettage (~~(and)~~) or root planing after reflection of a flap by the supervising dentist. This does not include cutting of osseous tissues.

(4) **"Elevating soft tissues"** is defined as part of a surgical procedure involving the use of the periosteal elevator to raise flaps of soft tissues. Elevating soft tissue is not a separate and distinct procedure in and of itself.

(5) **"General supervision"** means supervision of dental procedures based on examination and diagnosis of the patient and subsequent instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist in the treatment facility during the performance of those procedures.

(6) **"Incising"** is defined as part of the surgical procedure of which the end result is removal of oral tissue. Incising, or the making of an incision, is not a separate and distinct procedure in and of itself.

(7) **"Luxation"** is defined as an integral part of the surgical procedure of which the end result is extraction of a tooth. Luxation is not a distinct procedure in and of itself. It is the dislocation or displacement of a tooth or of the temporomandibular articulation.

(8) **"Oral prophylaxis"** means the preventive dental procedure of scaling and polishing which includes complete removal of calculus, soft deposits, plaque, stains and the smoothing of unattached tooth surfaces. The objective of this treatment shall be creation of an environment in which hard and soft tissues can be maintained in good health by the patient.

(9) **"Periodontal soft tissue curettage"** means the closed removal of tissue lining the periodontal pocket, not involving the reflection of a flap.

(10) **"Root planing"** means the process of instrumentation by which the unattached surfaces of the root are made smooth by the removal of calculus ~~(and/or)~~ deposits.

(11) **"Supportive services"** means services that are related to clinical functions in direct relationship to treating a patient.

(12) **"Suturing"** is defined as the readaption of soft tissue by use of stitches as a phase of an oral surgery procedure. Suturing is not a separate and distinct procedure in and of itself.

(13) **"Treatment facility"** means a dental office or connecting suite of offices, dental clinic, room or area with equipment to provide dental treatment, or the immediately adjacent rooms or areas. A treatment facility does not extend to any other area of a building in which the treatment facility is located.

(14) **"~~(Unlicensed)~~ Noncredentialed person"** means a person who is ~~(neither)~~ not a dentist ~~(duly)~~ licensed ~~(pursuant to the provisions of)~~ under chapter 18.32 RCW ~~(nor a)~~; dental hygienist ~~(duly)~~ licensed ~~(pursuant to the provisions of)~~ under chapter 18.29 RCW; expanded function dental auxiliary licensed under chapter 18.260 RCW; or a dental assistant registered under chapter 18.260 RCW.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-520 ~~(Aets)~~ Supportive services that may be performed by ~~(unlicensed persons)~~ registered dental assistants. A dentist may allow ~~(an unlicensed person)~~ registered dental assistants to perform the following

~~(aets)~~ supportive services under the dentist's close supervision:

- (1) Oral inspection, with no diagnosis.
- (2) Patient education in oral hygiene.
- (3) Place and remove the rubber dam.
- (4) Hold in place and remove impression materials after the dentist has placed them.
- (5) Take impressions solely for diagnostic and opposing models.
- (6) Take impressions and wax bites solely for study casts.
- (7) Take impressions, fabricate, and deliver bleaching and fluoride trays.
- (8) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.
- ~~((8))~~ (9) Perform coronal polish.
- ~~((9))~~ (10) Give fluoride treatments.
- ~~((10))~~ (11) Place periodontal packs.
- ~~((11))~~ (12) Remove periodontal packs or sutures.
- ~~((12) Placement of)~~ (13) Place a matrix and wedge for a ~~(silver restoration)~~ metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.
- ~~((13))~~ (14) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist.
- ~~((14))~~ (15) Apply tooth separators as for placement for Class III gold foil.
- ~~((15))~~ (16) Fabricate, place, and remove temporary crowns or temporary bridges.
- ~~((16))~~ (17) Pack and medicate extraction areas.
- ~~((17))~~ (18) Deliver ~~((a))~~ an oral sedative drug ~~((capsule))~~ to patient.
- ~~((18))~~ (19) Place topical anesthetics.
- ~~((19) Placement of)~~ (20) Place retraction cord.
- ~~((20))~~ (21) Polish restorations at a subsequent appointment.
- ~~((21))~~ (22) Select denture shade and mold.
- ~~((22))~~ (23) Acid etch.
- ~~((23))~~ (24) Apply sealants.
- ~~((24))~~ (25) Place dental X-ray film and expose and develop the films.
- ~~((25))~~ (26) Take intra-oral and extra-oral photographs.
- ~~((26))~~ (27) Take health histories.
- ~~((27))~~ (28) Take and record blood pressure and vital signs.
- ~~((28))~~ (29) Give preoperative and postoperative instructions.
- ~~((29))~~ (30) Assist in the administration of inhalation anxietyolysis (nitrous oxide) analgesia or sedation ~~(, but shall not start the administration of the gases and shall not adjust the flow of the gases unless instructed to do so by the dentist. Patients must never be left unattended while nitrous oxide-oxygen analgesia or sedation is administered to them. The dentist must be present at chairside during the entire administration of nitrous oxide and oxygen analgesia or sedation if any other central nervous system depressant has been given to the patient. This regulation shall not be construed to prevent any person from taking appropriate action in the event of a medical emergency).~~

- ~~((30))~~ (31) Select orthodontic bands for size.
~~((31))~~ (32) Place and remove orthodontic separators.
~~((32))~~ (33) Prepare teeth for the bonding or orthodontic appliances.
~~((33))~~ (34) Fit and adjust headgear.
~~((34))~~ (35) Remove fixed orthodontic appliances.
~~((35))~~ (36) Remove and replace archwires and orthodontic wires.
~~((36))~~ (37) Take a facebow transfer for mounting study casts.
(38) Take impressions for space maintainers.
(39) Take impressions for orthodontic retainers.
(40) Take impressions for night guards.

NEW SECTION

WAC 246-817-525 Supportive services that may be performed by expanded function dental auxiliaries (EFDAs). (1) A dentist may allow EFDAs to perform the following supportive services under the dentist's close supervision:

- (a) Oral inspection, with no diagnosis.
- (b) Place and remove the rubber dam.
- (c) Take preliminary and final impressions and bite registrations, to include computer assisted design and computer assisted manufacture applications.
- (d) Take impressions, fabricate, and deliver bleaching and fluoride trays.
- (e) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.
- (f) Place periodontal packs.
- (g) Remove periodontal packs or sutures.
- (h) Place a matrix and wedge for a metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.
- (i) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist.
- (j) Apply tooth separators as for placement for Class III gold foil.
- (k) Fabricate, place, and remove temporary crowns or temporary bridges.
- (l) Pack and medicate extraction areas.
- (m) Deliver an oral sedative drug to patient.
- (n) Place topical anesthetics.
- (o) Place retraction cord.
- (p) Polish restorations.
- (q) Select denture shade and mold.
- (r) Acid etch.
- (s) Take intra-oral and extra-oral photographs.
- (t) Take health histories.
- (u) Take and record blood pressure and vital signs.
- (v) Give preoperative and postoperative instructions.
- (w) Assist in the administration of inhalation analgesia (nitrous oxide) or sedation.
- (x) Select orthodontic bands for size.
- (y) Place and remove orthodontic separators.
- (z) Prepare teeth for the bonding or orthodontic appliances.
- (aa) Fit and adjust headgear.

- (bb) Remove fixed orthodontic appliances.
- (cc) Remove and replace archwires and orthodontic wires.
- (dd) Take a facebow transfer for mounting study casts.
- (ee) Place and carve direct restorations.
- (ff) Take impressions for space maintainers.
- (gg) Take impressions for orthodontic retainers.
- (hh) Take impressions for night guards.
- (2) A dentist may allow EFDAs to perform the following supportive services under the dentist's general supervision:
 - (a) Perform coronal polishing.
 - (b) Give fluoride treatments.
 - (c) Apply sealants.
 - (d) Place dental X-ray film and exposing and developing the films.
 - (e) Give patient oral health instructions.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-540 Acts that may not be performed by ~~((unlicensed))~~ registered dental assistants or noncredentialed persons. No dentist shall allow ~~((an unlicensed))~~ registered dental assistants or noncredentialed persons who ~~((is))~~ are in his ~~((s))~~ or her employ or ~~((is))~~ are acting under his ~~((s))~~ or her supervision or direction to perform any of the following procedures:

- (1) Any removal of or addition to the hard or soft natural tissue of the oral cavity.
- (2) Any placing of permanent or semi-permanent restorations in natural teeth.
- (3) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure.
- (4) Any administration of general or ~~((injected))~~ local anesthetic ~~((of any nature in connection with a dental operation))~~ including intravenous sedation.
- (5) Any oral prophylaxis, except coronal polishing as a part of oral prophylaxis as defined in WAC 246-817-510 and 246-817-520(8).
- (6) Any scaling procedure.
- (7) The taking of any impressions of the teeth or jaws, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliances, or prosthesis. Not prohibited are the taking of impressions solely for diagnostic and opposing models or taking wax bites solely for study casts.
- (8) Intra-orally adjust occlusal of inlays, crowns, and bridges.
- (9) Intra-orally finish margins of inlays, crowns, and bridges.
- (10) Cement or recement, permanently, any cast restoration or stainless steel crown.
- (11) Incise gingiva or other soft tissue.
- (12) Elevate soft tissue flap.
- (13) Luxate teeth.
- (14) Curette to sever epithelial attachment.
- (15) Suture.
- (16) Establish occlusal vertical dimension for dentures.
- (17) Try-in of dentures set in wax.

(18) Insertion and post-insertion adjustments of dentures.

(19) Endodontic treatment—open, extirpate pulp, ream and file canals, establish length of tooth, and fill root canal.

(20) Use of lasers, noncoherent light, intense pulse light, radiofrequency, or plasma to topically penetrate skin and alter human tissue which are classified by the federal Food and Drug Administration as prescription devices.

(21) Intra-oral air polishing air abrasion or mechanical etching devices.

(22) Place direct pulp capping.

(23) Fit and adjust night guards.

NEW SECTION

WAC 246-817-545 Acts that may not be performed by expanded function dental auxiliaries (EFDA) or non-credentialed persons. No dentist shall allow EFDAs or non-credentialed persons who are in his or her employ or are acting under his or her supervision or direction to perform any of the following procedures:

(1) Any removal of or addition to the hard or soft natural tissue of the oral cavity except for placing and carving direct restorations by an EFDA.

(2) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure.

(3) Any administration of general or local anesthetic, including intravenous sedation.

(4) Any oral prophylaxis, except coronal polishing as a part of oral prophylaxis as defined in WAC 246-817-510 and 246-817-520(8).

(5) Any scaling procedure.

(6) Intra-orally adjust occlusal of inlays, crowns, and bridges.

(7) Intra-orally finish margins of inlays, crowns, and bridges.

(8) Cement or recement, permanently, any cast restoration or stainless steel crown.

(9) Incise gingiva or other soft tissue.

(10) Elevate soft tissue flap.

(11) Luxate teeth.

(12) Curette to sever epithelial attachment.

(13) Suture.

(14) Establish occlusal vertical dimension for dentures.

(15) Try-in of dentures set in wax.

(16) Insertion and postinsertion adjustments of dentures.

(17) Endodontic treatment—open, extirpate pulp, ream and file canals, establish length of tooth, and fill root canal.

(18) Use of lasers, noncoherent light, intense pulse light, radiofrequency, or plasma to topically penetrate skin and alter human tissue which are classified by the federal Food and Drug Administration as prescription devices.

(19) Intra-oral air polishing, air abrasion or mechanical etching devices.

(20) Place direct pulp capping.

(21) Fit and adjust night guards.

WSR 08-07-100

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed March 19, 2008, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-063.

Title of Rule and Other Identifying Information: Amending chapter 246-915 WAC regarding the licensing and supervision of physical therapist assistants.

Hearing Location(s): Hawthorn Suites, 6329 South 212th Street, Kent, WA 98032, on April 22, 2008, at 9:30 a.m.

Date of Intended Adoption: April 22, 2008.

Submit Written Comments to: Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by April 16, 2008.

Assistance for Persons with Disabilities: Contact Kris Waidely by April 4, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5292 (chapter 98, Laws of 2007) passed during the 2007 legislative session. The new legislation expands the regulation of physical therapy to include licensure for physical therapist assistants (PTAs). The legislation requires the board to revise the existing physical therapy rules to include licensure requirements for PTAs. The proposed rules also waive the examination requirement and issue a license to [a] person, currently practicing, who meets commonly accepted standards for practicing as a PTA.

Reasons Supporting Proposal: Rules are required by statute, therefore, there are no alternatives to rule making. These standards need to be established in rule in order to be enforced. In addition, these rules establish adequate education and training required for licensed PTAs to safely perform physical therapy procedures and tasks delegated by a supervising physical therapist. Without these rules there could be unqualified practitioners providing patient care. This could lead to substandard care.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: Chapter 18.74 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

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

Small Business Economic Impact Statement

1. Briefly Describe the Proposed Rule: ESSB 5292 (chapter 98, Laws of 2007) passed during the 2007 legislative session. The new legislation expands the regulation of physical therapy to include licensure for PTAs. The legislation requires the board to revise the existing physical therapy rules to include licensure requirements for PTAs.

The proposed rules do the following:

1. Identify the education/training and examination requirements for applicants applying for a license to practice as a PTA.
2. Identify the requirements for waiving the examination requirement for a person who meets the commonly accepted standards for practicing as a PTA.
3. Allows PTAs to utilize their time more efficiently and effectively when completing their continuing education requirements.
4. Maintains existing quality of care provided by well-informed and educated PTAs.
5. Restructures the language of the rule to make it more clear and understandable.

2. Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule? Yes.

3. Which Industries Are Affected by this Rule? In preparing this SBEIS, the department of health used the following NAICS codes:

NAICS	Description
623110	Skilled nursing facilities
623210	Intermediate care facilities
623110	Nursing and personal care, nec
622110	General medical & surgical hospital
622310	Specialty hospitals exc. psychiatric
621610	Home health care services

4. What Are the Costs of Complying with this Rule for Small Businesses (Those with Fifty or Fewer Employees) and for the Largest 10% of Businesses Affected? These are the costs to comply with the rule:

Continuing Competency: Licensed PTAs will be required to complete forty hours of continuing competency in the form of continuing education, in addition to two hundred hours of physical therapy related employment, every two years. The average cost to the practitioner will be approximately \$1,000.

The continuing education can be earned through classroom or correspondence coursework, cassette tape, videotape, or book review. The board recognizes the almost universal conclusion that the current results of mandatory continuing education programs are debatably effective. Therefore, the board has not sought to limit the professional development and interests of licensed PTAs to continuing education activities only. The board believes professional skills and knowledge can be maintained and enhanced through active practice. For this reason, the board of physical therapy has attempted to create a balance by establishing a relatively moderate requirement of forty contact hours of continuing education as well as two hundred hours of employment every two years.

The board received public comments requesting considering lowering the number of hours required for PTAs because they don't receive the same pay as licensed physical therapists. The board also received input from PTAs requesting the board to require the same number of hours for PTAs as physical therapists. The board believes this rule satisfies the legislative mandate to assure professional competence.

Examination: The Federation of State Board of Physical Therapy develops and administers the National Physical Therapy Examination (NPTE) for physical therapists and PTAs. All fifty states and three additional jurisdictions use the NPTE as one factor in the licensure or certification of physical therapist[s] and PTAs. The board feels this exam provides a common element in the evaluation of candidates so standards will be comparable from jurisdiction to jurisdiction. It also protects the public interest in having only those persons who have the requisite knowledge of physical therapy be licensed to practice physical therapy. The board feels the examination ensures minimum knowledge and competency of physical therapy. The cost to take the NPTE is \$350 and it is offered on demand. The legislation allows waiver of examination for PTAs currently practicing. Only newly graduating students will incur the exam cost.

The national exam ensures minimum knowledge and competency of physical therapy. PTAs currently practicing physical therapy may be eligible for licensure without taking the exam.

AIDS Education and Training: PTAs may come into contact with wounds and need to have appropriate infection control education and training. The average cost to take a seven hour course is \$0 to \$50. There are a variety of courses, on-line courses and locations to obtain the education and training. In addition, most physical therapy curriculum includes this training so PTAs already have the required training prior to applying for licensure.

5. Does the Rule Impose a Disproportionate Impact on Small Businesses? No. Passing the national exam is a part of the business requirement for currently practicing PTAs as well as newly graduating students.

AIDS education and training may impose costs for the PTA if this training was not completed as part of their physical therapy curriculum. The average cost of a seven-hour course for AIDS and education is \$0 to \$50. This cost range is less than [than] the threshold compliance costs associated with these industries.

If the licensed PTA is working for a small business, the PTA would need to go off site to get the required continuing competency training to comply with this rule. If the licensed PTA works for large businesses, the licensed PTA would be able to get this training on the job posing no costs to the licensed PTA to comply with this rule. The average cost to the practitioner will be approximately \$1,000. The board has determined that the benefits of the proposed rules assure that licensed PTAs are adequately trained which, in turn, provides a benefit to the public.

6. If the Rule Imposes a Disproportionate Impact on Small Businesses, What Efforts Were Taken to Reduce That Impact (Or Why Is it Not "Legal and Feasible" to Do So) by Reducing, Modifying, or Eliminating Substantive Regulatory Requirements? ESSB 5292 requires an examination to obtain licensure. The national examination is the only examination currently available. All fifty states and three additional jurisdictions use the NPTE as one factor in the licensure or certification of physical therapist[s] and PTAs. The board feels this exam provides a common element in the evaluation of candidates so standards will be comparable from jurisdiction to jurisdiction. It also protects

the public interest in having only those persons who have the requisite knowledge of physical therapy be licensed to practice physical therapy. The board feels the examination ensures minimum knowledge and competency of physical therapy.

RCW 70.24.270 requires all health professions to obtain AIDS education.

The new legislation authorizes the board of physical therapy to establish and administer requirements for continuing competency as a prerequisite for PTA license renewal. The legislation requires the establishment of continuing competency requirements and assurance of compliance before a physical therapy license can be renewed. The board recognizes the almost universal conclusion that the current results of mandatory continuing education programs are debatably effective. Therefore, the board has not sought to limit the professional development and interests of licensed PTAs to continuing education activities only. The board believes professional skills and knowledge can be maintained and enhanced through active practice. For this reason, the board of physical therapy has attempted to create a balance by establishing a relatively moderate requirement of forty contact hours of continuing education as well as two hundred hours of employment every two years. The board believes this rule satisfies the legislative mandate to assure professional competence.

One way the board mitigated was by considering not requiring PTAs to complete 2,500 hours of work experience in a three-year period to be granted a license without taking the examination. The board received opposition regarding the number of hours of experience. Some PTAs only work part-time which would make them ineligible to apply for licensure without taking the exam even though they may have been practicing in Washington for the past twenty years.

PTAs currently practicing in Washington are required to work under supervision of a licensed physical therapist. The board feels that rather than requiring a specific number of work experience hours, they will allow the supervising licensed physical therapist to attest to the completion of work experience hours. This creates no change in the rule as the rules currently indicate that the licensed physical therapist is professionally and legally responsible for patient care provided by their supportive personnel. The board will develop a form for supervising physical therapists to complete.

ESSB 5292 become[s] effective July 1, 2008, and requires an examination to obtain licensure. The national examination is the only examination currently available.

RCW 70.24.270 requires all health professions to obtain AIDS education prior to obtaining licensure.

Although the rule may cause a disproportionate impact to small businesses, the benefit to the public outweighs the cost.

7. How Are Small Businesses Involved in the Development of this Rule? During the comment period, town meetings were held and draft rules were sent to all interested parties.

A copy of the statement may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

March 18, 2008

Kris Waidely
Program Manager

Chapter 246-915 WAC

PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

AMENDATORY SECTION (Amending WSR 04-13-052, filed 6/11/04, effective 7/12/04)

WAC 246-915-010 Definitions. For the purposes of this chapter and administering chapter 18.74 RCW, the following words and phrases have the following meanings:

(1) The "performance of tests of neuromuscular function" includes the performance of electroneuromyographic examinations.

(2) "Consultation" means a communication regarding a patient's evaluation and proposed treatment plan with an authorized health care practitioner.

(3) "Supervisor" means the licensed physical therapist.

(4) "Trained supportive personnel" as described in RCW 18.74.010(3) means:

(a) "Physical therapist assistant." An individual who ~~((has successfully completed a board approved physical therapist assistant program))~~ meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist. However, a physical therapist may not delegate sharp debridement to a physical therapist assistant; or

(b) "Physical therapy aide." An individual who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training.

(5) "Direct supervision" means the supervisor is on the premises, is quickly and easily available and the patient has been examined by the physical therapist at such time as acceptable physical therapy practice requires, consistent with the delegated health care task.

(6) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires, and consistent with the particular delegated health care task.

(7) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(8) "Office on AIDS" means the section within the department of social and health services or any successor department with jurisdiction over public health matters as defined in chapter 70.24 RCW.

(9) "Spinal manipulation" or "manipulative mobilization" means movement beyond the normal physiological range of motion.

(10) "Patient reevaluation" means the licensed physical therapist must physically observe and interview the patient.

AMENDATORY SECTION (Amending Order 328B, filed 2/1/93, effective 3/4/93)

WAC 246-915-020 Physical therapist and physical therapist assistant examinations~~((—When held))~~. (1) ~~((Examinations of applicants for licensure as physical therapists shall be held at least twice a year at the time and location prescribed by the board.~~

~~((2)))~~ Physical therapy students in their last year may apply for licensure by examination prior to graduation under the following circumstances:

(a) Receipt of a letter from an official, of their physical therapy school, verifying the probability of graduation prior to the date of the examination for which they are applying.

(b) Results of the examination will be withheld until a diploma, official transcript or certification letter from the registrar's office certifying completion of all requirements for degree or certificate in physical therapy is received by the department.

~~((3)))~~ (2) Applicants who do not pass the examination after two attempts shall demonstrate evidence satisfactory to the board of having successfully completed clinical training and/or ~~((coursework))~~ course work as determined by the board before being permitted two additional attempts.

AMENDATORY SECTION (Amending WSR 96-13-008, filed 6/6/96, effective 6/7/96)

WAC 246-915-030 Examination. (1) The examination acceptable to and approved for use under the provisions of RCW 18.74.035 shall be the examination for physical therapists and physical therapist assistants as reviewed and approved by the board of physical therapy. A passing score is considered to be one of the following:

(a) Beginning November 8, 1995, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy for the examination approved by the board. The passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800.

(b) Beginning February 28, 1991, through July 12, 1995, not less than sixty-eight percent of the raw score for the examination approved by the board; or

(c) Prior to February 28, 1991, not less than sixty percent raw score on each of the three examination parts for the examination approved by the board.

(2) If a candidate fails to receive a passing score on the examination, he or she will be required to retake the examination.

(3) Where necessary, applicant's score will be rounded off to the nearest whole number.

AMENDATORY SECTION (Amending Order 294B, filed 8/4/92, effective 9/4/92)

WAC 246-915-075 Temporary permits—Issuance and duration. (1) Unless there is a basis for denial of a physical ~~((therapy))~~ therapist or physical therapist assistant license, an applicant who is licensed in another jurisdiction shall be issued a temporary practice permit after receipt of the following documentation by the department of health:

(a) Submission of a completed physical ~~((therapy))~~ therapist or physical therapist assistant license application on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) Payment of the application fee ~~((and temporary practice permit fee))~~;

(c) Submission of all required supporting documentation as described in the application forms and instructions provided by the department of health, excepting the seven hour AIDS education requirement as described in WAC 246-915-110.

(2) Applicants wishing to receive a temporary practice permit shall be granted an additional ninety days to complete the AIDS education requirement; however, issuance of a physical ~~((therapy))~~ therapist or physical therapist assistant license is contingent upon evidence of having met this requirement.

(3) The temporary permit shall expire upon the issuance of a license by the board; initiation of an investigation by the board of the applicant; or ninety days, whichever occurs first.

(4) An applicant who receives a temporary practice permit and who does not complete the application process may not receive additional temporary practice permits even upon submission of a new application in the future.

AMENDATORY SECTION (Amending WSR 04-13-052, filed 6/11/04, effective 7/12/04)

WAC 246-915-078 Interim permits. An applicant who has not previously taken the physical therapy examination or an applicant who has not previously held an interim or temporary permit in Washington or another state, may be eligible for an interim permit under RCW 18.74.075 upon submission of the following:

(1) Payment of the application fee;

(2) Evidence of having obtained a physical therapy degree from a board approved school;

(3) Completed a physical ~~((therapy))~~ therapist or physical therapist assistant license application on which the applicant:

(a) Requests to receive an interim permit;

(b) Provides the name, location and telephone number of his or her place of employment;

(c) Provides the name and license number of his or her licensed supervising physical therapist; and

(d) Provides written confirmation from the licensed supervising physical therapist attesting that he or she will:

(i) Ensure that a licensed physical therapist will remain on the premises at all times to provide "graduate supervision" as specified in RCW 18.74.075;

(ii) Report to the board any change in supervision or any change in location where services are provided;

(iii) Ensure that the holder of the interim permit wears identification showing his or her clinical title and/or role in the facility as a graduate physical therapist; and

(iv) Ensure that the holder of the interim permit ceases practice immediately upon notification of examination failure; or

(v) Ensure that the holder of the interim permit obtains his or her physical ~~((therapy))~~ therapist or physical therapist assistant license immediately upon notification of having passed the examination.

AMENDATORY SECTION (Amending WSR 04-08-101, filed 4/6/04, effective 5/7/04)

WAC 246-915-085 Continuing competency. Licensed physical therapists and physical therapist assistants must provide evidence of continuing competency in the form of continuing education and employment related to physical therapy every two years.

(1) Education - Licensed physical therapists and physical therapist assistants must complete 40 hours of continuing education every two years as required in chapter 246-12 WAC, Part 7.

(a) Continuing education specifically relating to the practice of physical therapy;

(b) Participation in a course with specific goals and objectives relating to the practice of physical therapy;

(c) Audio or video recordings or other multimedia devices, and/or book/article review. A maximum of ten hours may be used for books/articles reviewed;

(d) Correspondence course work completed.

(2) In addition to the requirements in subsection (1) of this section, 200 hours involving the application of physical therapy knowledge and skills, which may be obtained as follows:

(a) In the clinical practice of physical therapy; or

(b) In nonclinical activities that involve the direct application of physical therapy skills and knowledge, examples of which include, but are not limited to:

(i) Active service on boards or in physical therapy school or education program accrediting bodies;

(ii) Physical therapy teaching or presentations on:

(A) Patient/client management, prevention and wellness;

(B) Physical therapy ethics and standards of practice;

(C) Professional advocacy/involvement;

(iii) Developing course work in physical therapy schools or education programs or physical therapy continuing education courses;

(iv) Physical therapy research as a principal or associate researcher; and

(v) Physical therapy consulting.

(3) Licensees shall maintain records of all activities relating to continuing education and professional experience for a period of four years. Acceptable documentation shall mean:

(a) Continuing education. Certificates of completion, course sponsors, goals and objectives of the course, credentials of the presenter as a recognized authority on the subject presented, dates of attendance and total hours, for all continuing education being reported.

(b) Audio or video recordings or other multimedia devices, and/or book/article review. A two-page synopsis of each item reviewed must be written by the licensee.

(i) For audio or video recordings or other multimedia devices, a two-page double-spaced synopsis for every one to four hours of running time must be written by the licensee. Time spent writing a synopsis is not reportable.

(ii) For book/article review, a two-page double-spaced synopsis on each subject reviewed must be written by the licensee. Time spent writing a synopsis is not reportable.

(c) Correspondence course work completed. Course description and/or syllabus and copies of the completed and scored examination must be kept on file by the licensee.

(d) Physical therapy employment. Certified copies of employment records or proof acceptable to the board of physical therapy employment for the hours being reported.

AMENDATORY SECTION (Amending WSR 07-07-066, filed 3/15/07, effective 4/15/07)

WAC 246-915-120 Physical therapist applicants from unapproved schools. (1) Applicants who have not graduated from a physical therapy program approved by the board must:

(a) Have a bachelor's degree in physical therapy with all credits earned at an institution of higher learning that confers at least a bachelor's degree in physical therapy which is approved by the country's Ministry of Education/Health, or governmental entity;

(b) Have a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(c) Have graduated from a program of physical therapy education with requirements substantially equal to those required of graduates of board-approved programs;

(d) Submit an application for review by the board;

(e) Submit official transcripts from the physical therapy program showing degree date; and

(f) Submit transcripts, fees, and other documentation to a credentialing service approved by the board and request the evaluation report be sent directly to the board.

(2) In addition to the other requirements of this rule, the applicant must demonstrate a working knowledge of English by obtaining:

(a) Scores of at least:

(i) 4.5 on the test of written English (TWE);

(ii) 50 on the test of spoken English (TSE); and

(iii) 220 on the computer-based test of English as a foreign language (TOEFL) or 560 on the paper-based TOEFL; or

(b) Scores on the test of English as a foreign language (TOEFL) internet-based test (IBT) of at least:

(i) 24 on the writing section;

(ii) 26 on the speaking section;

(iii) 21 on the reading section;

(iv) 18 on the listening comprehension section; and

(v) 89 on the overall examination.

(3) The board may request additional supporting documentation as necessary.

(4) The degree's total credits must be at least one hundred twenty-three. A semester credit is equal to fifteen hours of classroom instruction per semester. For courses with a laboratory component, a semester credit is also equal to thirty hours of laboratory instruction per semester. (A semester credit equals 0.67 quarter credits.)

The applicant may meet the objective of one hundred twenty-three semester credits requirement by using additional elective credits in either general or professional education beyond the minimal requirements.

(5) Substantially equal physical therapy education as used in subsection (1)(c) of this section, shall include a total of one hundred twenty-three semester credits or equivalent credits of college education including:

General education - at least fifty-four semester credits:

(a) Humanities - nine semester credits which may include English, speech, foreign language, literature, music/art, philosophy and other humanities courses;

(b) Social sciences - ten semester credits which may include history, social sciences, philosophy, civilization, psychology, sociology, economics and other social science courses;

(c) Biological, natural, and physical science - eight semester credits which may include chemistry, mathematics, physics, biology, zoology, anatomy, kinesiology, physiology and other biological and natural science courses. In addition, the applicant must have one semester (five semester credits) of chemistry with laboratory and one semester (four semester credits) of physics with laboratory.

(6) Professional education. An applicant who has graduated from an unapproved school must complete at least sixty-nine semester credits in the following topics:

(a) Basic health sciences. At least one semester (at least four semester credits) in each of the following topics:

- (i) Human anatomy (specific to physical therapy);
- (ii) Human physiology (specific to physical therapy);
- (iii) Neurological science;
- (iv) Kinesiology or functional anatomy;
- (v) Abnormal or developmental psychology; and
- (vi) Pathology.

(b) Clinical sciences. The essential element of physical therapy education is teaching the student to assess and treat appropriately across the spectrum of age. Therefore, any educational course work should contain all of the following:

(i) Clinical medicine pertinent to physical therapy. Including, but not be limited to:

- (A) Neurology;
- (B) Orthopedics;
- (C) Pediatrics;
- (D) Geriatrics.

(ii) Physical therapy course work including, but not limited to:

- (A) Physical agents;
- (B) Musculoskeletal assessment and treatment;
- (C) Neuromuscular assessment and treatment;
- (D) Cardiopulmonary assessment and treatment;
- (E) Wound debridement/wound care;
- (F) Pharmacology.

(c) Clinical education. Clinical education must include demonstrated application of physical therapy theories, tech-

niques, and procedures, as supervised by a physical therapist. The applicant must have at least two clinical affiliations of no less than eight hundred hours total.

(d) Related professional course work. The applicant must complete three semester courses in the following topics:

- (i) Professional ethics;
- (ii) Administration;
- (iii) Community health;
- (iv) Research;
- (v) Educational techniques; and
- (vi) Medical terminology.

(7) Applicants must have received a grade of "C" or higher in all professional education course work.

(8) The applicant may apply for the College-Level Education Program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency.

(9) The board may allow applicants who have not graduated from a physical therapy program approved by the board to correct deficiencies by completing board-approved course work. To obtain course work preapproval, the applicant must submit a written request along with the course description/syllabus for the proposed course.

AMENDATORY SECTION (Amending WSR 05-06-023, filed 2/22/05, effective 3/25/05)

WAC 246-915-180 Professional conduct principles.

(1) The patient's lawful consent is to be obtained before any information related to the patient is released, except to the consulting or referring authorized health care practitioner and/or authorized governmental agency(s).

(a) Physical therapists are responsible for answering legitimate inquiries regarding a patient's physical dysfunction and treatment progress, and

(b) Information is to be provided by physical therapists and physical therapist assistants to insurance companies for billing purposes only.

(2) Physical therapists and physical therapist assistants are not to compensate or to give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement is to be identified as such unless it is apparent from the context it is a paid advertisement.

(3) It is the ~~((licensure's))~~ physical therapist's and physical therapist assistant's responsibility to report any unprofessional, incompetent or illegal acts that are in violation of chapter 18.74 RCW or any rules established by the board.

(4) It is the ~~((licensure's))~~ physical therapist's and physical therapist assistant's responsibility to recognize the boundaries of his or her own professional competencies and that he or she uses only those in which he or she can prove training and experience.

(5) Physical therapists and physical therapist assistants shall recognize the need for continuing education and shall be open to new procedures and changes.

(6) It is the ~~((licensure's))~~ physical therapist's and physical therapist assistant's responsibility to represent his or her aca-

demetic credentials in a way that is not misleading to the public.

(7) It is the responsibility of the physical therapist and physical therapist assistant to refrain from undertaking any activity in which his or her personal problems are likely to lead to inadequate performance or harm to a client and/or colleague.

(8) A physical therapist and physical therapist assistant shall not use or allow to be used any form of public communication or advertising connected with his or her profession or in his or her professional capacity as a physical therapist which:

(a) Is false, fraudulent, deceptive, or misleading;

(b) ~~((Uses testimonials;~~

~~(e))~~ Guarantees any treatment or result;

~~((c))~~ (c) Makes claims of professional superiority.

(9) Physical therapists and physical therapist assistants are to recognize that each individual is different from all other individuals and to be tolerant of and responsive to those differences.

(10) Physical therapists shall not receive reimbursement for evaluating or treating him or herself.

(11) Physical therapists shall only delegate physical therapy tasks to trained supportive personnel as defined in WAC 246-915-010 (4)(a) and (b).

AMENDATORY SECTION (Amending WSR 04-08-102, filed 4/6/04, effective 5/7/04)

WAC 246-915-182 Unprofessional conduct—Sexual misconduct. (1) The physical therapist and physical therapist assistant shall never engage in sexual contact or sexual activity with current clients.

(2) Sexual contact or sexual activity is prohibited with a former client for two years after cessation or termination of professional services.

(3) The physical therapist and physical therapist assistant shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the physical therapist-client relationship. Factors which the board may consider in evaluating if the physical therapist or physical therapist assistant-client relationship has been abusive includes, but is not limited to:

(a) The amount of time that has passed since therapy terminated;

(b) The nature and duration of the therapy;

(c) The circumstances of cessation or termination;

(d) The former client's personal history;

(e) The former client's current mental status;

(f) The likelihood of adverse impact on the former client and others; and

(g) Any statements or actions made by the physical therapist or physical therapist assistant during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the former client.

(4) The physical therapist and physical therapist assistant shall never engage in sexually harassing or demeaning behavior with current or former clients.

(5) These rules do not prohibit:

(a) The provision of physical therapy services on an urgent, unforeseen basis where circumstances will not allow a physical therapist or physical therapist assistant to obtain reassignment or make an appropriate referral;

(b) The provision of physical therapy services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the physical therapist or physical therapist assistant where no evidence of abuse of the physical therapist or physical therapist assistant-client relationship exists.

AMENDATORY SECTION (Amending Order 259B, filed 3/24/92, effective 4/24/92)

WAC 246-915-185 Standards for appropriateness of physical therapy care. (1) Appropriate, skilled physical therapy treatment is treatment which is reasonable in terms of accepted physical therapy practice, and necessary to recovery of function by the patient. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.

(2) Appropriate physical therapy services must be of such a level of complexity and sophistication, or the condition of the patient must be such, that the services required can be safely and effectively performed only by a ~~((qualified))~~ physical therapist~~((s))~~ or physical therapist assistant under supervision of a ~~((qualified))~~ physical therapist.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

WAC 246-915-190 Division of fees—Rebating—Financial interest—Endorsement. (1) Physical therapists and physical therapist assistants are not to directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or to profit by means of a credit or other valuable consideration such as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services.

(2) Physical therapists and physical therapist assistants who practice physical therapy as partners or in other business entities may pool fees and moneys received, either by the partnership or other entity, for the professional services furnished by any physical therapist or physical therapist assistant member or employee of the partnership or entity. Physical therapists and physical therapist assistants may divide or apportion the fees and moneys received by them, in the partnership or other business entity, in accordance with the partnership or other agreement.

(3) There shall be no rebate to any health care practitioner who refers or authorizes physical therapy treatment or evaluation as prohibited by chapter 19.68 RCW.

(4) Physical therapists and physical therapist assistants are not to influence patients to rent or purchase any items which are not necessary for the patient's care.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-210 Mandatory reporting—General provisions. (1) The following definitions apply to the requirements for mandatory reporting set out in WAC 246-915-220 through 246-915-280:

(a) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.130.180.

(b) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(c) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(d) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(e) "Board" means the physical therapy board(~~(, whose address is:)~~).

((~~Department of Health
P.O. Box 47868
Olympia, WA 98504-7868~~))

(f) "Physical therapist" means a person licensed (~~(pursuant to)~~) under chapter 18.74 RCW.

(g) "Physical therapist assistant" means a person licensed under chapter 18.74 RCW.

(h) "Mentally or physically disabled physical therapist or physical therapist assistant" means a physical therapist or physical therapist assistant who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice physical therapy with reasonable skill and safety to patients by reason of any mental or physical condition.

(2) All reports required by WAC 246-915-220 through 246-915-280 shall be submitted to the board as soon as possible. A report shall contain the following information if known:

(a) The name, address and telephone number of the person making the report.

(b) The name and address and telephone numbers of the physical therapist or physical therapist assistant being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid the evaluation of the report.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-220 Mandatory reporting—Physical therapists and physical therapist assistants. (1) Physical

therapists and physical therapist assistants shall report to the board if the therapist has knowledge that:

(a) Another physical therapist or physical therapist assistant has committed unprofessional conduct under RCW 18.130.180, including violations of chapter 18.74 RCW and chapter 246-915 WAC; or

(b) A physical therapist or physical therapist assistant is unable to practice with reasonable skill and safety as the result of a physical or mental condition.

(2) Failure to comply with these reporting requirements may constitute a violation of laws which regulate the practice of physical therapy.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-230 Health care institutions and home health agencies—Mandatory reporting. The chief administrator or executive officer of any hospital, home health agency, or nursing home shall report to the board when any physical therapist's or physical therapist assistant's services are terminated or are restricted based on a determination that the physical therapist or physical therapist assistant has either committed an act or acts which may constitute unprofessional conduct or that the physical therapist or physical therapist assistant may be mentally or physically disabled.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-240 Physical therapy associations or societies—Mandatory reporting. The president or chief executive officer of any physical therapy association or society within this state shall report to the board when the association or society has determined the physical therapist or physical therapist assistant:

(1) Demonstrated incompetence or acted with negligence in the practice of physical therapy;

(2) Has engaged in unprofessional conduct under RCW 18.130.180; or

(3) Is mentally or physically unable to perform as a physical therapist or physical therapist assistant. The report shall be made regardless of whether the physical therapist or physical therapist assistant appeals, accepts or acts upon the determination made by the association or society. Any notification of appeals shall be included with the report.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-250 Health care service contractors and disability insurance carriers—Mandatory reporting. The executive officer of any health care service contractor and disability insurer, licensed under chapters 48.20, 48.21, 48.21A and 48.44 RCW operating in the state of Washington, shall report to the board all final determinations that a physical therapist or physical therapist assistant has engaged in overcharging for services or has engaged in overutilization of services or has charged fees for services not actually provided.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-260 Professional liability carriers—Mandatory reporting. Any institution or organization providing professional liability insurance directly or indirectly to physical therapists or physical therapist assistants shall send a complete report of any malpractice settlement, award or payment as a result of a claim or action for damages alleged to have been caused by an insured physical therapist's or physical therapist assistant's incompetency or negligence in the practice of physical therapy.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-270 Courts—Mandatory reporting. The board requests the assistance of all clerks of trial courts within the state to report all professional malpractice judgments and all convictions of (~~licensed~~) physical therapists and physical therapist assistants, other than minor traffic violations.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-280 State and federal agencies—Mandatory reporting. The board requests the assistance of executive officers of any state or federal program operating in the state of Washington, under which a physical therapist or physical therapist assistant is employed to provide patient care services, to report to the board when the program has determined the physical therapist or physical therapist assistant:

- (1) Demonstrated incompetence or acted with negligence in the practice of physical therapy;
- (2) Has engaged in unprofessional conduct under RCW 18.130.180; or
- (3) Is mentally or physically unable to perform as a physical therapist or physical therapist assistant. Whenever such a physical therapist or physical therapist assistant has been judged to have demonstrated his/her incompetency or negligence in the practice of physical therapy, or has otherwise committed unprofessional conduct; or is a mentally or physically disabled physical therapist or physical therapist assistant.

AMENDATORY SECTION (Amending Order 178B, filed 6/21/91, effective 7/22/91)

WAC 246-915-300 Philosophy governing voluntary substance abuse monitoring programs. The board recognizes the need to establish a means of proactively providing early recognition and treatment options for physical therapists and physical therapist assistants whose competency may be impaired due to the abuse of drugs or alcohol. The board intends that such physical therapists and physical therapist assistants be treated and their treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the board shall approve voluntary substance abuse monitoring

programs and shall refer physical therapists and physical therapist assistants impaired by substance abuse to approved programs as an alternative to instituting disciplinary proceedings as defined in RCW 18.130.160.

AMENDATORY SECTION (Amending Order 178B, filed 6/21/91, effective 7/22/91)

WAC 246-915-310 Terms used in WAC 246-915-300 through 246-915-330. (1) "Approved substance abuse monitoring program" or "approved monitoring program" is a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-915-320 which enters into a contract with physical therapists or physical therapist assistants who have substance abuse problems regarding the required components of the physical therapist's or physical therapist assistant's recovery activity and oversees the physical therapist's or physical therapist assistant's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating physical therapists or physical therapist assistants.

(2) "Contract" is a comprehensive, structured agreement between the recovering physical therapist or physical therapist assistant and the approved monitoring program stipulating the physical therapist's or physical therapist assistant's consent to comply with the monitoring program and its required components of the physical therapist's or physical therapist assistant's recovery activity.

(3) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(2) or 69.54.030 to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020(2) or 69.54.030.

(4) "Substance abuse" means the impairment, as determined by the board, of a physical therapist's or physical therapist assistant's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(5) "Aftercare" is that period of time after intensive treatment that provides the physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(6) "Support group" is a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which physical therapists or physical therapist assistants may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

(7) "Twelve steps groups" are groups such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

(8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person being tested.

(9) "Health care professional" is an individual who is licensed, certified or registered in Washington to engage in the delivery of health care to patients.

AMENDATORY SECTION (Amending Order 178B, filed 6/21/91, effective 7/22/91)

WAC 246-915-320 Approval of substance abuse monitoring programs. The board will approve the monitoring program(s) which will participate in the board's substance abuse monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

(1) The approved monitoring program will not provide evaluation or treatment to the participating physical therapists or physical therapist assistants.

(2) The approved monitoring program staff must have the qualifications and knowledge of both substance abuse and the practice of physical therapy as defined in this chapter to be able to evaluate:

- (a) Clinical laboratories;
- (b) Laboratory results;
- (c) Providers of substance abuse treatment, both individuals and facilities;
- (d) Support groups;
- (e) The physical therapy work environment; and
- (f) The ability of the physical therapist or physical therapist assistant to practice with reasonable skill and safety.

(3) The approved monitoring program will enter into a contract with the physical therapist or physical therapist assistant and the board to oversee the physical therapist's or physical therapist assistant's compliance with the requirements of the program.

(4) The approved monitoring program may make exceptions to individual components of the contract on an individual basis.

(5) The approved monitoring program staff will determine, on an individual basis, whether a physical therapist or physical therapist assistant will be prohibited from engaging in the practice of physical therapy for a period of time and restrictions, if any, on the physical therapist's or physical therapist assistant's access to controlled substances in the work place.

(6) The approved monitoring program shall maintain records on participants.

(7) The approved monitoring program will be responsible for providing feedback to the physical therapist or physical therapist assistant as to whether treatment progress is acceptable.

(8) The approved monitoring program shall report to the board any physical therapist or physical therapist assistant who fails to comply with the requirement of the monitoring program.

(9) The approved monitoring program shall receive from the board guidelines on treatment, monitoring, and limita-

tions on the practice of physical therapy for those participating in the program.

AMENDATORY SECTION (Amending Order 178B, filed 6/21/91, effective 7/22/91)

WAC 246-915-330 Participation in approved substance abuse monitoring program. (1) In lieu of disciplinary action, the physical therapist or physical therapist assistant may accept board referral into the approved substance abuse monitoring program.

(a) The physical therapist or physical therapist assistant shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

(b) The physical therapist or physical therapist assistant shall enter into a contract with the board and the approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The physical therapist or physical therapist assistant will undergo intensive substance abuse treatment in an approved treatment facility.

(ii) The physical therapist or physical therapist assistant will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The physical therapist or physical therapist assistant must complete the prescribed aftercare program of the intensive treatment facility, which may include individual and/or group psychotherapy.

(iv) The physical therapist or physical therapist assistant must cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis and goals.

(v) The physical therapist or physical therapist assistant will submit to random drug screening as specified by the approved monitoring program.

(vi) The physical therapist or physical therapist assistant will attend support groups facilitated by a health care professional and/or twelve step group meetings as specified by the contract.

(vii) The physical therapist or physical therapist assistant will comply with specified employment conditions and restrictions as defined by the contract.

(viii) The physical therapist or physical therapist assistant shall sign a waiver allowing the approved monitoring program to release information to the board if the physical therapist or physical therapist assistant does not comply with the requirements of this contract.

(c) The physical therapist or physical therapist assistant is responsible for paying the costs of the physical and psychosocial evaluation, substance abuse treatment, and random drug screens.

(d) The physical therapist or physical therapist assistant may be subject to disciplinary action under RCW 18.130.160

if the physical therapist or physical therapist assistant does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.

(2) A physical therapist or physical therapist assistant who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance abuse may voluntarily participate in the approved substance abuse monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program:

(a) The physical therapist or physical therapist assistant shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

(b) The physical therapist or physical therapist assistant shall enter into a contract with the approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The physical therapist or physical therapist assistant will undergo intensive substance abuse treatment in an approved treatment facility.

(ii) The physical therapist or physical therapist assistant will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The physical therapist or physical therapist assistant must complete the prescribed aftercare program of the intensive treatment facility, which may include individual and/or group psychotherapy.

(iv) The physical therapist or physical therapist assistant must cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis and goals.

(v) The physical therapist or physical therapist assistant will submit to random drug screening as specified by the approved monitoring program.

(vi) The physical therapist or physical therapist assistant will attend support groups facilitated by a health care professional and/or twelve step group meetings as specified by the contract.

(vii) The physical therapist or physical therapist assistant will comply with employment conditions and restrictions as defined by the contract.

(viii) The physical therapist or physical therapist assistant shall sign a waiver allowing the approved monitoring program to release information to the board if the physical therapist or physical therapist assistant does not comply with the requirements of this contract.

(c) The physical therapist or physical therapist assistant is responsible for paying the costs of the physical and psychosocial evaluation, substance abuse treatment, and random drug screens.

(3) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsections (1) and (2) of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

AMENDATORY SECTION (Amending WSR 05-09-003, filed 4/7/05, effective 5/8/05)

WAC 246-915-350 Inactive credential. (1) A physical therapist or physical therapist assistant may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) Practitioners with an inactive credential for three years or less who wish to return to active status must meet the requirements of chapter 246-12 WAC, Part 4.

(3) Practitioners with an inactive credential for more than three years, who have been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Submit verification of active practice from any other United States jurisdiction; and

(b) Meet the requirements of chapter 246-12 WAC, Part 4.

(4) Practitioners with an inactive credential for more than three years, who have not been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Successfully pass the examination as provided in RCW 18.74.035. The board may waive reexamination if the practitioner presents evidence of continuing competency satisfactory to the board; and

(b) Must meet the requirements of chapter 246-12 WAC, Part 2.

NEW SECTION

WAC 246-915-995 Waiver of examination—Physical therapist assistants. Persons eligible for waiver of examination for licensure as a physical therapist assistant under this section may apply for a license from July 1, 2008, through July 1, 2009. The board shall waive the examination and license a person after receipt of the following documentation by the department of health:

(1) Complete the application process including payment of fees; and

(2) Submit proof of graduation from a physical therapist assistant education program accredited by a national accreditation agency approved by the board at the time of graduation. A board approved physical therapist assistant program shall mean a United States physical therapist assistant education program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education or a United States military physical therapy technician program that is substantially equivalent to an

accredited United States physical therapist assistant program; and

(3) Provide verification of graduation on or before June 30, 2007 and verification of work experience within the last five years as a PTA in a physical therapy setting under the supervision of a licensed physical therapist legally able to practice in Washington.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-915-160 Responsibilities of supervision.

WSR 08-07-103

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 19, 2008, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-046.

Title of Rule and Other Identifying Information: The department is amending and creating new sections in chapter 388-825 WAC, Division of developmental disabilities service rules.

Washington Administrative Code	Effect of Rule	Impact Small Business?
388-825-020 Definitions		
"Abandonment" - repealed	Definition is no longer used in this chapter.	No
"Adolescent" - repealed	Definition is no longer used in this chapter.	No
"Attendant care" - repealed	Definition is now contained in WAC 388-825-074.	No
"Best interest" - repealed	Definition is no longer used in this chapter.	No
"Client or person" - amended	Revises definition to correspond with other chapters.	No
"Community support services" - repealed	Definition is no longer used in this chapter.	No
"Companion Home" - repealed	Definition is now contained in chapter 388-829C WAC.	No
"Division or DDD" - amended	Adds the aging and disability services administration to the definition.	No
"Emergency" - repealed	Definition is no longer used in this chapter.	No
"Exemption" - repealed	Definition is no longer used in this chapter.	No
"Family" - amended	Revises definition of "family" to correspond with other chapters.	No
"Family resource coordinator" - repealed	Definition is no longer used in this chapter.	No
"ICF/MR" - amended	Clarifies the definition of ICF/MR.	No
"Individual Support Plan (ISP)" - new	Adds the definition of ISP.	No
"Individual" - repealed	Definition is no longer used in this chapter.	No
"Individual alternative living" - repealed	Definition is no longer used in this chapter.	No
"Intelligence quotient score" - repealed	Definition is no longer used in this chapter.	No
"Intensive individual supported living support" - repealed	Definition is no longer used in this chapter.	No
"Medicaid personal care" - amended	Corrects the cross-reference to chapter 388-106 WAC.	No
"Nonresidential programs" - repealed	Definition is no longer used in this chapter.	No
"Nursing facility eligible" - repealed	Definition is no longer used in this chapter.	No
"Other resources" - repealed	Definition is no longer used in this chapter.	No
"Part C" - repealed	Definition is no longer used in this chapter.	No
"RHC capacity" - repealed	Definition is no longer used in this chapter.	No
"Residential programs - amended	Corrects the types of programs considered to be residential and adds cross references.	No
"Respite care" - amended	Amends definition for consistency with other programs.	No
"Vacancy" - repealed	Definition is no longer used in this chapter.	No
"Vulnerable adult" - repealed	Definition is no longer used in this chapter.	No
388-825-025 - repealed	Exemptions are no longer valid.	No

Washington Administrative Code	Effect of Rule	Impact Small Business?
388-825-045 - repealed	Section is broken down into more manageable sections later in this chapter.	No
388-825-050 - repealed	Individual service plans are no longer in use.	No
388-825-055 - repealed	Section is broken down into more manageable sections later in this chapter.	No
388-825-056 - new	Describes how DDD services benefit persons with developmental disabilities.	No
388-825-057 - new	Describes how eligibility for paid services is determined.	No
388-825-0571 - new	Describes the services available to persons under eighteen who are in a dependency guardianship or foster care with children's administration.	No
388-825-058 - new	Lists services that DDD may authorize.	No
388-825-059 - new	Clarifies that the individual support plan identifies the services and the amount to be received.	No
388-825-061 - new	Describes services for persons under the age of three.	No
388-825-062 - new	Defines the infant toddler early intervention program (ITEIP).	No
388-825-063 - new	Defines services available under ITEIP.	No
388-825-065 - repealed	Section is no longer applicable.	No
388-825-066 - new	Describes where program eligibility rules and service definitions for ITEIP can be found.	No
388-825-067 - new	Defines medicaid state plan services.	No
388-825-068 - new	Describes what medicaid state plan service that DDD can authorize.	No
388-825-069 - new	Describes service available under the DDD home and community based services (HCBS) waiver.	No
388-825-071 - new	Describes eligibility criteria for services for persons enrolled in a DDD HCBS waiver.	No
388-825-072 - new	Describes where information on DDD's HCBS waivers can be found.	No
388-825-073 - new	Defines "state-only funded" services.	No
388-825-074 - new	Describes eligibility for state-only funded services.	No
388-825-079 - new	Defines which HCBS waiver services that DDD can authorize with state-only funding for persons not on an HCBS waiver.	No
388-825-080 - repealed	Section is moved to WAC 388-825-098 and reworded.	No
388-825-081 - new	Defines which state-only funded services not available in a HCBS waiver that DDD can authorize.	No
388-825-082 - new	Lists and defines other state-only funded services that are not contained in other DDD rules.	No
388-825-083 - new	Lists all of the services available through DDD.	No
388-825-084 - new	Lists limitations of state-only services and programs.	No
388-825-087 - new	Lists out-of-home residential services that address the special needs of persons with developmental disabilities.	No
388-825-088 - new	Lists where additional information can be found about DDD contracted residential services.	No
388-825-089 - new	Defines residential habilitation centers (RHCs) and lists the RHCs' locations in the state.	No

Washington Administrative Code	Effect of Rule	Impact Small Business?
388-825-091 - new	Defines the eligibility for RHC services.	No
388-825-093 - new	Defines when a person can receive a short-term stay at an RHC.	No
388-825-094 - new	Describes when a person can request to live in an RHC and how the request is processed.	No
388-825-096 - new	Describes what a person must pay toward the cost of DDD services.	No
388-825-097 - new	Describes what expenses can be deducted from income in determining participation.	No
388-825-098 - new	Moved from WAC 388-825-080 and reworded for clarity.	No

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

or by calling (360) 664-6094, on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 7, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 6, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments and new sections define and reorganize the rules governing the delivery of services to individuals with developmental disabilities.

Reasons Supporting Proposal: The definitions reorganization of the rules allow stakeholders to easily find the rules pertaining to specific programs and services.

Statutory Authority for Adoption: RCW 71A.12.030.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail maniosk@dshs.wa.gov, (360) 725-3454, fax (360) 404-0955; and Enforcement: Don Clintman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined that these rules do not impact small businesses. See Title of Rule above.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 404-0955, e-mail brinksc@dshs.wa.gov.

March 12, 2008

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-08 issue of the Register.