

**WSR 12-14-007**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed June 21, 2012, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-055.

Title of Rule and Other Identifying Information: Chapter 260-28 WAC, Ownerships, trainers and employees and WAC 260-40-145 Prohibited entry of certain horses.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on August 10, 2012, at 9:30 a.m.

Date of Intended Adoption: August 10, 2012.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by August 6, 2012.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 6, 2012, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds a new section to chapter 260-28 WAC to give authority to the board of stewards or executive secretary to declare a horse, "retired," for racing purposes based on certain factors to protect the safety of the equine and other participants.

Reasons Supporting Proposal: The industry has struggled to address how to protect horses that have underlying injuries or safety concerns that are gifted or sold with the understanding the horse should not race, and then subsequently is trained and raced at a later date by another owner or trainer. This would place the horse on the "stewards list," permanently to protect the horse and riders by not allowing the horse to enter in a race at a facility under the jurisdiction of the Washington horse racing commission (WHRC).

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [WHRC], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

June 21, 2012  
 Douglas L. Moore  
 Deputy Secretary

NEW SECTION

**WAC 260-28-095 Retirement of a horse.** At any time an owner or group of owners may decide to retire a horse from racing due to injury, age, or other physiological or behavioral condition(s) that may cause harm to the horse or others if the horse returns to training or racing. The owner(s) who wish to retire a horse can notify the board of stewards, or

during their absence the executive secretary. The board of stewards or executive secretary will conduct a ruling conference. At the time of the conference, the owner(s) will present evidence to support the reasons for retirement from applicable professionals; for example, a statement from a licensed veterinarian noting the horse has a condition which makes it unsafe to continue racing in the future. If the stewards or executive secretary issues a ruling declaring the horse "retired" the horse will not be eligible for racing. The owner(s), and any new owner(s) if the retirement is concurrent with a sale or transfer of ownership, will be served a copy of the ruling. All horses retired will be placed permanently on the steward's list as provided in WAC 260-24-510(9). Once a horse is retired it will remain retired and ineligible for racing.

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

**WAC 260-40-145 Prohibiting entry of certain horses.**

(1) No horse will be allowed to enter or start if it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo or other identification method approved by the appropriate breed registry and the commission.

(2) No horse may be allowed to enter or start if its owner, lessor(s), or trainers have not been licensed as required by the commission.

(3) No horse may be allowed to enter or start if the horse has been declared "retired" as provided in WAC 260-28-085.

**WSR 12-14-036**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
 [Order 11-09—Filed June 26, 2012, 12:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-22-013.

Title of Rule and Other Identifying Information: Ecology is proposing to adopt new chapter: Chapter 173-910 WAC, Mercury-containing lights product stewardship program.

Hearing Location(s): Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, on August 7, 2012, at 1:00 p.m.

Date of Intended Adoption: November 16, 2012.

Submit Written Comments to: Kara J. Steward, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail kara.steward@ecy.wa.gov, fax (360) 407-6102, by August 14, 2012.

Assistance for Persons with Disabilities: Contact Michelle Payne, (360) 407-6129 by July 25, 2012, TTY 711 or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As signed into law, Mercury-containing lights—Proper disposal, chapter 70.275 RCW, requires producers of mercury-containing lights to establish a product stewardship program for residen-

tial lighting. The purpose of this rule is to clarify the following:

- Responsibilities of producers, wholesalers, retailers, distributors, and electric utilities to safely recycle residential mercury-containing lights sold in or into Washington state.
- How producers will fund ecology's administration, enforcement, and oversight costs.
- Program requirements, such as product stewardship plan, outreach and education efforts, and annual reporting requirements.
- Requirements for collecting, transporting, processing and recycling of mercury-containing lights.
- Enforcement process.
- Other requirements necessary to implement the law, such as definitions.

**Reasons Supporting Proposal:** Discarded mercury-containing lights can release toxic mercury vapors. This rule contains requirements and responsibilities for establishing safe recycling of discarded lights through a product stewardship program in Washington, in accordance with chapter 70.275 RCW.

**Statutory Authority for Adoption:** Mercury-containing lights—Proper disposal, chapter 70.275 RCW.

**Statute Being Implemented:** Mercury-containing lights—Proper disposal, chapter 70.275 RCW.

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

**Name of Proponent:** Washington state department of ecology, governmental.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Kara J. Steward, Waste 2 Resources, Headquarters, (360) 407-6250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the proposed rule will not impose more than minor costs (RCW 19.85.020 (2)) on an industry (RCW 19.85.020(1)).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kara Steward, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6250, fax (360) 407-6102, e-mail kara.steward@ecy.wa.gov.

June 25, 2012

Polly Zehm  
Deputy Director

## Chapter 173-910 WAC

### MERCURY-CONTAINING LIGHTS PRODUCT STEWARDSHIP PROGRAM

#### GENERAL REQUIREMENTS

#### NEW SECTION

**WAC 173-910-010 Purpose.** (1) Washington state law requires establishment of a convenient and environmentally sound product stewardship program for mercury-containing lights throughout Washington state by January 1, 2013.

Every producer of mercury-containing lights sold in or into Washington state for residential use must fully finance and participate in the product stewardship program. Such a system is essential to collect spent mercury lighting from covered entities which, when improperly disposed, releases mercury that threatens human health and the environment.

(2) This chapter implements Mercury-containing lights—Proper disposal, chapter 70.275 RCW.

(3) Washington state law established a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

#### NEW SECTION

**WAC 173-910-020 Applicability.** This chapter applies to:

(1) Any producer of mercury-containing lights sold in or into Washington state for residential use, as defined in this chapter.

(2) Any stewardship organization operating an approved product stewardship program for any producer or group of producers, as defined in this chapter.

(3) Any covered entities as defined in this chapter.

(4) Collectors of mercury-containing lights participating in a product stewardship plan approved under this chapter.

(5) Transporters of mercury-containing lights participating in a product stewardship plan approved under this chapter.

(6) Processors of mercury-containing lights under a product stewardship plan approved under this chapter.

(7) Any retailer, electric utility, or other person that gives away, offers for sale, or sells mercury-containing lights in or into Washington state for residential use.

#### DEFINITIONS

#### NEW SECTION

**WAC 173-910-100 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Accumulation point"** means where mercury-containing lights from curbside or mail-back programs are accumulated for a product stewardship plan approved by the department.

**"Brand"** means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

**"Collector"** means an entity that is licensed to do business in Washington state and that gathers mercury-containing lights from covered entities for the purpose of recycling under a product stewardship plan approved by the department and meets the collector requirements in WAC 173-910-520. Examples of collectors include, but are not limited to, drop off locations, household hazardous waste facilities, collection

sites, curbside services, mail-back services, accumulation points, and collection events.

**"Compliance audit report"** means a comprehensive review of third-party audits for each processing facility in the program.

**"Covered entities"** means:

(a) A single-family or a multifamily household generator and persons that deliver no more than fifteen mercury-containing lights to registered collectors for a product stewardship program during a ninety-day period; and

(b) A single-family or a multifamily household generator and persons that utilize a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and that discard no more than fifteen mercury-containing lights into those programs during a ninety-day period.

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

**"Department's annual fee"** means the sum total of five thousand dollars paid to the department for each producer participating in a mercury-containing lights product stewardship program to fund department administration, oversight, and enforcement costs.

**"Distributor"** is an agent who supplies goods to stores and other businesses that sell to consumers.

**"Final disposition"** means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in facilities that meet all applicable federal, state, and local requirements.

**"Hazardous substances"** or **"hazardous materials"** means those substances or materials identified by rules adopted under chapter 70.105 RCW.

**"Independent plan"** means a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a stewardship organization.

**"Mail-back program"** means the use of a prepaid postage container transported by the United States Postal Service or a common carrier, using sealable packaging and shipping materials that are designed to prevent the release of mercury into the environment by volatilization or any other means, to return mercury-containing lights for a product stewardship plan approved by the department.

**"Market share"** means the portion of mercury-containing lights sold in Washington state representing the producer's share of all mercury-containing lights products sold in Washington state assigned to a producer.

**"Mercury-containing lights"** means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

**"Orphan product"** means a mercury-containing light that lacks a producer's brand, or for which the producer is no longer in business and has no successor in interest, or that bears a brand for which the department cannot identify an owner.

**"Person"** means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited lia-

bility company, firm, association, cooperative, or other legal entity located within or outside Washington state.

**"Premium services"** means collection of mercury-containing lights through systems that may include additional fees to cover the collection costs not paid by the product stewardship program, examples include curbside collection or mail-back services.

**"Processing"** means handling of mercury-containing lights for materials recovery, recycling, or preparing for final disposition. Processing must occur at facilities that meet all applicable federal, state, and local requirements.

**"Processor"** means an entity engaged in disassembling or dismantling mercury-containing lights to recover materials for recycling or disposal.

**"Producer"** means a person that meets any one of the following conditions:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, except for persons whose primary business is retail sales;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this definition and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this definition do not apply, makes or made an unbranded mercury-containing light that is offered for sale or sold in or into Washington state; or

(d) Offers for sale, sells or has sold at wholesale or retail a mercury-containing light and does not have legal ownership of the brand but chooses to fulfill the responsibilities of the producer for that product.

**"Product stewardship"** means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and collecting, transporting, reusing, processing, recycling, and final disposition of mercury-containing lights.

**"Product stewardship plan"** or **"plan"** means a detailed plan describing the manner in which a product stewardship program will be implemented. A product stewardship plan can either be the standard plan or an independent plan.

**"Product stewardship program"** or **"program"** means the methods, systems, and services financed and provided by producers of mercury-containing lights generated by covered entities that addresses collecting, transporting, processing, recycling, and final disposition of mercury-containing lights, including orphan products.

**"Recycling"** means transforming or remanufacturing mercury-containing lights into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting mercury-containing lights with or without other waste.

**"Reporting period"** means the period commencing January 1st and ending December 31st in the same calendar year.

**"Retailer"** means a person that offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, cata-

logs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

"**Service providers**" means collectors, transporters, and processors participating in a stewardship program.

"**Stakeholder**" means a person that may have an interest in or be affected by a product stewardship program.

"**Standard plan**" means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by the state-contracted stewardship organization, approved by the department, and implemented by a stewardship organization.

"**Stewardship organization**" or "**organization**" means a producer or group of producers that operate a product stewardship program or an organization designated by a producer or group of producers to act as an agent on behalf of each producer to operate a product stewardship program.

"**Transboundary**" means crossing a provincial, territorial, or national boundary or border.

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

"**Wholesale**" means buying and selling goods, generally in original packages, on a large scale in parcels, usually from a manufacturer to a retail, commercial, or industrial client.

**PRODUCER REQUIREMENTS**

NEW SECTION

**WAC 173-910-210 Producers of mercury-containing lights.** (1) Beginning January 1, 2013, any producer of mercury-containing lights whose mercury-containing lights are offered for sale or sold in or into Washington state for residential use must participate in a department approved product stewardship program for mercury-containing lights.

(2) Producers must pay all administrative and operational costs associated with their program or programs, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a producer, group of producers, or stewardship organization must finance the costs of transporting mercury-

containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a producer, group of producers, or stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations.

(3) The producer must satisfy the following requirements:

(a) Meet the producer's financial obligations to the plan, which include the department's annual fee;

(b) Comply with producer's requirements as described in the plan;

(c) Participate in a fully implemented plan; and

(d) Take actions required to correct violations.

(4) Producers must participate in a product stewardship program by:

(a) Participating in the standard plan approved by the department and operated by a stewardship organization; or

(b) Operating, either individually or jointly, an independent plan approved by the department and operated by a stewardship organization.

NEW SECTION

**WAC 173-910-220 Producer violation and warning.**

(1) There are three types of producer violations:

(a) Participation violation for not participating in an approved product stewardship plan.

(b) Implementation violation for not implementing an approved product stewardship plan.

(c) Plan/report violation for not submitting a product stewardship plan, plan update, or annual report.

(2) Department issued warning letters will:

(a) Be issued for participation or plan/report violations.

(b) Be sent to the producer by certified mail.

(c) Include a copy of the requirements to let the producer know what they must do to be in compliance with this chapter.

(d) Include the time period within which the producer must be in compliance in order to not incur a penalty.

NEW SECTION

**WAC 173-910-230 Producer violation notices and penalties.**

**Table 200  
Producer Violation Notices and Penalties**

<b>Notice</b>	<b>Participation Violation</b>	<b>Implementation Violation</b>	<b>Plan/Report Violation</b>
	<i>Failure to participate in an approved plan</i>	<i>Failure to implement an approved plan</i>	<i>Failure to submit plan, update plan, change plan or submit annual report</i>
First Violation Notice	Warning letter to participate within 60 days	Automatic penalty of up to \$5,000, plus warning letter regarding subsequent penalties	Warning letter to comply within 60 days

Notice	Participation Violation <i>Failure to participate in an approved plan</i>	Implementation Violation <i>Failure to implement an approved plan</i>	Plan/Report Violation <i>Failure to submit plan, update plan, change plan or submit annual report</i>
Second Violation Notice	Penalty of up to \$1,000 per day starting 60 days after receipt of warning letter	Penalty of up to \$10,000 for each 30 days of noncompliance starting 30 days after receipt of warning letter	Penalty of up to \$10,000 per day starting 60 days after receipt of warning letter
If Compliance is Achieved Within 30 Days of Second Violation Notice	Penalty reduced by 50% if compliance is achieved by day 90	Penalty reduced by 50% if compliance is achieved by day 30	Penalty reduced by 50% if compliance is achieved by day 90
Third Violation and Subsequent Notices	Penalty of up to \$1,000 per day for every day of noncompliance to be issued every 60 days	Penalty of up to \$10,000 for every 30 days of noncompliance to be issued every 30 days	Penalty of up to \$10,000 per day for every 30 days of non-compliance to be issued every 30 days

(1) **Participation penalties** apply to producers not participating in an approved product stewardship plan.

(a) Producers selling mercury-containing lights in or into the state for residential use that are not participating in an approved product stewardship plan will receive a warning letter, or first violation notice, to participate in an approved plan within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers not participating in an approved product stewardship plan that continue to sell mercury-containing lights in or into the state for residential use sixty days after receiving the warning letter will receive a penalty, or second violation notice, of up to one thousand dollars for each violation; a violation is one day of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to not participate in an approved product stewardship plan will receive penalties of up to one thousand dollars per day of noncompliance starting from the date of the second violation notice. This penalty will be issued after each subsequent period of sixty days of noncompliance.

(2) **Implementation penalties** apply to producers that fail to implement their approved product stewardship plan.

(a) Producers not implementing an approved product stewardship plan will receive a penalty for the first violation of up to five thousand dollars, plus a warning letter to implement its approved plan within thirty days or incur additional penalties. The warning letter will include compliance requirements and notification that the requirements must be met within thirty days.

(b) Producers that fail to implement their product stewardship plan will receive a penalty, or second violation notice, of up to ten thousand dollars for the thirty days of non-compliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to implement their product stewardship plan will receive penalties of up to ten thousand dollars for each subsequent thirty days of noncompliance.

(3) **Plan/report penalties** apply to producers that fail to submit a product stewardship plan, update, or change the plan when required, or fail to submit an annual report.

(a) Producers not submitting the plan, plan update, or report will receive a warning letter, or first violation notice, to submit the plan or report within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers that fail to submit the plan, plan update, or report will receive a penalty, or second violation notice, of up to ten thousand dollars for each violation; a violation is one day of noncompliance starting with the first day of notice of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to submit the plan, plan update, or report will receive penalties of up to ten thousand dollars per day issued after each subsequent period of thirty days of noncompliance.

(4) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(5) To correct a violation the producer must:

(a) Meet the compliance requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(6) Penalties applied to the stewardship organization in WAC 173-910-340 for the same violation will not be applied to producers.

(7) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

**STEWARDSHIP ORGANIZATION REQUIREMENTS**NEW SECTION

**WAC 173-910-310 Stewardship organization requirements.** (1) The stewardship organization for a plan must begin implementation of the plan no later than January 1st of the calendar year following approval of the plan by the department.

(2) The stewardship organization must implement the approved plan. Updates to the plan will follow the process outlined in WAC 173-910-460.

(3) Stewardship organizations, as agents of their participating producers, are required to:

(a) Annually register producers, collectors, transporters, and processing facilities participating in the stewardship plan and report this information to the department.

(i) Registration includes documentation that each producer, collector, transporter, and processing facility is meeting the requirements of this chapter.

(ii) Provide regular updates to the department for producers, collectors, transporters, and processing facilities participating in the plan.

(b) Submit a product stewardship plan and required updates to the department as required in WAC 173-910-440.

(c) Annually report to the department as required in WAC 173-910-430.

(d) Monitor the compliance of all parties participating in the stewardship plan and report compliance issues to the department.

(e) Finance all administrative and operational costs associated with their program, including collection, transport, and processing of mercury-containing lights.

(f) Finance the department's cost for administration, oversight and enforcement of their plan and program by paying the department's annual fee for all producers participating in the plan by January 1st of each year. The department's annual fee for each stewardship organization is the sum total of five thousand dollars paid to the department for each producer participating in the stewardship program.

(i) The department fee listed in this subsection will be adjusted by the annual fiscal growth factor calculated under chapter 43.135 RCW.

(ii) For implementation of the fiscal growth factor, the base year for all mercury-containing lights department annual fees will be fiscal year 2011 ending June 30, 2011. In the base year, the fiscal growth factor will be zero.

(g) Finance the costs of transporting and processing mercury-containing lights from accumulation points for curbside and mail-back collection programs.

(4) Each stewardship organization operating a department approved product stewardship plan must recover their share of mercury-containing lights based on the combined market share of all producers participating in the stewardship organization's approved plan.

(5) The department will determine market share for stewardship organizations in the event that there is more than one approved product stewardship plan.

(6) Stewardship organizations must collaborate with state government, local governments, electric utilities, retail-

ers, collectors, transporters, processing facilities, and citizens in the development and implementation of public education, outreach, and marketing efforts. Education and outreach efforts include, but are not limited to:

(a) Development of a program web site and social media services;

(b) Providing point of sale educational materials, like posters and brochures; and

(c) Publishing media releases in print, radio, and television.

(7) If the department determines a stewardship organization is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-330 and 173-910-340.

NEW SECTION

**WAC 173-910-320 Stewardship collection system (1)** The stewardship organization must work with the department, local government officials, retailers, electric utilities, and citizens to establish a convenient collection system for covered entities to deliver their mercury-containing lights into the program.

(2) Convenient collection service will:

(a) Provide collection services for mercury-containing lights in each county of the state;

(b) Provide additional collection services in each city or town with a population greater than ten thousand; and

(c) Provide service in remote and rural areas of the state.

(3) This system may include:

(a) Collection sites, including retail businesses and household hazardous waste facilities;

(b) Collection events to serve remote and rural communities;

(c) Curbside collection, a premium service;

(d) Mail-back service, a premium service; or

(e) A combination of these services.

(4) The stewardship organization must register collectors and provide updated collector information to the department, including:

(a) Contact information, including site name, operator name, physical address, telephone number, and hours of operation;

(b) Identify prospective collection sites not approved to participate in the program. Provide copies to the department of all written correspondence related to prospective collection sites that were not approved. Notify the department, within five days of denial of a prospective collection site, including the reason for denial.

(5) Each collection site or service must accept up to fifteen mercury-containing lights from covered entities at no charge, except for premium services, when lights are dropped off or delivered.

(6) Each collection site or service must have a:

(a) Spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light;

(b) Worker safety plan that describes the handling of the mercury-containing lights at the collection location and the

measures that will be taken to protect worker health and safety.

#### NEW SECTION

**WAC 173-910-330 Stewardship organization violation and warning.** (1) There are two types of stewardship organization violations:

(a) Implementation violation for not implementing an approved product stewardship plan.

(b) Plan/report violation for not submitting a product stewardship plan, plan update or annual report.

(2) Department issued warning letters will:

(a) Be issued for either of the two stewardship organization violations, except that a penalty may be issued for a first implementation violation concurrent with a warning letter.

(b) Be sent to the stewardship organization by certified mail.

(c) Include a copy of the requirements to let the stewardship organization know what they must do to be in compliance with this chapter.

(d) Include the time period within which the stewardship organization must be in compliance in order to not incur a penalty.

#### NEW SECTION

**WAC 173-910-340 Stewardship organization penalty and appeal.** (1) Stewardship organizations that fail to implement their program or submit a plan, updated plan, or annual report, or that fail to comply with a warning letter, will receive penalties in the amounts provided in WAC 173-910-230 multiplied by the number of producers participating in the stewardship organization.

(2) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(3) To correct a violation the stewardship organization must:

(a) Meet the requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(4) If the stewardship organization, as the agent of its member producers, does not pay the penalties issued against it when due to the department, each participating producer will be responsible for its share of the total penalties.

(5) Penalties applied to the producers in WAC 173-910-230 for the same violation will not also be applied to stewardship organizations.

(6) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

### PLAN AND REPORT REQUIREMENTS

#### NEW SECTION

**WAC 173-910-410 Product stewardship plans.** (1) Stewardship organizations must submit the proposed product stewardship plan to the department by January 1st of the year prior to the planned calendar year when the plan will be implemented. See WAC 173-910-420 for plan content.

(2) Product stewardship plans must provide a program for the collection, transportation, and processing of mercury-containing lights from covered entities in Washington state.

(3) The product stewardship plan must meet the content requirements of WAC 173-910-420.

(4) Prior to implementation, the plan must be approved by the department.

(5) The stewardship organization must be authorized to submit and implement the plan for each participating producer.

#### NEW SECTION

**WAC 173-910-420 Plan content.** Product stewardship plans must contain the following information:

(1) **Overall plan requirements:** The plan must include:

(a) Names and contact information for all participating producers, including names of brands or brand labels used by specific producers;

(b) The total number of mercury-containing lights sold annually in or into the state by producers participating in the plan;

(c) The types of mercury-containing lights that the program will accept;

(d) Details on the management and organization of the stewardship organization; and

(e) A binding agreement that must include:

(i) A statement that the producers participating in the product stewardship plan will comply with the terms and conditions of the plan when it is approved by the department;

(ii) A statement that if the plan fails to meet the producers' obligations under chapter 70.275 RCW, the producers retain responsibility and liability, including financial liability, for the collection, transportation, and processing of mercury-containing lights; and

(iii) A letter signed by each of the producers participating in the product stewardship plan designating the stewardship organization as the party authorized to submit and implement the plan for each participating producer.

(2) **Description of the financing system:** The plan must include a description of how the program will be funded by the producers and how compensation is paid to collectors, transporters, and processing facilities for all services provided to a plan and that payments to service providers will be made within thirty days from date of shipment or other time frame defined in contractual arrangements. The stewardship organization will:

(a) Allocate revenues and expenditures applicable to this program in accordance with generally accepted accounting principles (GAAP).

(b) Commit to providing an annual financial audit of the stewardship organization conducted by an independent certified public accountant.

(3) **Use of Washington state businesses:** The plan must identify the use of businesses within the state, including utilities, retailers, charities, household hazardous waste facilities, processing facilities, recycling facilities, and collection and transportation services for implementation of the plan including existing curbside collection services and existing mail-back services for implementation of the plan.

(4) **Plan goals:** The plan will provide goals for the collection of mercury-containing lights for five years of operation, including:

(a) Total number of mercury-containing lights sold in or into the state, separating residential and nonresidential lights;

(b) An estimate of how many mercury-containing lights are available for collection from covered entities;

(c) Annual program goals for collection of mercury-containing lights from covered entities for the next five years.

(5) **Collectors:** The plan must include the following information about collectors participating in the plan:

(a) The type of collection services in the plan, including curbside collection activities, household hazardous waste facilities, drop-off locations, collection events, and accumulation points for curbside or mail-back collection;

(b) Registration information for collectors participating in the plan as required in WAC 173-910-520(1), including accumulation points used for curbside or mail-back collection;

(c) A written statement from each collector ensuring that the collector will comply with the requirements in WAC 173-910-520;

(d) A statement that collection sites will be:

(i) Staffed during operating hours; and

(ii) Open during regularly scheduled hours and on an ongoing basis.

(e) A description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as appropriate collection mechanisms;

(f) A statement identifying how quickly collection containers will be provided once containers reach capacity;

(g) A description of the communication and outreach process to answer questions, provide supplies, or provide technical assistance to collectors;

(h) A description of the technical assistance to be provided to collection sites, including written instructions on how to participate in the program and how to appropriately handle and store mercury-containing lights;

(i) A description of the packaging and shipping materials that will be used when collecting, accumulating, storing, and transporting mercury-containing lights to minimize the release of mercury into the environment and to minimize breakage; and

(j) Drafts of spill and release response plan and worker safety plan required in WAC 173-910-520.

(6) **Transporters:** The plan must include information about transporters participating in the plan, including:

(a) Registration information for transporters participating in the plan, including names, addresses, and contact information.

(b) A written statement from each transporter ensuring that the transporter will comply with the requirements in WAC 173-910-530.

(7) **Processing facilities:** The plan must include information about processing facilities participating in the plan, including:

(a) Registration information for processors participating in the plan, including names, addresses, contact information and hours of operation;

(b) A description of the methods used to process mercury-containing lights;

(c) A list of all downstream processors used through final disposition for mercury, other hazardous substances, or materials or components containing mercury or other hazardous substances;

(d) A description of the methods used by the downstream processors described in (c) of this subsection to process mercury, other hazardous substances, or materials or components containing mercury or other hazardous substances;

(e) A written statement from the processing facility ensuring that the facility, including the downstream processors described in (c) of this subsection, will comply with the requirements in WAC 173-910-540;

(f) Identification of the final destination for mercury collected from processing mercury-containing lights; and

(g) Description of how the compliance audit report will be completed given that a qualified third party must audit each processing facility in the program.

(8) **Recordkeeping:** The plan must include procedures for how the stewardship organization will collect and maintain records to meet and demonstrate compliance with the recordkeeping requirements of this chapter. At a minimum, the stewardship organization will track the following information:

(a) Total number of mercury-containing lights sold in or into Washington state for all producers participating in the plan.

(b) The types of lights collected by the program, including lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

(c) List of all collection sites and collection services, including curbside and mail back.

(d) Identification of transporters and processing facilities participating in the plan.

(e) Mercury-containing lights collected, transported, and processed for the plan, including:

(i) Total number of mercury-containing lights, by lamp type and by weight in pounds, collected from individual collection sites, collection services, curbside and mail back.

(ii) Final destination and quantities of lights processed and disposed.

(f) Education efforts for consumers, retailers, utilities, collectors, transporters, and processors, including assessments of the effectiveness of these efforts.

(g) Efforts to promote the mercury-containing lights collection program.

(9) **Implementation timeline:** The plan must include a timeline showing when each of the following will occur and a detailed description of each activity including, but not limited to:

(a) Start-up of the collection and processing efforts;

(b) Education efforts for consumers, retailers, collectors, transporters, and processors;

(c) Outreach efforts for the mercury-containing lights collection program; and

(d) Continual progress toward collection of spent mercury-containing lights.



(10) **Education, public outreach, and marketing:** A description of how the plan will meet the public education, outreach and marketing requirements, including:

(a) How it will provide information about where and how to deliver their mercury-containing lights to a product stewardship program collector at the end of the product's life;

(b) Providing a web site and toll-free number that gives information about the product stewardship program in sufficient detail regarding how and where to drop off mercury-containing lights into the product stewardship program, and collaborating with the department to provide information necessary to keep the 1-800-RECYCLE on-line data base up to date;

(c) Describing the outreach method or methods used;

(d) How it will ensure outreach to the public throughout the state;

(e) How it will provide outreach materials for educating the public to all collectors used by the plan;

(f) Explaining how the plan will coordinate education, public outreach, and marketing with other approved product stewardship plans;

(g) Explaining how the plan will coordinate on education, public outreach, and marketing with retailers, distributors, wholesalers, and electric utilities; and

(h) Explain the public review process implemented by the stewardship organization, the public comments received by the stewardship organization, and how the stewardship organization addressed those comments.

(11) **Other information** deemed necessary by the department to determine compliance with this chapter.

#### NEW SECTION

**WAC 173-910-430 Annual reports.** By April 1, 2014, and each program year thereafter, each stewardship organization must file an annual report with the department for the preceding calendar year's program. The department will review the report and notify the stewardship organization of any deficiencies that need to be addressed. The annual report must include the following information:

(1) **Contact information:** Identify the stewardship organization and the producers participating in the program, including any updated contact information. The list of producer brands sold in or into the state. The total number of mercury-containing lights sold in or into the state by participating producers in the previous year.

(2) **Executive summary:** Provide a description of the mercury-containing lights collection efforts during the reporting period. Include anticipated steps, if needed, to improve performance and a description of challenges encountered during the reporting period and how they will be addressed.

(3) **Program description:** Summarize the mercury-containing lights product stewardship program, providing details on the collection, transport, and recycling of mercury-containing lights.

(4) **Program goals:** State the goals from the plan, the baseline from which goals were measured, and report on achievement during the reporting period, including:

(a) Describe any adjustments to goals stated in the approved stewardship plan for the upcoming reporting period and accompanying rationale for those changes.

(b) Describe how the program met its goal for the collection of unwanted mercury-containing lights and, if not, what changes have been made or will be made in the next year to meet its goal.

(c) Identify the total mercury-containing lights, by lamp type and by weight in pounds, collected for the preceding program year including documentation verifying collection and processing of that material, including:

(i) Mercury-containing lights collected, reported by county;

(ii) Amount of mercury-containing lights recycled;

(iii) Amount of mercury-containing lights disposed;

(iv) Where mercury-containing lights were processed; and

(v) Where mercury-containing lights were disposed.

(5) **Collection system:** Names, locations, contact information for collection sites and services operating in the state in the prior program year and the parties who operated them:

(a) In each county;

(b) For each city with a population greater than ten thousand;

(c) For collection events, curbside collection, or mail-back services; and

(d) Total mercury-containing lights, by lamp type and by weight in pounds, received from each collector.

(6) **Processing facility information:** Identify all processing facilities used, including the name, address, and contact information by providing the following:

(a) Total mercury-containing lights, by lamp type and by weight in pounds, processed by each processing facility;

(b) List of the collection sites and services submitting mercury-containing lights to each processor, including total number and weight of mercury containing lights submitted;

(c) A description of the methods used by each processing facility to process the mercury-containing lights;

(d) The amount of mercury-containing lights, mercury, other hazardous substances, or materials or components containing mercury or other hazardous substances exported from Washington state to countries that are not members of the Organization for Economic Co-operation and Development (OECD) or the European Union; and

(e) A compliance audit report completed for the stewardship organization by a qualified third party for each processing facility listed in the approved product stewardship plan.

(7) **Educational and outreach:** Efforts that were undertaken by the stewardship organization regarding how and where to drop off mercury-containing lights into the product stewardship program. Include an assessment of the effectiveness of these efforts and changes to be implemented in the next year.

(8) **Other information** deemed necessary by the department to determine compliance with this chapter.

NEW SECTION

**WAC 173-910-440 Plan and report submittal.** (1) Plans must include the plan content requirements in WAC 173-910-420.

(a) New product stewardship plans must be submitted by January 1st for implementation in the following calendar year.

(b) The first update of an approved product stewardship plan is required two years after approval and implementation, by July 1st of the second year of implementation.

(c) Second and subsequent updates of an approved product stewardship plan are required every four years, by July 1st of each subsequent third year of implementation.

(d) The department will post product stewardship plans and updates on the department's web site for public review. The department will provide public review comments to the stewardship organization.

(2) Annual reports must include the content requirements in WAC 173-910-430.

(a) Annual reports must be submitted by April 1st for the prior calendar year.

(b) The department may request additional information or clarification during the review of annual reports. If the department determines that additional information is needed, the stewardship organization must submit the additional information to the department within sixty days of receipt of the notice.

(c) The department will post annual reports on the department's web site for public review.

(3) The stewardship organization must submit one electronic copy of their plan, update, or report to the department. The plan, update, or report must be submitted to the Waste 2 Resources Program at the department's headquarters office.

(4) Producers may request portions of the plan or report be exempted from public disclosure in accordance with RCW 42.56.270.

(5) The department may request a hard copy version of the plan or report.

**Table 400  
Plan and Report Submittal Timeline**

Entity	Plan	Plan Update	Annual Report
<i>Timing</i>	<i>For the following calendar year</i>		<i>For the prior calendar year</i>
Stewardship organization submits document	January 1st	July 1st	April 1st
Department initial review	90 days	90 days	60 days
Stewardship organization document revision	60 days	60 days	60 days
Department second review	60 days	60 days	60 days
Stewardship organization resubmits document	60 days	60 days	60 days
Until approved, document review timing follows the second review schedule			

NEW SECTION

**WAC 173-910-450 Plan review and approval.** (1) The department will post stewardship plans on the department's web site to allow public review and comment.

(2) Within ninety days after receipt of a complete plan, the department will determine whether the plan complies with this chapter.

(3) The department will determine if the plan is:

(a) **Approved.** If approved, the department will send a letter of approval to the stewardship organization via certified mail. The approval letter will include an expiration date for the plan, either after two years, for initial plans, or four years, for updated plans, from approval.

(b) **Disapproved.** If disapproved, the department will send a letter of disapproval to the stewardship organization via certified mail. The disapproval letter will provide the department's reasons for not approving the plan.

(i) The stewardship organization must submit a new or revised plan within sixty days after receipt of the disapproval letter.

(ii) The department will have an additional sixty days to review the new or revised plan.

(4) The department will consider the following when reviewing a plan for approval:

(a) The plan met the submittal dates;

(b) The plan meets the requirements in this chapter;

(c) The plan contains all of the information required in this chapter and provides descriptive information sufficient to allow the department to determine that the implementation of the plan will be in compliance with this chapter;

(d) When reviewing a plan for service level, the department may contact the local government or community identified in the plan; and

(e) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-910-320).

(5) The department may request additional information or clarification during the review of a plan. If the department determines that additional information is needed, the stewardship organization must submit the additional information to the department within sixty days of receipt of the notice.

(6) Stewardship organizations may request portions of the plan be exempted from public disclosure in accordance with RCW 42.56.270.

NEW SECTION

**WAC 173-910-460 Plan updates.** (1) A stewardship organization operating a product stewardship program must update its product stewardship plan by July 1st for the upcoming implementation calendar year and submit the updated plan to the department for review and approval.

(2) Plan updates are required two years after start up, once every four years thereafter, or as needed due to program changes. Examples of program changes that could require an unscheduled plan update include:

(a) Addition or deletion of producers;

(b) Changes, increase or decrease, in collection service;

or

(c) Revision of the plan goals or schedule.

(3) Failure to provide service means implementation of the plan fails to do any of the following:

- (a) Provide service in each county in the state;
  - (b) Provide service in each city or town with a population of ten thousand or greater; or
  - (c) Meet other plan requirements.
- (4) Failure to provide service is a stewardship organization implementation violation. The department will document the violation and follow the procedures in WAC 173-910-330 and 173-910-340.

### SERVICE PROVIDER REQUIREMENTS

#### NEW SECTION

##### **WAC 173-910-510 Service provider requirements.**

(1) Beginning January 1, 2013, service providers participating in a mercury-containing lights product stewardship program approved by the department must comply with the requirements of this chapter.

(2) Service providers participating in the stewardship program that must comply with these requirements include collectors, transporters, and processing facilities.

#### NEW SECTION

##### **WAC 173-910-520 Collector requirements.**

(1) Collectors participating in a product stewardship program including, but not limited to, collection sites, curbside services, mail-back services, accumulation points, and collection events, must register with the stewardship organization. Collector registration information must include:

- (a) The legal name of the person owning and operating the collection location;
- (b) The address of the collection location;
- (c) The phone number of the collection location;
- (d) The name, address, and phone number of the individual responsible for operating the collection location; and
- (e) Updates of any changes in this information within thirty days of the change.

(2) Mercury-containing lights collected for a plan must be collected free of charge except for premium services.

(3) Mercury-containing lights premium services provide collection and transport of mercury-containing lights from point of collection to product stewardship program accumulation points for additional fees. For premium services participating in the product stewardship program, the stewardship organization must pay the cost of transporting mercury-containing lights from accumulation points to the processing facility and the cost of processing the mercury-containing lights. Premium services include, but are not limited to:

- (a) Curbside collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.
- (b) Mail-back collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(4) Collectors participating in a product stewardship program may include collection events that:

- (a) Service remote communities that do not have a continually staffed collection site;

- (b) Are registered with the stewardship organization; and
- (c) Meet the requirements of this section.

(5) Collectors of mercury-containing lights will not process the collected lights unless they also meet the processing facility requirements in WAC 173-910-540.

(6) Collectors must comply with all applicable laws, rules, and local ordinances.

(7) When providing collection services for a plan, each collector, including collection sites, curbside collection, mail-back service, accumulation points, and collection events must:

- (a) Staff the site during operating hours;
- (b) Notify the stewardship organization of changes in hours and days of operation;
- (c) Handle mercury-containing lights in a way that prevents releases of mercury to the environment, as follows:

(i) Immediately clean up and place in a cardboard, fiber or other appropriate container any mercury-containing lights that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the mercury-containing light, designed to prevent the escape of mercury into the environment by volatilization or any other means, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(ii) Minimize mercury-containing lights breakage by collecting, accumulating, and transporting mercury-containing lights in cardboard, fiber or other appropriate containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the mercury-containing lights. The container must be closed, structurally sound, compatible with the contents of the mercury-containing light, designed to prevent the escape of mercury into the environment by volatilization or any other means, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(iii) Store mercury-containing lights in cardboard, fiber, or other appropriate containers indoors, meaning in a structure that prevents a container from being exposed to the elements.

(d) Post, in a readily visible location, information about how and where mercury-containing lights received into the program are processed. Processing information must be provided by the plan(s) for which the collector is providing services;

(e) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light;

(f) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety;

(g) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage; and

(h) Submit all mercury-containing lights collected from covered entities to a department approved product stewardship program.

(8) A collector must allow the department access for inspections to determine compliance with the requirements in this chapter.

(9) No entity may claim to be collecting mercury-containing lights for a plan unless the entity is registered with the stewardship organization as a collector and submits all collected mercury-containing lights to the processors identified in the plan.

(10) If the department determines a collector is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-550 and 173-910-560.

#### NEW SECTION

**WAC 173-910-530 Transporter requirements.** (1) All transporters of mercury-containing lights must comply with all applicable laws, rules, and local ordinances.

(2) Transporters participating in a product stewardship program must register with the stewardship organization as required in WAC 173-910-310 of this chapter.

(3) Transporters must allow access to the department for purposes of ensuring compliance with this chapter.

(4) Transporters must deliver mercury-containing lights for recycling to processing facilities participating in the product stewardship plan.

(5) If the department determines a transporter is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-550 and 173-910-560.

#### NEW SECTION

##### **WAC 173-910-540 Processing facility requirements.**

(1) Processing facilities must operate their facility in a way that protects human health and the environment.

(2) Processing facilities must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing and disposal of mercury-containing lights, parts of the mercury-containing lights, or mercury from the mercury-containing lights. These include, but are not limited to, applicable legal requirements relating to:

(a) Waste and recyclables processing, storage, handling, and shipping;

(b) Air emissions and waste water discharge, including storm water discharges;

(c) Worker health and safety; and

(d) Transboundary movement of materials, waste, or scrap for reuse, recycling, or disposal.

(3) Processing facilities must be open and transparent concerning compliance with all federal, state, and local requirements. Upon request by the department, person, or individual, a processing facility must make information available about any financial penalties, regulatory orders, or violations received in the previous three years. If the processing facility receives subsequent penalties or regulatory orders, the processing facility must make that information available to the requestor within sixty days after any subsequent penalties or regulatory orders are issued.

(4) Processing facilities participating in a product stewardship program must register with the stewardship organization as required in WAC 173-910-310.

(5) Processing facilities must allow access to the department for purposes of ensuring compliance with this chapter.

(6) Processing facilities may not use federal or state prison labor for processing mercury-containing lights.

(7) If the department determines a processing facility is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-550 and 173-910-560.

#### NEW SECTION

**WAC 173-910-550 Service provider violation and warning.** (1) A service provider is in "violation" of this chapter when the service provider does not meet the requirements of this chapter.

(2) A violation occurs for every day the service provider is out of compliance with the requirements.

(3) Department issued warning letters will:

(a) Be issued for any service provider violations.

(b) Be sent by certified mail.

(c) Include a copy of the requirements to let the service provider know what they must do to be in compliance with this chapter.

(d) Include the time period within which the service provider must be in compliance in order to avoid a penalty.

#### NEW SECTION

**WAC 173-910-560 Service provider penalty and appeal.** (1) Penalties apply when a service provider fails to come into compliance with this chapter.

(2) A service provider that fails to comply with the warning letter, will receive penalties of up to five hundred dollars for each violation; a violation is one day of noncompliance.

(3) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(4) To correct a violation the service provider must:

(a) Meet the requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

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

#### **RETAILER, WHOLESALER, DISTRIBUTOR, OR ELECTRIC UTILITY REQUIREMENTS**

#### NEW SECTION

**WAC 173-910-610 Participation requirements.** (1) Retailers, wholesalers, distributor, electric utilities, or other persons that give away, offer for sale, or sell, including internet sales, mercury-containing lights in or into the state for residential use must comply with the requirements of this section.

(2) Beginning January 1, 2013, mercury-containing lights offered for sale or distributed in or into the state for res-

idential use must be obtained from producers participating in a product stewardship plan approved by the department.

(a) The department will maintain a list of compliant producers on its web site.

(b) Retailers, wholesalers, distributors, or electric utilities are required to regularly check this list of compliant producers to ensure sales and distribution of compliant product.

(3) Retailers, wholesalers, distributors, or electric utilities must only sell or offer for sale or distribute mercury-containing lights from compliant producers. Existing stock of mercury-containing lights in possession on January 1, 2013, may be sold or distributed even if the producer of the mercury-containing light is not in compliance.

(4) After January 1, 2013, the department may inspect mercury-containing lights inventory offered for sale or distributed in or into Washington state to determine if the requirements in this chapter are met.

(5) Education and outreach. Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale or distribute mercury-containing lights must work with stewardship organizations to:

(a) Ensure distribution of mercury-containing lights in or into Washington state is from producers participating in the product stewardship program

(b) Provide information to consumers and customers describing where and how to return mercury-containing lights to the product stewardship program and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(i) Use of artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(ii) The stewardship organization's toll-free telephone number and web site.

(iii) Information about how to return mercury-containing lights to the product stewardship program in Washington state either in, on, or with the packaging.

(c) Provide information in a visible location on their web site.

#### NEW SECTION

**WAC 173-910-620 Violation and warning.** (1) A retailer, wholesaler, distributor, or electric utility is in violation of this chapter when selling or distributing mercury-containing lights from a noncompliant producer.

(2) A violation occurs for every day of noncompliance with the requirements.

(3) Department issued warning letters will:

(a) Be issued for violations.

(b) Be sent by certified mail.

(c) Include a copy of the requirements to let the recipient know what they must do to be in compliance with this chapter.

(d) Include the time period within which the recipient must be in compliance in order to avoid a penalty.

#### NEW SECTION

**WAC 173-910-630 Penalty and appeal.** (1) Penalties apply when a retailer, wholesaler, distributor, or electric utility fails to come into compliance with this chapter.

(2) Failure to comply with the warning letter within sixty days will result in a penalty of up to five hundred dollars for each violation; a violation is one day of noncompliance.

This penalty will be waived if the distribution or sale of mercury-containing lights is discontinued within thirty days of the date the penalty was assessed.

(3) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(4) To correct a violation the recipient must:

(a) Meet the requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

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

#### **WSR 12-14-040**

#### **PROPOSED RULES**

#### **LIQUOR CONTROL BOARD**

[Filed June 27, 2012, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-07-058.

Title of Rule and Other Identifying Information: New chapter 314-31 WAC, Compliance checks.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on August 8, 2012, at 10:00 a.m.

Date of Intended Adoption: August 15, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by August 8, 2012.

Assistance for Persons with Disabilities: Contact Karen McCall by August 8, 2012, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Compliance checks have been performed by law enforcement agencies for many years. This has been a standard enforcement practice. The board plans to adopt state rules to conduct compliance checks based on language in RCW 66.44.290 involving minors purchasing alcohol.

Reasons Supporting Proposal: Creating rules around alcohol compliance checks alleviates the conflict in legal interpretation surrounding language in RCW 66.44.290.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.44.290.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is to clarify RCW 66.44.290.

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

June 27, 2012  
Sharon Foster  
Chairman

### Chapter 314-31 WAC

### COMPLIANCE CHECKS

#### NEW SECTION

**WAC 314-31-005 Liquor compliance checks.** (1) The Washington state liquor control board authorizes enforcement officers and investigative aides working with enforcement officers to conduct liquor compliance checks at any location where alcohol is sold, served or provided.

(2) Investigative aides working at the direction of enforcement officers during a liquor compliance check are considered agents of the Washington state liquor control board.

(3) Violations involving a licensee, its employee, or a member of the public that result from a liquor compliance check are subject to criminal arrest and/or administrative action by the liquor control board.

#### NEW SECTION

**WAC 314-31-015 What are the guidelines for liquor compliance checks?** Enforcement officers conducting liquor compliance checks must comply with the following conditions:

(1) An investigative aide must:

(a) Be at least eighteen years of age and under twenty-one years of age;

(b) Transfer any physical evidence to the enforcement officer(s) at the conclusion of each compliance check during which alcohol is acquired; and

(c) Complete a written statement on a form provided by the enforcement officer(s) at the conclusion of each compliance check during which alcohol is acquired.

(2) During a compliance check, an investigative aide may not:

(a) Be directly related to the enforcement officer(s) conducting the compliance check; or

(b) Possess any funds other than the funds provided by the agency for the compliance check.

(3) An enforcement officer shall photograph the investigative aide prior to conducting a compliance check. At least one photograph shall be taken of the investigative aide's face and at least one photograph shall be taken of the investigative aide from head to toe.

(4) An investigative aide is not required to possess identification during a compliance check, provided that if identification is possessed during the compliance check, the identification must be the investigative aide's lawfully issued identification.

### WSR 12-14-071

### WITHDRAWAL OF PROPOSED RULES HEALTH CARE AUTHORITY

[Filed July 2, 2012, 11:20 a.m.]

The health care authority requests the withdrawal of proposed rule making filed as WSR 12-13-065 (WAC 182-519-0050 and 388-519-0100, income, resource, and eligibility standards for the medically needy (MN) program).

Kevin M. Sullivan  
Rules Coordinator

### WSR 12-14-105

### PROPOSED RULES DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed July 3, 2012, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-049.

Title of Rule and Other Identifying Information: Chapter 246-886 WAC, Animal control legend drug and WAC 246-887-050, 246-887-060 and 246-887-070, rules regulating the possession, administration and storage of sodium pentobarbital.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on August 16, 2012, at 9:30 a.m.

Date of Intended Adoption: August 16, 2012.

Submit Written Comments to: Doreen E. Beebe, Washington State Board of Pharmacy, P.O. Box 47852, Olympia, WA 98504-7852, e-mail [http://www3.doh.wa.gov/policy\\_review/](http://www3.doh.wa.gov/policy_review/), fax (360) 236-2901, by August 13, 2012.

Assistance for Persons with Disabilities: Contact Doreen E. Beebe by August 13, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules update current requirements for training personnel, and the administration and recordkeeping of legend drugs. In addition, the amended rule will standardize training and record-keeping requirements for sodium pentobarbital, a controlled substance, mirroring the requirements established for approved legend drugs used in euthanizing animals.

Reasons Supporting Proposal: The proposed rules are needed in order to establish consistent enforceable standards for training, administration, storage, and recordkeeping for the use of approved drugs. The rules update the minimum training parameters for animal euthanasia training to ensure individuals receive adequate training in the proper techniques and understand the potential hazards associated in administration of approved drugs. Standards established for the storage, recordkeeping, and inventory controls of approved drugs are needed to protect the public from drug diversion and misuse.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.080, and 69.50.310.

Statute Being Implemented: RCW 69.41.080 and 69.50.310.

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

Name of Proponent: Department of health, board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen E. Beebe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834; Implementation and Enforcement: Steven Saxe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. 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 Doreen E. Beebe, Department of Health, Board of Pharmacy, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4834, fax (360) 236-2901, e-mail [wsbop@doh.wa.gov](mailto:wsbop@doh.wa.gov).

July 3, 2012

Steven Saxe

Acting Executive Director

## Chapter 246-886 WAC

### ANIMAL CONTROL—LEGEND DRUGS AND CONTROLLED SUBSTANCES

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-886-001 Purpose.** ~~The ((purpose of)) rules in this chapter ((shall be to ensure compliance with the law and rules regarding)) establish the use of legend drugs and controlled substances for euthanasia by animal control agencies and humane societies ((for the sole purpose of sedating animals prior to euthanasia, when necessary)), and ((for use in)) chemical capture programs.~~

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-886-010 Definitions.** ~~((1) "Board": The Washington state board of pharmacy.~~

~~((2)) The following definitions apply throughout this chapter unless the context clearly indicates otherwise:~~

~~((1)) "Animal control agency"((:)) means any agency authorized by law to euthanize or destroy animals; to sedate animals prior to euthanasia or to engage in chemical capture of animals.~~

~~((3)) (2) "Approved legend drugs" means any legend drug approved by the board for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.~~

~~((3)) "Board" means the Washington state board of pharmacy.~~

~~((4)) "Chemical capture programs" means wildlife management programs registered under RCW 69.50.320 and 69.41.080 to use approved legend drugs and controlled substance for chemical capture. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes.~~

~~((5)) "Controlled substances" means a drug, substance, or immediate precursor in Schedule I through V of Article II of chapter 69.50 RCW and Schedule I through V of chapter 246-887 WAC.~~

~~((6)) "Humane society"((:—A society incorporated and authorized to act under RCW 16.52.020.~~

~~((4)) means a nonprofit organization, association, or corporation, the primary purpose of which is to prevent cruelty to animals, place unwanted animals in homes, provide other services relating to "lost and found" pets, and provide animal care education to the public, as well as sponsoring a neutering program to control the animal population.~~

~~((7)) "Legend drugs"((:—"Legend drugs")) means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.~~

~~((5)) "Controlled substances": "Controlled substance" means a drug, substance, or immediate precursor in Schedule I through V of Article II of chapter 69.50 RCW.~~

~~((6)) "Approved legend drug": Any legend drug approved by the board for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.)~~ ~~((8)) "Registered entity" means any humane society or animal control agency registered under RCW 69.50.310.~~

### HUMANE SOCIETY AND ANIMAL CONTROL AGENCY

AMENDATORY SECTION (Amending Order 277B, filed 5/28/92, effective 6/28/92)

**WAC 246-886-020 Registration.** ~~((1)) Humane societies and animal control agencies registered with the board under RCW 69.50.310 ((and WAC 246-887-050 to)) may purchase, possess, and administer sodium pentobarbital ((as provided therein may also, under that registration, purchase, possess;)) and ((administer)) approved legend drugs as provided in RCW 69.41.080 ((and herein)).~~

~~((2)) To apply for registration a humane society or animal control agency shall submit to the board a completed application for registration on forms provided by the board.~~

~~((3)) A registered humane society or animal control agency shall:~~

~~((a)) Employ at least one individual who has completed a training program described in WAC 246-886-040;~~

~~((b)) Designate a responsible person as defined in WAC 246-886-060;~~

~~((c)) Maintain written policies and procedures available for inspection by the board that includes processes to:~~

~~((i)) Require completion of approved training as defined in WAC 246-886-040 by each of the agency's agents or person-~~

nel who possess, and administer approved legend drugs or sodium pentobarbital, prior to being approved to administer such drugs:

(ii) Establish a system for the secure storage of all drugs to prevent access by unauthorized personnel to guard against theft and diversion;

(iii) Establish a system for accountability of access, use, and stocking of drug inventory;

(iv) Ensure the proper disposal of all drugs in compliance with state and federal laws and rules; and

(v) Establish a method to investigate and report the theft, loss, or diversion of approved legend drugs and sodium pentobarbital, in compliance with state and federal laws and rules.

**AMENDATORY SECTION** (Amending WSR 94-02-060, filed 1/3/94, effective 2/3/94)

**WAC 246-886-030 Approved legend drugs.** ~~((+))~~

The following legend drugs are ~~((hereby))~~ designated as "approved legend drugs" for use by registered humane societies or animal control agencies for ~~((limited purposes))~~ pre-euthanasia sedation:

~~((a))~~ (1) Acetylpromazine.

~~((b))~~ (2) Ketamine.

(3) Medetomidine.

~~((e))~~ (4) Xylazine.

~~((2))~~ A humane society or animal control agency shall not be permitted to purchase, possess, or administer approved legend drugs unless that society or agency:

(a) Is registered with the board under RCW 69.50.310 and WAC 246-887-050 to purchase, possess, and administer sodium pentobarbital;

(b) Submits to the board written policies and procedures ensuring that only those of its agents and employees who have completed a board-approved training program will possess or administer approved legend drugs; and

(c) Has on its staff at least one individual who has completed a board-approved training program.

(3) The following legend drugs are hereby designated as "approved legend drugs" only for use by agents and biologists of the Washington state department of wildlife: ~~Naltrexone, detomidine, metdetomidine and yohimbine.~~

**NEW SECTION**

**WAC 246-886-035 Sodium pentobarbital—Approved controlled substance.** (1) Registered humane societies and animal control agencies may only use sodium pentobarbital to euthanize injured, sick, homeless or unwanted domestic pets, and domestic or wild animals.

(2) Registered humane societies and animal control agencies shall only possess sodium pentobarbital labeled "For veterinary use only."

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-886-040 Training of personnel.** (1) ~~((Approved legend drugs may only be administered by those personnel who have completed a board-approved training~~

~~program. Such))~~ Personnel of a registered humane society or animal control agency may administer approved legend drugs and sodium pentobarbital if the individual:

(a) Has been approved by the registered entity to administer these drugs; and

(b) Has completed a board-approved training program or training that is substantially equivalent.

(2) Application for approval of a training program ~~((s shall))~~ must be submitted to the board ~~((for approval no later than thirty days))~~ prior to the initiation of training.

~~((2))~~ ~~Any~~ (3) A training program ~~((shall))~~ must:

(a) Use a ~~((text))~~ manual approved by the board ~~((The board will make available a list of approved texts. Training programs shall))~~;

(b) Be at least four hours in length ~~((and shall))~~;

(c) Be taught by a licensed veterinarian or by a person who has completed an approved training program taught by a licensed veterinarian ~~((Each program shall require that the trainee participate in))~~;

(d) Require both didactic and practical training in the use of ~~((these drugs and shall be required to))~~ both approved legend drugs and sodium pentobarbital;

(e) Require a passing score of no less than seventy-five percent on a final examination ~~((Training programs shall))~~; and

(f) Include, but not be limited to, the following topics:

~~((a))~~ (i) Anatomy and physiology~~((;))~~;

(A) Methods of euthanasia;

(B) Routes of drug administration;

(C) Use of sedatives;

(D) Drug dosing;

(E) Use of restraints; and

(F) Process and verification of death;

~~((b))~~ (ii) Pharmacology of the drugs;

~~((e))~~ (iii) Indications, contraindications, and adverse effects;

~~((d))~~ (iv) Human hazards;

~~((e))~~ (v) Disposal of medical waste (needles, syringes, etc.);

~~((f))~~ (vi) Recordkeeping and security requirements; and

(vii) Applicable federal and state laws and rules.

(4) Training programs shall retain a list of persons who have successfully completed the program for a minimum of two years.

(5) The board shall maintain a registry of approved training programs and manuals. Interested persons may request a copy of the registry by contacting the board.

**AMENDATORY SECTION** (Amending Order 277B, filed 5/28/92, effective 6/28/92)

**WAC 246-886-060 Responsible individuals.** (1) ~~((Each agency or))~~ A registered humane society ~~((registered in accordance with WAC 246-887-050))~~ or animal control agency shall name a designated individual as the person who ~~((shall be))~~ is responsible for maintaining all records and submitting all reports required by applicable federal or state law or ~~((regulation, including chapter 246-887 WAC))~~ rule.



(2) ~~((This))~~ The designated individual ((shall also be)) is responsible for the ordering, possession, safe storage, and ((utilization)) use of the sodium pentobarbital and approved legend drugs.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-886-080 Recordkeeping and reports.** (1) A registered humane society or animal control agency must use a bound ((log book)) logbook with consecutively numbered pages ((shall be used)) to record the receipt, use, and disposition of approved legend drugs and sodium pentobarbital. ((No more than)) Only one drug ((shall)) may be recorded on any single page.

(2) The ((record shall be in)) logbook must have sufficient detail to allow an audit of the drug usage to be performed and must include:

(a) Date and time of administration;

(b) Route of administration;

(c) Identification number or other identifier assigned to the animal;

(d) Estimated weight of the animal;

(e) Estimated age and breed of the animal;

(f) Name of drug used;

(g) Dose of drug administered;

(h) Amount of drug wasted; and

(i) Initials of the primary person administering the drug.

(3) The logbook may omit subsections (2)(b), (d), and (e) of this section if the information is recorded in other records cross-referenced by the animal identification number or other assigned identifier.

~~((2) All invoices, record books, disposition records, and other records regarding approved legend drugs shall be maintained in a readily retrievable manner for no less than two years.~~

~~((3) All records shall be available for inspection by the state board of pharmacy or any officer who is authorized to enforce this chapter.))~~

(4) Personnel of the registered entity shall document any errors or discrepancies in the drug inventory in the logbook. He or she shall report the findings to the responsible supervisor for investigation.

(5) The registered entity shall report any unresolved discrepancies in writing to the board within seven days, and to the federal Drug Enforcement Administration if the loss includes a controlled substance.

(6) The designated individual, as defined in WAC 246-886-060, shall perform a physical inventory or count of approved legend drugs ((shall be performed and reconciled with the log book no less frequently than)) and sodium pentobarbital every six months. The physical inventory must be reconciled with the logbook.

~~((5) Any discrepancy in the actual inventory of approved legend drugs shall be documented in the log book and reported immediately to the responsible supervisor who shall investigate the discrepancy. Any discrepancy which has not been corrected within seven days shall be reported to the board of pharmacy in writing.~~

~~(6) Any approved)~~ (7) The supervisor or designated individual shall destroy legend drugs ((which has become)) that are unfit for use due to contamination or having passed its expiration date ((shall be destroyed by a supervisor and another staff member. Record of such destruction shall be made)). A second member of the staff shall witness drugs that are destroyed or wasted. The records of the destruction of drugs are documented in the ((log book which shall be signed and dated by)) logbook with the date of the event and signatures of the individuals involved.

(8) A registered entity shall return all unwanted or unused sodium pentobarbital to the manufacturer or destroy them in accordance with the rules and requirements of the board, the federal Drug Enforcement Administration, and the department of ecology.

(9) A registered entity shall maintain a written list of all authorized personnel who have demonstrated the qualifications to possess and administer approved legend drugs, and sodium pentobarbital.

(10) All records of the registered entity shall be available for inspection by the board or any officer who is authorized to enforce this chapter.

(11) The registered entity shall maintain the logbook and other related records for a minimum of two years.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-886-090 Drug storage and field use.** (1) The registered humane society and animal control agency must store all approved legend drugs ((shall be stored)) and sodium pentobarbital in a substantially constructed securely locked cabinet or drawer. Only those persons authorized to administer the drugs shall have keys to the storage area ((shall be restricted to those persons authorized to administer the drugs. Specifically designated agents and employees of the registrant may possess a supply of approved legend drugs for emergency field use. Such emergency supply shall be stored in a locked metal box securely attached to the vehicle)).

(2) The registered entity may designate only the following agents or personnel to possess and administer approved legend drugs and sodium pentobarbital for locations other than the registered location:

(a) Humane officer;

(b) Animal control enforcement officer;

(c) Animal control authority;

(d) Peace officer authorized by the chief of police, sheriff, or county commissioner.

(3) Specially designated agents of the registered entity may possess a supply of approved legend drugs and sodium pentobarbital for emergency field use. Such emergency supply shall be stored in a locked metal box securely attached to the vehicle. The designated agent is responsible for:

(a) The drug inventory present at the beginning of a shift and is present or accounted for at the end of each shift.

(b) Recording all receipts and use of approved legend drugs and sodium pentobarbital from the emergency supply.

AMENDATORY SECTION (Amending Order 191B, recodified as filed 8/30/91, effective 9/30/91)

**WAC 246-886-100 Violations.** The board may suspend or revoke a registration issued under chapter 69.50 RCW if the board determines that any agent or employee of a registered humane society or animal control agency has purchased, possessed, or administered legend drugs in violation of RCW 69.41.080 or 69.50.310, or this chapter or has otherwise demonstrated inadequate knowledge in the administration of legend drugs. The board's revocation or suspension of a registration ((as provided herein)) would restrict the registered entity's ability to use both approved legend drugs and sodium pentobarbital.

**CHEMICAL CAPTURE PROGRAM**

NEW SECTION

**WAC 246-886-180 Approved legend drugs.** The following legend drugs are designated as "approved legend drugs" for use by agents and biologists of the Washington state department of fish and wildlife chemical capture programs:

- (1) Naltrexone;
- (2) Detomidine;
- (3) Metdetomidine; and
- (4) Yohimbine.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-886-070 Notification.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-887-050 Sodium pentobarbital for animal euthanasia.
- WAC 246-887-060 Sodium pentobarbital administration.
- WAC 246-887-070 Sodium pentobarbital records and reports.

**WSR 12-14-112**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed July 5, 2012, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-093.

Title of Rule and Other Identifying Information: WAC 388-527-2754 Assets not subject to recovery and other limits on recovery.

Hearing Location(s): Office Building 2, Lookout Room, 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>), on August 7, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 8, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 7, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 25, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending the rules in estate recovery, WAC 388-527-2754, in order to incorporate needed language from the long-term care partnership (LTCP) program described in WAC 388-513-1400 through 388-513-1455. Individuals with a long-term care partnership policy can designate assets as protected from estate recovery based on the dollar amount paid out by a qualified LTCP policy approved by the Washington state insurance commissioner.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Rule is necessary because of federal law, [no further information supplied by agency.]

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, rollej@dshs.wa.gov, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

June 28, 2012

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-08-110, filed 4/7/10, effective 5/8/10)

**WAC 388-527-2754 Assets not subject to recovery and other limits on recovery.** (1) Recovery does not apply to the first fifty thousand dollars of the estate value at the time

of death and is limited to thirty-five percent of the remaining value of the estate for services the client:

(a) Received (~~before July 25~~) through July 24, 1993; and

(b) When the client died with:

(i) No surviving spouse;

(ii) No surviving child who is:

(A) Under twenty-one years of age;

(B) Blind; or

(C) Disabled.

(iii) A surviving child who is twenty-one years of age or older.

(2) For services received on and after ((July 24)) July 25, 1993, all services recoverable under WAC 388-527-2742 will be recovered, even from the first fifty thousand dollars of estate value that is exempt above, except as set forth in subsections (3) through (8) of this section.

(3) For a client who received services on and after ((July 24)) July 25, 1993 ((and before July 1)) through June 30, 1994, the following property, up to a combined fair market value of two thousand dollars, is not recovered from the estate of the client:

(a) Family heirlooms;

(b) Collectibles;

(c) Antiques;

(d) Papers;

(e) Jewelry;

(f) Photos; and

(g) Other personal effects of the deceased client and to which a surviving child is entitled.

(4) Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death:

(a) The deceased client was enrolled in a federally recognized tribe; and

(b) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:

(i) Within the most recent boundaries of a prior federal reservation; or

(ii) Within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.

(5) Protection of trust and nontrust property under subsection (4) is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nonetheless protect as family members, to a tribe or tribal organization and/or to one or more Indians.

(6) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(7) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(8) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

(9) Assets designated as protected ((under)) by a qualified long term care partnership ((agreement)) (QLTC) policy issued on or after December 1, 2011, may be disregarded for estate recovery purposes if:

(a) The insured individual's estate is the recipient of the estate recovery exemption; or

(b) The insured individual holds title to property which is potentially subject to a pre-death lien and that individual asserts the property is protected under the long term care (LTC) partnership policy.

(10) An individual must provide clear and convincing evidence that the asset in question was designated as protected to the office of financial recovery including:

(a) Proof of a valid QLTC partnership policy; and

(b) Verification from the LTC insurance company of the dollar amount paid out by the policy; and

(c) A current DSHS LTCP asset designation form when the LTC partnership policy paid out more than was previously designated.

(11) The insured individual's estate must provide evidence proving an asset is protected prior to the final recovery settlement.

#### WSR 12-14-113

#### PROPOSED RULES

#### NORTHWEST CLEAN

#### AIR AGENCY

[Filed July 5, 2012, 10:29 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency.

Hearing Location(s): Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, on August 7, 2012, at 9:00 a.m.

Date of Intended Adoption: August 9, 2012.

Submit Written Comments to: Mark Buford, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by August 7, 2012, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber by July 31, 2012, (360) 428-1617 ext. 215.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate a reference to a reasonably available control technology (RACT) fee schedule. Update the effectiveness dates under NWCAA 104 to ensure that the most recent versions of the

referenced regulations are adopted. Adopt 40 C.F.R. 63 Subpart ZZZZZ by reference.

Reasons Supporting Proposal: This rule change to incorporate a RACT fee schedule is intended to implement RCW 70.94.154(7).

Statutory Authority for Adoption: Chapter 70.94 RCW.  
Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

July 5, 2012  
Mark Buford  
Assistant Director

#### AMENDATORY SECTION

Section 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of July 18, 2012 (~~October 19, 2011~~), which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedures Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except - 035, -036, -070(8), -075, -099, -100, -101, -102, -103, -104, -105(8), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of July 18, 2012 (~~October 19, 2011~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E,

F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, YYYYY, ZZZZZ, CCCCCC, EEEEEEE, FFFFFFF, GGGGGG, MMMMMM, NNNNNN, SSSSSS, VVVVVV; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012

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

#### AMENDATORY SECTION

SECTION 324 - FEES

##### 324.1 Annual Registration Fees

~~(a)~~ (A) The NWCAA shall levy annual registration program fees as set forth in Section 324.1 ~~((e))~~ (C) to cover the costs of administering the registration program.

~~(b)~~ (B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of twenty-five percent (25%) of the registration fee for failure to pay the registration fee within thirty (30) days after the due date. The late penalty shall be in addition to the registration fee.

~~(e)~~ (C) All registered air pollution sources shall pay the appropriate registration fee(s) as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. A proposed resolution that changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and

any comments received during the public comment period have been considered.

#### 324.2 New Source Review Fees

((a)) (A) New source fees shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

((b)) (B) The applicable fee(s) shall be established in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA. A proposed resolution that changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days.

Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012

**WSR 12-14-115**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed July 5, 2012, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-084.

Title of Rule and Other Identifying Information: WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished, this proposal removes Steller sea lions from the state endangered species list.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 2-3, 2012, at 8:30 a.m.

Date of Intended Adoption: December 14, 2012.

Submit Written Comments to: Bill Tweit, Washington Department of Fish and Wildlife (WDFW), 600 Capitol Way North, Olympia, WA 98501-1091, e-mail William.Tweit@dfw.wa.gov, fax (360) 902-2158, by October 15, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by October 15, 2012, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The National Marine Fisheries Service (NMFS) published a proposed rule on April 18, 2012, to remove the eastern distinct population segment (DPS) of Steller sea lions (SSLs) from the list of threatened species under the federal Endangered Species Act (ESA). The eastern DPS includes all SSLs in Washington state. In response to petitions from Washington, Oregon, and Alaska, NMFS reviewed the current status of the eastern DPS and determined that the species has recovered and no longer meets the definition of a threatened species under the federal ESA. The draft NMFS status review is available at <http://www.fakr.noaa.gov/protectedresources/stellers/edps/status.htm>.

Pursuant to WAC 232-12-297 (6.1.1) and (6.2), the department intends to adopt the April 2012 NMFS draft status review as the preliminary species status report required in subsection (7.1) of the rule. In its review, NMFS considered all information relevant to the SSLs' status in Washington, as well as the rest of the species range on the Pacific coast, and addressed factors affecting its status. NMFS's draft status review has been evaluated by members of the public and the scientific community, including WDFW scientists, through a public comment period extending from April 18 to June 18,

2012. The draft review provides an analysis of the factors cited in WAC 232-12-297 (7.1.1) through (7.1.5). Interested parties are invited to submit new scientific data relevant to the draft review, classification recommendation, and SEPA findings to the department by October 15, 2012.

Reasons Supporting Proposal: SSLs were listed as threatened under the state ESA in 1993, following a federal listing in 1990. The federal recovery plan was published in 2008; a separate state recovery plan has not been developed. The department bases its proposed SSL delisting on scientific information contained in the department's petition to the NMFS, submitted on August 30, 2010, and in NMFS's April 2012 draft status review. The petition and the status review provide evidence that SSLs in Washington are no longer in danger of failing or declining and are no longer vulnerable. Both the petition and the status review provide evidence that the recovery objectives in the 2008 federal recovery plan have been achieved.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Rule is necessary because of federal law, 77 F.R. 23209.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Bill Tweit, WDFW Directors Office, Olympia, (360) 902-2723; and Enforcement: Chief Bruce Bjork, WDFW Enforcement, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Delisting Steller sea lions will have no economic impact or impose any costs on small businesses or school districts.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

July 5, 2012

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 08-09, filed 1/14/08, effective 2/14/08)

**WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished.** Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
<del>((Steller (northern) sea lion</del>	<del><i>Eumetopias jubatus</i></del>
North American lynx	<i>Lynx canadensis</i>
ferruginous hawk	<i>Buteo regalis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
green sea turtle	<i>Chelonia mydas</i>

Common Name	Scientific Name
loggerhead sea turtle	<i>Caretta caretta</i>
sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Phasianus columbianus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius gibbosus</i>
Common Loon	<i>Gavia immer</i>
bald eagle	<i>Haliaeetus leucocephalus</i>
Peregrine Falcon	<i>Falco peregrinus</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Spermophilus saturatus</i>
golden-mantled ground squirrel	<i>Spermophilus lateralis</i>
Washington ground squirrel	<i>Spermophilus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata;</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as

endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

**WSR 12-14-116**  
**PROPOSED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2012-03—Filed July 5, 2012, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-057.

Title of Rule and Other Identifying Information: Prescription drug benefit standards.

Hearing Location(s): Columbia Room, Legislature [Legislative] Building, Capitol Campus, Olympia, WA 98504, on August 7, 2012, at 10:00 a.m.

Date of Intended Adoption: August 7, 2012.

Submit Written Comments to: Meg Jones, P.O. Box 40258, Olympia, WA 98504, (360) 725-7170, e-mail megj@oic.wa.gov, fax (360) 586-3109, by August 6, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by August 6, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal explains the standards applied by the commissioner when reviewing a plan's prescription drug benefit. There are no proposed changes to existing rules.

Reasons Supporting Proposal: Prescription drug coverage, when offered, provides important treatment for covered persons under an individual or small group plan. If a covered person is diagnosed with a medical condition that a prescription helps to treat, the policy or plan should not unreasonably restrict the enrollee's ability to receive the medication through the prescription drug benefit. Otherwise, the prescription benefit does not provide the coverage that the covered person thought they were purchasing.

- A covered person with a condition for which they enroll in a clinical trial often has many aspects of care, including some prescriptions, paid for by the clinical trial program. When a policy or plan covers that care in one setting, it is unreasonable for the policy or plan to restrict coverage of that care, including coverage for prescription drugs that are not the subject of the clinical trial, when it is delivered while the person is enrolled in a clinical trial.
- Cost-containment strategies should not unreasonably interfere with a patient's treatment. If a generic drug doesn't work for a patient, a policy or plan should not restrict the patient's ability to receive

coverage for the right drug because it is not in the formulary or is not a generic drug.

- Complaints received about how the oral anticancer medication parity requirement, effective January 1, 2012, was implemented by carriers indicates that carriers need further guidance in order to apply the law. The rules seek to provide this guidance.
- Enrollees rely on the information they receive when planning their health care with their provider. Knowing what drugs are covered by a plan facilitates this planning. These rules propose that carriers must notify enrollees of formulary changes, and keep the public information about the formulary current.

Statutory Authority for Adoption: RCW 48.02.060, 48.02.062, 48.18.140, 48.43.525, 48.44.050, 48.44.440(2), 48.44.460(2), 48.46.200, 48.46.510.

Statute Being Implemented: RCW 48.18.110, 48.20.-389, 48.20.391, 48.20.525, 48.20.580, 48.21.143, 48.21.223, 48.21.325, 48.21.241, 48.44.020(2), 48.44.315, 48.44.323, 48.44.341, 48.44.440, 48.44.465, 48.46.060, 48.46.066, 48.46.272, 48.46.274, 48.46.291, 48.46.510, 48.46.535.

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

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, Insurance Building, P.O. Box 40258, Olympia, WA, (360) 725-7170; Implementation: Beth Berendt, 5000 Capitol Boulevard South, Tumwater, WA, (360) 725-7117; and Enforcement: Carol Sureau, 5000 Capitol Boulevard South, Tumwater, WA, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the entities subject to this regulation qualify as small businesses under chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504, (360) 725-7170, e-mail megj@oic.wa.gov, fax (360) 586-3109.

July 5, 2012

Mike Kreidler

Insurance Commissioner

NEW SECTION

**WAC 284-43-816 General prescription drug benefit requirements.** A health carrier must not offer, renew, or issue a health benefit plan providing a prescription drug benefit, including a formulary, which the commissioner determines results or can reasonably be expected to result in an unreasonable restriction on the treatment of patients. A carrier may restrict prescription drug coverage based on contract or plan terms and conditions that otherwise limit coverage, such as a preexisting condition waiting period, or medical necessity.

(1) A carrier must ensure that a prescription drug benefit covers prescribed drugs, medications or therapies that are the sole prescription available for a covered medical condition.

(2) A prescription drug benefit that only covers generic drugs constitutes an unreasonable restriction on the treatment of patients.

(3) Nothing in this chapter is intended to limit or deter the use of "Dispense as Written" prescriptions, subject to the terms and conditions of the health plan.

#### NEW SECTION

##### **WAC 284-43-817 Prescription drug benefit design.**

(1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative generic product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, requiring step therapy, protocols requiring clinical documentation that a preferred or generic drug is not therapeutically efficacious for the enrollee (sometimes referred to as a fail first protocol), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in subsection (3) of this section.

(3) A carrier must establish a process that a provider and enrollee may use to request a substitution for a covered prescribed therapy, drug or medication. The process must not unreasonably restrict an enrollee's access to nonformulary or alternate medications for refractory conditions. Used in this context, "refractory" means "not responsive to treatment." A carrier's substitution process must not result in delay in treating an enrollee's emergency fill or urgent care needs, or expedited requests for authorization. Subject to the terms and conditions of the policy that otherwise limit coverage, the carrier must permit substitution of a covered generic drug or formulary drug if:

(a) An enrollee does not tolerate the covered generic or formulary drug; or

(b) An enrollee's provider determines that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the substitution request; or

(c) The provider determines that a dosage is required for clinically efficacious treatment that differs from a carrier's formulary dosage limitation for the covered drug.

(4) A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

(a) Neither the substitution process criteria nor the type or volume of documentation required to support a substitution request may be unreasonably burdensome to the enrollee or their provider.

(b) The substitution process must be administered consistently, and include a documented consultation with the prescribing provider prior to any decision.

#### NEW SECTION

**WAC 284-43-818 Formulary changes.** A carrier is not required to use a formulary as part of its prescription drug benefit design. If a formulary is used, a carrier must, at a minimum, comply with these requirements when a formulary change occurs.

(1) In addition to the requirements set forth in WAC 284-30-450, a carrier must not exclude or remove a medication from its formulary if the medication is the sole prescription medication option available to treat a disease or condition for which the health benefit plan, policy or agreement otherwise provides coverage, unless the medication or drug is removed because the drug or medication becomes available over-the-counter, or for documented medical risk to patient health.

(2) A carrier must continue to cover a drug that is removed from the carrier's formulary for the time period required for an enrollee who is taking the medication at the time of the formulary change to use a carrier's substitution process to request continuation of coverage for the removed medication, and receive a decision through that process, unless the formulary change is based on:

(a) Patient safety requires swifter replacement;

(b) Withdrawal of the drug from the market;

(c) Availability of the drug over-the-counter; or

(d) The issue of black box warnings by the Federal Drug Administration.

(3) Formularies posted on a carrier or a carrier's contracted pharmacy benefit manager web site must be current. Unless the removal is done on an emergency basis, formulary changes must be posted thirty days before the effective date of the change. In the case of an emergency removal, the change must be posted as soon as practicable, without unreasonable delay.

#### NEW SECTION

**WAC 284-43-819 Cost-sharing for prescription drugs.** (1) A carrier and health plan unreasonably restrict the treatment of patients if an ancillary charge, in addition to the plan's normal copayment or coinsurance requirements, is imposed for a drug that is covered because of one of the circumstances set forth in either WAC 284-43-817 or 284-43-818. An ancillary charge means any payment required by a carrier that is in addition to or excess of cost-sharing explained in the policy or contract form as approved by the commissioner. Cost-sharing means amounts paid directly to a provider or pharmacy by an enrollee for services received under the health benefit plan, and includes copayment, coinsurance, or deductible amounts.

(2) When an enrollee requests a brand name drug or a drug from a higher tier within a tiered formulary and there is not a documented clinical basis for the substitution, a carrier may require the enrollee to pay for the difference in price between the drug that the formulary would have required, and the covered drug, in addition to the copayment. This charge



must reflect the actual cost difference, and must not contribute to the carrier's underwriting gain for the plan.

(3) When a carrier approves a substitution drug, whether or not the drug is in the carrier's formulary, the enrollee's cost-sharing for the substitution drug must be adjusted to reflect any discount agreements or other pricing adjustments for the drug that are available to a carrier. Any charge to the enrollee for a substitution drug must not contribute to the carrier's underwriting gain for the plan.

(4) If a carrier uses a tiered formulary in its prescription drug benefit design, and a substitute drug that is in the formulary is required based on one of the circumstances in either WAC 284-43-817 or 284-43-818, the enrollee's cost sharing may be based on the tier in which the carrier has placed the substitute drug.

#### NEW SECTION

**WAC 284-43-825 Prescription drug benefit disclosures.** (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit:

(a) A clear statement explaining that the health benefit plan, policy or agreement may cover brand name drugs or medication under the circumstances set forth in WAC 284-43-817 or 284-43-818, including, if a formulary is part of the benefit design, brand name drugs or other medication not in the formulary.

(b) A clear explanation of the substitution process that the enrollee or their provider must use to seek coverage of a prescription drug or medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, as soon as is practicable, at a minimum a carrier must ensure that prior notice of the change will be provided to covered enrollees using the drug. Electronic mail notice, provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, or written notice by first class mail at the last known address of the enrollee are acceptable methods of notice. If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its web site or at another location that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

#### NEW SECTION

**WAC 284-43-840 Anticancer medication.** A carrier and health plan must cover prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on at least a comparable basis to the plan's

coverage for the delivery of cancer chemotherapy medications administered in a clinical or medical setting.

(1) A carrier may not impose dollar limits, copayments, deductibles or coinsurance requirements on coverage for orally administered anticancer drugs or chemotherapy that are less favorable to an insured or enrollee than the dollar limits, copayments, deductibles or coinsurance requirements that apply to coverage for anticancer medication or chemotherapy that is administered intravenously or by injection.

(2) A carrier may not reclassify an anticancer medication or increase an enrollee's out-of-pocket costs as a method of compliance with the requirements of this section.

#### NEW SECTION

**WAC 284-43-850 Clinical trials.** A carrier must cover routine patient costs in clinical trials for all items and services consistent with the coverage provided in the plan or coverage that is typically covered for an enrollee who is not enrolled in a clinical trial. This includes the cost of prescription medication used for the direct clinical management of the enrollee, unless the trial is for the investigation of the prescription medication or the medication is typically provided by the research sponsors free of charge for any enrollee in the trial. The requirement does not apply to a service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis, or for items and services provided solely to satisfy data collection and analysis needs and that are not used in the direct clinical management of the enrollee.

Clinical trial means a phase I, phase II, phase III, or phase IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, funded or approved by:

(1) One of the National Institutes of Health (NIH);

(2) An NIH cooperative group or center which is a formal network of facilities that collaborate on research projects and have an established NIH-approval peer review program operating within the group including, but not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology Program;

(3) The federal Departments of Veterans Affairs or Defense;

(4) An institutional review board of an institution in this state that has a multiple project assurance contract approval by the Office of Protection for the Research Risks of the NIH; and

(5) A qualified research entity that meets the criteria for NIH Center Support Grant eligibility.