

**WSR 14-24-043**  
**PROPOSED RULES**  
**WASHINGTON STATE PATROL**

[Filed November 24, 2014, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-107.

Title of Rule and Other Identifying Information: Chapter 212-17 WAC, Fireworks.

Hearing Location(s): General Administration (GA) Building, Room G-3, 210 11th Avenue, Olympia, WA 98504-2600, on January 6, 2015, at 1:00 p.m.

Date of Intended Adoption: January 7, 2015.

Submit Written Comments to: Dan Johnson, P.O. Box 42642, Olympia, WA 98501-2642, e-mail dan.johnson@wsp.wa.gov, fax (360) 596-3913, by January 2, 2015.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by January 2, 2015, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will include but may not be limited to:

- Adoption of established national and industry standards which will remove a number of section[s] and the entire appendix of the existing rules.
- Consolidation of the definitions and removal of redundant definitions for things already defined in chapter 70-77 [70.77] RCW.
- Identification of rule violations and penalties.
- Establish different levels of a pyrotechnic operator consistent with industry and other states.
- Identify when federal licenses are required with fireworks that are designated explosives.

Reasons Supporting Proposal: Provide clarification regarding the process. Clearly articulate restrictions, requirements and penalties which will reduce liability and increase public safety.

Statutory Authority for Adoption: RCW 70.77.250.

Statute Being Implemented: Chapter 70.77 RCW.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Dan Johnson, GA Building, P.O. Box 42642, Olympia, WA 98504, (360) 596-3913; and Enforcement: WSP Fire Protection Bureau, GA Building, P.O. Box 42642, Olympia, WA 98504, (360) 596-4000.

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

Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** The Washington state patrol, fire protection bureau (FPB), licensing section is proposing amendments to chapter 212-17 WAC, Fireworks.

The purpose of the chapter is to develop rules to implement the state fireworks law from chapter 70.77 RCW.

The proposed major changes to the chapter are:

- Reorganization of the entire chapter.
- Adoption of several National Fire Protection Association (NFPA) standards regarding fireworks (manufacture, storage, retail sales, public display, proximate display and flame effect in close proximity to an audience).
- Adoption of American Pyrotechnic Association (APA) standard 87-1 which is the standard for fireworks construction and approval for transportation.
- Define and identify violations and associated penalties.
- Removal of duplicative or redundant language.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)—DETERMINATION OF NEED:** Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

These proposed rules impact fireworks manufacturers, importers, wholesalers, retail sales and pyrotechnic companies. These businesses fall under the following North American Industry Classification System (NAICS) codes:

325998	Fireworks manufacturing
423920	Fireworks merchant wholesalers
424690	Explosives (except ammunition, fireworks) merchant wholesalers
453998	Fireworks shops (i.e., permanent location)
713990	Fireworks display services

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

The fireworks licensing section has analyzed the proposed rule amendments and has determined that small businesses will be impacted by these changes, with some costs considered "more than minor" and disproportionate to small businesses.

**INDUSTRY ANALYSIS:** The fireworks licensing section is responsible for the issuance of fireworks licenses to manufacturers, importers, wholesalers, retail sales, general display and pyrotechnic operators licenses. As part of their licensing and monitoring, the program maintains an internal database of current and past fireworks licensees. Using this database gives more accurate information about impacted small businesses for this analysis than the four-digit NAICS codes.

The fireworks licensing section has determined that there are no known existing agencies that meet the criteria for small businesses under RCW 19.85.020. These proposed rules impact those with or without a fireworks license.

**INVOLVEMENT OF SMALL BUSINESSES:** A number of the proposed changes were brought forward through discussions with fourteen stakeholders representing both consumer and display fireworks companies and individuals who are fireworks licensees. Seven stakeholders were fire marshals from city and county jurisdictions.

The defining and identification of violations and associated penalties for noncompliance would apply to a relative [relatively] small number of licensees. Most violations are committed by persons not requiring a license.

**COST OF COMPLIANCE:** Under chapter 19.85 RCW, the licensing section has considered annual costs to small businesses that are fifty dollars or more per licensee. To consider the cost of compliance, FPB has elected to look at cost per type of license. This is because several licenses are issued by the FPB and each license allows for a different activity to occur.

Two licenses have potential costs to small businesses that could exceed fifty dollars per license. These would be the fireworks importer and retail fireworks licenses.

Those licenses issued to a fireworks wholesaler, importer and manufacturer would see potentially the largest penalties based upon a penalty per package. Penalties of this nature have been rarely issued as the this violation hasn't been clearly defined or identified. A licensee would only be issued a civil penalty if they are importing, selling or possessing illegal fireworks. The number of violations are not anticipated to increase.

**General Costs:** The licensing section analysis revealed that there are costs imposed by the proposed amendments. These cost are associated with the identification of rule violations and penalty assessment.

**Specific Cost - Fireworks Testing:** WAC 212-17-015 requires that all fireworks meet the testing requirements established by APA 87-1, U.S. DOT regulations and Consumer Product Safety Commission (CPSC) standards. This would apply to an importer of fireworks. Fireworks that are imported into Washington come primarily from China. To ensure these fireworks meet the requirements of a consumer firework, they are subject to inspection and testing by the U.S. CPSC. Other states allow only those fireworks that are third-party tested to be sold.

Of the twenty-six licensed importers:

- Sixteen already submit to third-party testing.
- Six purchase their fireworks from wholesalers outside of the state [of] Washington and do not import.
- Four do not participate in third-party testing. Two are display companies which this testing is not yet required for display fireworks and two are fireworks wholesalers who purchase their fireworks from other wholesalers in the state.

There is no membership or annual fee for third-party testing. The shipper pays a fee of \$.50 per box that is tested and shipped. A random sampling based on the number of boxes in a shipment are tested for compliance before it leaves the manufacturer in China[.] Fireworks that pass the testing are then approved for shipment to [the] United States. A sticker is applied to the boxes to show that this testing was conducted.

WAC 204-17-085 requires documentation to be presented to show compliance with testing as well. This requirement will not add additional costs to the importer as the U.S. CPSC already requires these records to be maintained. WAC 212-17-145 provides that a licensed importer who has a shipment of imported fireworks inspected and tested by the CPSC

that do not meet the federal standards to join a firework trade association as part of mitigating any penalty issued.

The cost of joining a trade related organization is between \$100 and \$375 for individuals and a business between \$1,300 and \$10,000 which is based on the gross sales.

The penalty for importing fireworks that do not meet federal standards that were not third-party tested is \$100 per box. Joining a trade association, mitigating the civil penalty is intended to gain compliance and prevent the importation of illegal fireworks.

**Specific Cost - Retail Firework Sales - Signage:**

Adopting the NFPA standard 1124 would impact all of the retail fireworks sales facilities as the distance for "No Fireworks Discharge" and "No Smoking" would change. Currently the rules require a distance of one hundred feet for no fireworks discharge and twenty feet for smoking so that signs read:

- "NO FIREWORKS DISCHARGE WITHIN 100 FEET"
- "NO SMOKING WITHIN 20 FEET"

The adopted standard changes the distances to three hundred feet for fireworks discharge and fifty feet for no smoking, therefore the new signs would need to be purchased to read:

- "NO FIREWORKS DISCHARGE WITHIN 300 FEET"
- "NO SMOKING WITHIN 50 FEET"

Surveying three fireworks wholesalers (small, medium and largest), that together account for fifty-two percent of all of the retail fireworks licenses purchased, they didn't foresee an increase cost in replacing signs as they only use the signs for one sales season. Additionally, the current inventory of signs could easily be altered until the inventory is exhausted. The cost to fix existing signs would be less than five dollars for all signs.

If new signs were to be purchased the cost would vary upon the material the sign was printed on. Paper signs average \$3 each or \$24 per license. Signs made of aluminum or plastic average \$24 each \$144 per license. Using the median, the average cost would be \$84 per retail license to replace their signs.

**TOTAL COST:** The total anticipated cost for a licensee would be for the signs and depending on if they are replacing permanent [permanent] signs or disposable signs the cost would be less than \$100.

**DISPROPORTIONATE ECONOMIC IMPACT ANALYSIS:** When proposed rule changes cause more than minor costs to small businesses, the Regulatory Fairness Act requires an analysis that compares these costs between small businesses and ten percent of the largest businesses.

Why the cost would appear to be considered disproportionate is that the assessment of penalties in some instances would be based upon the number of packages in violation. A penalty based on the number of packages in violation. A container of illegal fireworks would have the same penalty issued but depending on the company size or revenue this would appear disproportionate [disproportionate]. The impact of any assessed penalty or suspension of a license would vary by the affected size of the licensee.

**MITIGATING COSTS:** The licensing section has plans for mitigating disproportionate costs for small businesses by offering an informal hearing process in which penalties can be mitigated based upon severity and contractor compliance.

Mitigating the cost of the signs may not be possible. During the meeting with the stakeholders, both the industry and enforcement representatives were in favor of increasing the distance for no discharge of fireworks. The no smoking signs will need to be changed from the current twenty feet to a minimum of twenty-five feet regardless of the adoption of the NFPA standard. Another state law prohibits smoking closer than twenty-five feet from any building.

**EVALUATION OF PROBABLE COST AND PROBABLE BENEFITS:** Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), the FPB has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), the FPB has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

**BENEFITS FOR PROPOSED RULES:** The benefit of the proposed rule changes is that it clearly articulates the violations associated with specific rules and penalties which should aid local law enforcement and fire officials when taking enforcement action.

The rule has also adopted the standards developed by NFPA and the APA for storage, use and construction of fireworks. Adoption of these national standard[s] will provide consistency between jurisdictions.

**JOBS CREATED OR LOST:** The licensing section does not believe any jobs will be lost as a result of small businesses complying with these rules. The current rules outline certain requirements be met of licensees. The general requirements under the proposed rules [rule] changes have not changed so the agency does not anticipate that there will be an impact on jobs.

**CONCLUSION:** The licensing section has given careful consideration to the impact of proposed rules in chapter 212 [212-17] WAC, Fireworks on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, the licensing section has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate.

Please contact Dan Johnson if you have any questions at (360) 596-3913.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPRules@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPRules@wsp.wa.gov.

November 24, 2014  
John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

**WAC 212-17-015 Scope.** These rules apply to ~~((fireworks))~~ the manufacture, storage, transportation, sale, importation, possession, classification, and discharge of fireworks of every class or kind in this state and improvised explosive device (IED).

- Exceptions:
- (1) Explosives, as defined and regulated under the state explosives law, chapter 70.74 RCW;
  - (2) Firearms and ammunition, including blank cartridges and pistols of the type used at sporting events or theatrical productions;
  - (3) Research or experiments with rockets or missiles, including model rockets and model rocket motors designed, sold and used for the purpose of propelling recoverable aero models;
  - (4) Toy paper and/or plastic caps, ~~((manufactured in accordance with DOT regulations, 49 C.F.R. 173.100(p), 1981, as of October 29, 1982,))~~ or toy pistols, toy canes, toy guns, or other devices in which toy paper and/or plastic caps are used;
  - (5) Emergency signaling devices including, but not limited to, devices intended for signaling, illuminating, and incendiary purposes such as:
    - (a) Railway torpedoes;
    - (b) Airplane flares;
    - (c) Illuminating projectiles;
    - (d) Incendiary and smoke projectiles;
    - (e) Flash cartridges (formerly classified as special fireworks);
    - (6) Line throwing rocket classified as UN0453 with DOT regulations 49 C.F.R. 171-173.

#### NEW SECTION

**WAC 212-17-017 Preemption.** (1) The state of Washington does not preempt a city or county from imposing as authorized in RCW 70.77.250(4) where a city or county may enact an ordinance that imposes the following:

- (a) Ban the use and sale of fireworks.
- (b) Restrict the dates of sale, purchase, possession, and use of fireworks.
- (c) If sales and use are allowed, may restrict the types of fireworks that can be:
  - (i) Sold;
  - (ii) Purchased; or
  - (iii) Used within its boundaries.
- (2) Any such ordinance that is more restrictive than state law must have an effective date no sooner than one year after their adoption.
- (3) In those cities or counties that allow the sale, purchase, and use of consumer fireworks, the state of Washington preempts the city or county as authorized in RCW 70.77.-270(2) to establish the minimum statewide standards for consumer fireworks retail sales facilities (CFRS) as defined in WAC 212-17-028.
  - (a) The use of temporary structures for the temporary sale or storage of consumer fireworks is exempt from the International Building Code, International Fire Code, and local ordinances.

(b) Exception: Where a city or county ordinance regulates the sale or use of fireworks as a part of that city's or that county's building code or fire code, those provisions of that county's or that city's building code or fire code which are not in conflict with this rule are not hereby preempted or affected.

(4) Where a city or county allows CFRS the following rules constitute the entire and exclusive authority for regulation and preempt a city or county authority to enact or enforce any other regulations that are more restrictive than the minimum requirements.

(5) The preemption of local jurisdiction is specific, but not limited to:

(a) Types of structure and construction material that may be used.

(b) Operation of CFRS.

(c) Area around the CFRS:

(i) Setback requirements;

(ii) Siting of property;

(iii) Required flagging;

(iv) Clean up, location of, areas surrounding, after the use of said structure;

(v) Signage.

(d) Transportation of fireworks to and from the CFRS.

(e) Temporary storage of fireworks associated with the CFRS.

(6) The use of temporary structures for the temporary sale or storage of consumer fireworks is exempt from the International Building Code, International Fire Code, and local ordinances except that where a city or county ordinance regulates the sale or use of fireworks as a part of that city's or that county's building code or fire code, those provisions of that county's or that city's building code or fire code which are not in conflict with this rule are not hereby preempted or affected.

#### NEW SECTION

**WAC 212-17-021 Adoption of code.** (1) The state fire marshal adopts the following standards in effect on the effective date of this section unless otherwise outlined in this chapter:

(a) National Fire Protection Association (NFPA) codes:

(i) NFPA 140 2013 edition, Standard on motion picture and television production, studio soundstages, approved production facilities, and production locations.

(ii) NFPA 160 2011 edition, Standard for the use of flame effects before an audience.

(iii) NFPA 1123 2013 edition, Code for fireworks display.

(iv) NFPA 1124 August 2012 edition, Code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles.

(v) NFPA 1126 2011 edition, Standard for the use of pyrotechnics before a proximate audience.

(b) American Pyrotechnic Association (APA) standard:

(i) APA Standard 87-01 2004 edition, Standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics.

(ii) All fireworks devices will meet the following chemical content, design, and construction requirements required in APA 87-01.

(2) If there is a conflict between a standard and rule, the standard will be followed unless the rule is more stringent.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-025 Definition and classification— "Fireworks."** ~~((The term "fireworks" shall mean any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic, consumer, or display fireworks.))~~ (1) **Consumer fireworks** as defined in RCW 70.77.136 includes the following devices manufactured in accordance with the American Pyrotechnics Association Standards outlined in WAC 212-17-021:

**(a) Ground and hand-held sparkling devices.**

**(i) Wire sparkler/dipped stick.** These devices consist of a metal wire or wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced.

**(A) Sparklers may contain up to 100 grams of pyrotechnic composition per item.**

**(B) Sparklers typically use:**

**(I) Barium nitrate as the oxidizer, with aluminum and dextrine as fuels.**

**(II) Iron filings produce the spark effect.**

**(III) Color-producing sparklers use potassium perchlorate as an oxidizer.**

**(C) Any sparkler containing a chlorate or perchlorate oxidizer is limited to a maximum of 5 grams of composition per article.**

**(D) Items not included in Division 1.4, 1.5, or 1.6 explosives under DOT regulations, are included in this category.**

**(ii) Cylindrical fountain.** Cylindrical tubes containing not more than 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed 200 grams.

**(iii) Cone fountain.** Cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed 200 grams.

**(iv) Illuminating torch.** Cylindrical tube containing not more than 100 grams of pyrotechnic composition that produces a colored flame upon ignition. May be spike, base or hand-held. When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed 200 grams.

**(v) Wheel.** Pyrotechnic device intended to be attached to a post or tree by means of a nail or string. May have one or more drivers, each of which may not contact more than 60

grams of pyrotechnic composition. No wheel may contain more than 200 grams total pyrotechnic composition. Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a whistling effect.

(vi) **Ground spinner.** Small device containing not more than 20 grams of pyrotechnic composition, venting out of orifice usually on the side of the tube. Similar in operation to a wheel in design and effect and placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device.

(vii) **Flutter sparkler.** Narrow paper tube attached to a stick or wire and filled with not more than 5 grams of pyrotechnic composition that produces color and sparks upon ignition. The paper at one end of the tube is ignited to make the device function.

**(b) Aerial device.**

(i) **Helicopter, aerial spinner.** A tube not more than 20 grams of pyrotechnic composition with a propeller or blade is attached, which upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight.

(ii) **Roman candles.** Heavy paper or cardboard tube containing not more than 20 grams of pyrotechnic composition. Upon ignition "stars" are individually expelled.

(iii) **Mine, shell.** Heavy cardboard or paper tube usually attached containing not more than 60 grams of pyrotechnic composition (lift charge, burst charge, and visible/audio effect composition).

(A) Upon ignition, "stars," or other devices are propelled into the air.

(B) A shell refers to a device that propels a component that subsequently bursts open in the air.

(C) A mine refers to a device with no internal components containing a bursting charge.

(D) A mine or shell device may contain more than one tube provided the tubes fire in sequence upon ignition of one inch external fuse.

(E) Total chemical composition including lift charges of any multiple tube devices may not exceed 200 grams. The maximum quantity of lift charge in any one tube of a mine or shell device will not exceed 20 grams and the maximum quantity of break or bursting charge in any component shall not exceed twenty-five percent of total weight chemical composition in the component.

(iv) **Smoke device.** Small plastic or paper item containing not more than 100 grams of pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(v) **Aerial shell kit.** A package (kit) containing a cardboard, high-density polyethylene (HDPE) or equivalent launching tube and not more than twelve small aerial shells.

(A) Each shell is limited to a maximum of 60 grams of total composition (lift charge, burst charge, and visible/audible effect composition) and the maximum diameter of each shell will not exceed one and three-quarters inches.

(B) In addition the maximum quantity of lift charge in any shell will not exceed 20 grams and the maximum quantity of break or bursting charge in any shell will not exceed twenty-five percent of the total weight of chemical composition in the shell.

(C) The total chemical composition of all the shells in a kit, including lift charge, will not exceed 400 grams.

(D) All launching tubes must be capable of firing twice the number of shells in the kit without failure of the tube.

(E) Each package of twelve shells must comply with all warning label requirements of CPSC.

Note: Shells that are offered for transportation without a launching tube may not be approved as Fireworks, 1.4G, UN0336 under the provisions of this Standard, except as provided in section 3.1.2.6 for kits. Aerial shells without launching tubes may be approved for transportation as Fireworks, 1.3G, UN0335.

**(c) Multiple tube fireworks devices - Cake.**

(i) Multiple tube devices:

(A) Contain more than one cardboard tube;

(B) Have one external fuse that upon ignition causes all of the tubes to function in sequence;

(C) Are either individually attached to a wood or plastic base;

(D) Are normally limited to a maximum of 200 grams of total pyrotechnic composition for approval as Fireworks, UN0336, 1.4G or Article, Pyrotechnic, UN0431, 1.4G under this standard.

(ii) Cake devices contain the same as multiple tube devices and include the following characteristics and requirements:

(A) Tubes are dense-packed, held together by glue, wire, string, or other means that securely holds the tubes together during operation.

(B) The weight of chemical composition per tube is limited to the weight limit for the specific type of device in the tube.

(C) The connecting fuses on multiple tube devices must be fused in sequence so that the tubes fire sequentially rather than all at once.

(iii) Exception for items with more than one tube:

(A) When the tubes are securely attached to a wood or plastic base, and the tubes are separated from each other on the base by a distance of at least 0.50 inch (12.7 mm), a maximum total weight of 500 grams of pyrotechnic composition will be permitted for approval as 1.4G.

(B) This applies to only the following types of devices:

(I) Cylindrical fountain;

(II) Cone fountain;

(III) Illuminating torch;

(IV) Mine, shell;

(V) Multiple tube fireworks devices - Cake.

(2) **"Dangerous fireworks"** means:

(a) Torpedoes of all kinds which explode on impact are prohibited.

(b) Fireworks that are examined or tested for compliance with standards established for consumer fireworks and determined to possess characteristics of design or construction that make such item unsafe for use by any person not specially qualified or trained in the use of fireworks. The determination may be made by:

(i) The consumer safety product commission;

(ii) Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iii) State fire marshals office; or

(iv) Department of labor and industries.

(c) All fireworks designed and intended by the manufacturer to create the element of surprise upon the user.

(d) Fireworks that explode by friction, unless otherwise classified by the state fire marshal pursuant to this chapter.

(3) "Display fireworks" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Types of display fireworks:

(a) Aerial shell that is:

(i) Cylindrical or spherical cartridge containing:

(A) Lift charge;

(B) Burst charge;

(C) Effect composition.

(ii) Commonly sized from two to six inches in diameter; and

(iii) Fired from metal, high-density polyethylene (HDPE), fiberglass, or heavy cardboard tubes.

(b) Salute that is:

(i) Paper-wrapped, cardboard tube, or sphere containing explosive composition in excess of 130 mg (2 grains); and

(ii) Upon ignition, produces noise and a flash of light.

(4) "Explosive pest control devices (EPCDs)" or "agricultural and wildlife fireworks" means pest control pyrotechnics (fireworks) that contain black powder, flash powder, or a similar pyrotechnic composition used for pest control efforts within the agricultural, aquacultural (commercial fishing operations), horticultural, and aviation industries when wildlife damage agriculture, property, or threaten public safety or health.

(a) EPCDs are not a consumer firework.

(i) They are regulated under the federal explosives laws.

(ii) To manufacture, import, or distribute EPCDs, requires a federal explosives license, and those who wish to receive explosives must acquire a federal explosives permit, unless otherwise previously exempted.

(b) Commonly known types of EPCDs are:

(i) "Bird bombs, shell crackers or cracker shells" means 12 gauge shotgun shells containing a sound and flash explosive charge that is designed to explode in air or on the surface of the water at a distance of seventy-five to one hundred yards from the point of discharge.

(ii) "Screamer rockets or banger rockets" means units ignited using a hand-held launcher, similar to a .22 short caliber starter pistol, that fly through the air, emitting a loud whistling sound (screamers) similar to other whistling type fireworks, or end in an impulsive report similar to a firecracker.

(iii) "Seal bomb" means underwater firecrackers available domestically, similar to "M-80" firecrackers and contain approximately 2.3 grams of "flash and sound" charge mixture in a sealed cardboard tube, fitted with an eight to nine second waterproof fuse. UN0471 Class 1.4E explosives or NA0412 Class 1.4E explosive.

(iv) "Rocket nets" means a net that is propelled by regulated explosive materials to capture or scare away pest wildlife.

(v) "Rope firecrackers" or "rope salutes" means the fuses of large firecrackers are inserted through cotton rope. As the rope burns, the fuses are ignited.

(c) These items are classified under U.S. Department of Transportation regulations as:

(i) 1.3G Firework;

(ii) 1.4E Explosive (not otherwise specified);

(iii) 1.4S Explosive (not otherwise specified).

(d) Devices used for other than bona fide pest control purposes if approved in accordance with Title 49 C.F.R., Section 173.56.

(5) "Flame effect" means the combustion of solids, liquids, or gases to produce thermal, physical, visual, or audible phenomena before an audience in one of the three methods:

(a) "Automatic flame effect" means a flame effect that is supervised and fired by an automatic control system.

(b) "Manual flame effect" means a flame effect that is operated manually without the use of an automatic control system.

(c) "Portable flame effects" means flame effects that are designed and installed, either in a permanent or temporary installation, and that are designed to move or be moved in the course of operation or installation.

(6) "Forbidden devices" means any device intended for sale to the public that produces an audible effect (other than a whistle) by a charge of more than 130 mg (2 grains) of explosive composition per report.

(7) "Prohibited components" means no component of any consumer fireworks device or novelty may upon functioning, project or disperse any metal, glass, or brittle plastic fragments.

(8) "Prohibited consumer fireworks" means a firework that meets the definition and requirements of a consumer firework promulgated by the U.S. Consumer Product Safety Commission in Title 16, Code of Federal Regulations but the sale, use, and possession is prohibited by the state of Washington unless otherwise prescribed in RCW 70.77.311.

(9) "Theatrical pyrotechnics" means pyrotechnics that are approved as UN0431, Articles, Pyrotechnic, and 1.4G do not bear a warning label that resembles the required wording on a consumer fireworks device.

(10) "Trick and novelty devices" means any small fireworks devices that are not regulated as explosives and are not classified as consumer or display fireworks by the United States Department of Transportation.

(a) These devices must still comply with all labeling requirements of the Consumer Product Safety Commission applicable to consumer fireworks devices as required in WAC 212-17-055 and includes the following items as defined in APA 87-1:

(i) Snakes, glow worm. Pressed pellet of pyrotechnic composition that contains 2 grams or less of composition per article. Upon burning produces a large, snake-like ash that expands in length as the pellet burns.

(ii) Party popper. Small plastic or paper device containing not more than 16 mg of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.

(iii) Snapper. Small, paper-wrapped item containing not more than 1.0 mg of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report.

(iv) Toy smoke devices. Small devices consisting of cork-like spheres, or cardboard or plastic tubes, containing not more than 5 grams of pyrotechnic composition that produces a small cloud of smoke after activation. Device is typically ignited by means of safety fuse.

(v) Toy caps. Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps, containing a small amount of explosive composition per cap.

(b) Trick and novelty devices does not include any kind of sparklers as outlined in subsection (1)(a) of this section.

#### NEW SECTION

**WAC 212-17-028 Definitions—General.** (1) "**Citation**" means a document issued by the office of the state fire marshal pursuant to chapter 70.77 RCW to issue a civil penalty for a violation of RCW 70.77.480 through 70.77.520. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(2) "**Consumer fireworks for personal use**" means consumer fireworks with a net explosive weight or weight of the pyrotechnic composition which does not exceed one hundred twenty-five pounds. Where the actual weight of the pyrotechnic composition of consumer fireworks is not known, twenty-five percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

(3) "**Consumer fireworks retail sales (CFRS) facility**" means a permanent or temporary building or structure, CFRS stand, tent, canopy, or membrane structure that is used primarily for the retail display and sale of consumer fireworks to the public.

(4) "**Facility**" means a consumer fireworks retail sales facility, distribution facility, or manufacturing facility.

(5) "**Formal hearing**" is a hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion issued.

(6) "**Hazard**" means a condition which could result in fire loss, injury, or damage to a person or property.

(7) "**Hearings request**" means the written request for a formal hearing to contest a civil penalty.

(8) "**Inhabited building**" means any building or structure regularly used in whole or part as a place of human habitation.

(9) "**International Building Code**" means the edition currently adopted by chapter 51-50 WAC.

(10) "**International Fire Code**" means the edition currently adopted by chapter 51-54A WAC.

(11) "**Magazine**" means a building or structure, other than an explosives manufacturing building approved for the storage of explosive materials.

(12) "**Permanent structure**" means an enclosure or shelter erected for a period of thirty days or more used for the sales, at retail or wholesale, of legal fireworks of any kind.

(13) "**Person**" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state,

state agencies, counties, municipal corporations, school districts, and other public corporations.

(14) "**Private display**" means an entertainment feature where the public is not invited or admitted to view the display or discharge of display fireworks.

(15) "**Private way**" means any privately owned driveway, lane, access way, or similar parcel of land essentially unobstructed from the ground to the sky which serves as access from private property to a public road.

(16) "**Public road**" means any street or alley essentially unobstructed from the ground to the sky which is deeded, dedicated, or otherwise permanently appropriated to the public for public use.

(17) "**Recognized testing laboratory**" means a nationally recognized testing laboratory approved by the state fire marshal.

(18) "**State fire marshal**" means the director of the fire protection bureau of the Washington state patrol as appointed by the chief or his or her designee.

(19) "**Temperature overheat protection**" means a device which immediately interrupts the power to the heating element of a portable heating unit when the portable heating unit exceeds its designed operating temperature.

(20) "**Temporary power drop**" means an electrical service connection to a temporary retail fireworks stand.

(21) "**Temporary storage structure**" means a building or other structure used for storage of consumer fireworks directly related to a retail fireworks stand and authorized within the scope of a retail fireworks stand permit.

(22) "**Temporary structure**" means an enclosure or shelter erected for a period of less than thirty days and not otherwise defined in the International Fire Code as a tent or canopy.

(23) "**Tip-over protection**" means a device which immediately interrupts the power to the heating element of a portable heating unit when the portable heating unit is tipped or tilted more than forty-five degrees from its designed operating position.

AMENDATORY SECTION (Amending WSR 84-23-009, filed 11/9/84)

**WAC 212-17-045 (~~Definition and classification~~)**  
**Explosive pest control devices (EPCDs) or "agricultural and wildlife fireworks."** (~~The term "agricultural and wildlife fireworks" shall mean (1) fireworks devices, including but not limited to, firecrackers containing more than 50 mg (.772 grains) of pyrotechnic composition designed to produce audible effects, which are distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of Interior (or by equivalent state or local governmental agencies); and, such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate or, (2) seal control units, purchased under a Certificate of Inclusion, issued by the United States Department of Commerce, National Oceanic and Atmosphere Administration, or sold by bona fide dealers to~~)

~~licensed commercial fishermen or licensed commercial fishing boat owners for marine mammal control.)~~ (1) No state license is required to purchase or use explosive pest control devices (EPCDs) or agricultural and wildlife fireworks; however, as they are classified explosive devices and regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) requiring a federal explosives permit.

(2) In order to purchase or use EPCDs, a federal explosives permit is required.

(a) Government agencies meeting the requirement of RCW 70.77.311 are not required to have a permit.

(b) For farmers, ranchers, and growers to receive or purchase EPCDs a written wildlife management plan or contract administered by the United States Department of the Interior or an equivalent state or local governmental agency is needed.

(i) The wildlife management plan or contract should describe the wildlife management problem that requires use of such devices.

(A) The wildlife management problem that requires use of such devices.

(B) The frequency and duration of using EPCDs.

(ii) The quantity of EPCDs is no greater than required to control the problem described.

(c) For commercial fishers and licensed commercial fishing boat owners to receive or purchase EPCDs for use on pinnipeds (seals and sea lions), a written plan is needed to receive a Certificate of Inclusion, issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration.

(i) The marine mammal management plan should describe the wildlife management problem that requires use of such devices.

(ii) The frequency and duration of using EPCDs.

(iii) The quantity of EPCDs is of a quantity no greater than required to control the problem described.

(3) Unless specifically required to be used, EPCDs are not to be used when a burn ban is in place or there is an increased fire danger.

(4) EPCDs are not to be used in a reckless or malicious manner that is not reasonable or prudent that threatens to injure or kill wildlife or persons.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

(6) The state fire marshal will notify the Washington state department of fish and wildlife of any violations.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-050 Firework device chemical content(~~, construction~~).** (1) All consumer fireworks devices (~~shall~~) must meet the (~~following~~) chemical content(~~, design, and construction~~) requirements(~~,~~

(1) ~~Prohibited chemicals. Fireworks devices shall not contain any of the following chemicals:~~

(a) ~~Arsenic sulfide, arsenates, or arsenites.~~

(b) ~~Boron.~~

(c) ~~Chlorates, except:~~

(i) ~~In colored smoke mixtures in which an equal or greater amount of sodium bicarbonate is included;~~

(ii) ~~In caps and party poppers;~~

(iii) ~~In those small items wherein the total powder content does not exceed four grams of which not greater than fifteen percent is potassium, sodium, or barium chlorate.~~

(d) ~~Gallates or gallic acid.~~

(e) ~~Magnesium (magnesium/aluminum alloys, called magnalium, are permitted).~~

(f) ~~Mercury salts.~~

(g) ~~Phosphorus (red or white). EXCEPT that red phosphorus is permissible in caps and party poppers.~~

(h) ~~Picrates or picric acid.~~

(i) ~~Thiocyanates.~~

(j) ~~Titanium, except in particle size greater than 100-mesh.~~

(k) ~~Zirconium.~~

(2) ~~Fuses.~~

(a) ~~Fireworks devices that require a fuse shall:~~

(i) ~~Utilize only a fuse that has been treated or coated in such manner as to reduce the possibility of side ignition. Devices such as ground spinners that require a restricted orifice for proper thrust and contain less than 6 grams of pyrotechnic composition are exempt from this requirement.~~

(ii) ~~Utilize only a fuse which will burn at least three seconds but not more than six seconds before ignition of the device.~~

(b) ~~The fuse shall be securely attached so that it will support either the weight of the fireworks device plus eight ounces dead weight or double the weight of the device, whichever is less, without separation from the fireworks device.~~

(3) ~~Bases. The base or bottom of fireworks devices that are operated in a standing upright position shall have the minimum horizontal dimensions or the diameter of the base equal to at least one-third of the height of the device including any base or cap affixed thereto.~~

(4) ~~Pyrotechnic leakage. The pyrotechnic chamber in fireworks devices shall be sealed in a manner that prevents leakage of the pyrotechnic composition during shipping, handling and normal operation.~~

(5) ~~Burnout and blowout. The pyrotechnic chamber in fireworks devices shall be constructed in a manner to allow functioning in a normal manner without burnout or blowout.~~

(6) ~~Handles and spikes. Fireworks devices that are intended to be hand-held and are so labeled shall incorporate a handle at least four inches in length. Handles shall remain firmly attached during transportation, handling and full operation of the device, or shall consist of an integral section of the device at least four inches below the pyrotechnic chamber, except sparklers 10" or less in length shall have handles at least 3" in length. Spikes provided with fireworks devices shall protrude at least two inches from the base of the device and shall have a blunt tip not less than 1/8 inch in diameter or 1/8 inch square.~~

(7) ~~Wheel devices. Drivers in fireworks devices commonly known as "wheels" shall be securely attached to the device so that they will not come loose in transportation, handling, and normal operation. Wheel devices intended to operate in a fixed location shall be designed in such a manner that~~



the axle remains attached to the device during normal operation.

(8) Toy smoke devices and flitter devices.

(a) Toy smoke devices shall be so constructed that they will neither burst nor produce external flame (excluding the fuse and small but brief bursts of flame accompanying normal smoke production) during normal operation.

(b) Toy smoke devices and flitter devices shall not be of such color and configuration so as to be confused with illegal explosive devices such as M-80 salutes, silver salutes, or cherry bombs.

(c) Toy smoke devices shall not incorporate plastic as an exterior material if the pyrotechnic composition comes in direct contact with the plastic.

(9) Rockets with sticks. Rockets with sticks (including sky rockets and bottle rockets) shall utilize a straight and rigid stick to provide a direct and stable flight. Such sticks shall remain straight and rigid and attached to the driver so as to prevent the stick from being damaged or detached during transportation, handling, or normal operation.

(10) Party poppers. Party poppers (also known by other names such as "champagne party poppers" and "party surprise poppers" shall not contain more than 0.25 grains of pyrotechnic composition. Such devices may contain non-flammable soft paper or cloth inserts)) as defined in APA 87-1. They must not contain any chemicals listed as prohibited in APA 87-1.

(2) Testing:

(a) Any fireworks device that is suspected of containing prohibited chemicals may be sent for independent testing by a recognized testing laboratory.

(b) A minimum of ten devices of each kind will need to be collected and sent for testing.

(c) For a licensed manufacturer, importer, and wholesaler any similar devices are to be segregated from product that can be sold or used until the findings of the testing laboratory are known.

(d) If the laboratory reports the device(s) meet the chemical content in APA 87-1, the devices can be put into the owner's inventory for sale or use.

(e) Laboratory reports that indicate the presence of prohibited chemicals will result in the owner having the responsibility to make arrangements to destroy the devices.

(f) Any items destroyed will need to be witnessed by a police officer, fire marshal, or federal enforcement agent.

(3) Violations of this section are defined in WAC 212-17-515.

#### NEW SECTION

**WAC 212-17-051 Construction.** (1) Fireworks must meet all design, construction, and testing requirements established by APA 87-1, U.S. DOT regulations and Consumer Product Safety Commission standards.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

#### NEW SECTION

**WAC 212-17-053 Altered consumer fireworks—Classification change to dangerous firework.** (1) Any fire-

work in its originally manufactured form that met the standards for a consumer firework as established in this chapter, that has been altered, modified, enhanced, manipulated, tampered, or disassembled will be classified as a dangerous firework.

(2) It is illegal to possess, sell, purchase, store, or discharge any dangerous fireworks.

(a) For the purpose of this section a licensed pyrotechnic operator altering a fuse as part of a public display for consumer fireworks that are electronically fired is not considered a dangerous fireworks.

(b) A person without a pyrotechnic operator's license cannot alter fireworks.

(i) This would include using an electric match attached to the fuse for electronically firing of the device.

(ii) This does not include the use of a nonpyrogen type igniter that clips onto the fuse and a heated wire is the source of ignition.

(c) This section does not apply to law enforcement, government agency, testing laboratory, or designated hazardous material transportation carrier who is transporting dangerous fireworks to a destruction site.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-055 Firework device, labeling.** ((+) Any consumer fireworks device not required to have a specific label by 16 C.F.R. 1500.14 (b)(7), 1981, as of October 29, 1982, shall carry a warning label indicating to the user where and how the item is to be used and necessary safety precautions to be observed.

(2) Every fireworks device, or fireworks device container where the device is packaged in an immediate container intended or suitable for delivery to the ultimate consumer, shall be conspicuously labeled with the name and place of business of the manufacturer, packer, distributor, or seller and the United States Department of Transportation designation as "Division 1.4G consumer fireworks" or "Division 1.3G special fireworks."

(3) All label wording shall be prominently located, in the English language, and in conspicuous and legible type in contrast by typography, layout, or color with the printed matter on the fireworks device or container.) (1) Fireworks intended for consumer sale and use must be labeled in conformance with the requirements of the Federal Hazardous Substances Act (FHSA) and regulations promulgated thereunder in Title 16 C.F.R., § 1500.

(2) All outside packaging containing fireworks must be marked and labeled in conformance with Title 49 C.F.R., Part 172.

(a) For consumer fireworks all label wording must be:

(i) Prominently located;

(ii) In the English language; and

(iii) In conspicuous and legible type in contrast by typography, layout, or color with the printed matter on the fireworks device or container.

(b) For display fireworks aerial shells, each shell must bear a label containing the following information:

(i) A description of the size of the shell (e.g., "3 in. (76 mm) shell").

(ii) A description of the type of shell (e.g., "2-break with report").

(iii) A warning statement reading:

"WARNING: DANGEROUS EXPLOSIVE.

IF FOUND, DO NOT HANDLE.

CONTACT LOCAL FIRE OR POLICE DEPARTMENT."

(iv) The name and location of business of the manufacturer, importer, or distributor.

(c) For proximate or theatrical fireworks, articles intended for indoor use:

(i) Must be so marked, and labels must include the following information:

(A) Accurate performance characteristics of the device.

(B) For fountains, gerbs, and other preloads, duration, height, and diameter of the effect, as applicable.

(C) Theatrical pyrotechnics that are approved as UN0431, Articles, Pyrotechnic, 1.4G will not bear a warning label that resembles the required wording on a consumer fireworks device.

(D) A warning label providing instructions to a trained operator is permitted, but alternative wording must be used.

(ii) Theatrical pyrotechnics may or may not have an ignition device attached.

(iii) All requests for approval of a device as articles, pyrotechnic must be accompanied by a signed certification stating that the article is intended for professional use in the entertainment industry and will not be offered for sale to the general public.

(A) Approvals for classification as articles, pyrotechnic will be evaluated based on the weight of pyrotechnic composition in the individual article, and compared to the allowable weights for the corresponding category of 1.4G consumer fireworks.

(B) If a 1.4G classification is desired for an article containing more pyrotechnic composition than is permitted for a comparable consumer firework, the DOT approval procedure in Title 49 C.F.R., § 173.56 (b)(1) will be followed.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

#### NEW SECTION

**WAC 212-17-057 Destruction of dangerous fireworks.** (1) Any firework that does not conform to the requirements of this section regarding labeling is to be confiscated for destruction as a dangerous firework. The cost associated with destruction of any firework in violation of this section will be at the possessor's expense.

(2) A licensed importer may be given a time frame by the U.S. Consumer Product Safety Commission (CPSC) to correct the labeling. Any firework that does not conform to the requirements of this section within the given time frame provided by CPSC will be confiscated and destroyed as provided in this section.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-060 Public purchase and use of fireworks.** (1) The public may purchase and use consumer fireworks only from licensed retail fireworks stands (~~(between noon, June 28th and 9:00 p.m. July 5th of each year. Purchase or discharge is prohibited between the hours of 11:00 p.m. and 9:00 a.m., except on July 4th, in which fireworks can be discharged between the hours of 9:00 a.m. and 12:00 midnight. Possession and discharge of fireworks is lawful during this period only, except as provided in subsection (2) of this section.~~

~~(2) Religious organizations or private organizations or adult persons may be authorized to purchase consumer fireworks or such audible ground devices as firecrackers, salutes, and chasers, as defined in WAC 212-17-040 (3) and (4) from licensed manufacturers, importers, or wholesalers for use on prescribed dates and locations for religious or specific purposes, when a permit is obtained from the fire chief or other designated local official. Application shall be on forms provided by the director of fire protection and shall contain the following information:~~

~~(a) The name and mailing address of the organization or person desiring to purchase and discharge the fireworks;~~

~~(b) The date and time of the proposed discharge;~~

~~(c) The location of the proposed discharge;~~

~~(d) The quantity and type of fireworks desired to be purchased and discharged;~~

~~(e) The reason or purpose of the discharge; and~~

~~(f) The signature of the applicant, following a statement that: "The applicant understands and agrees to comply with all provisions of the application and requirements of the approving authority, will discharge the fireworks only in a manner that will not endanger persons or property or constitute a nuisance, and assumes full responsibility for all consequences of the discharge, intended or not." Upon approval by the fire official, the applicant may submit a copy of the approval to any licensed wholesaler as proof of authorization to purchase the fireworks listed therein. The applicant shall retain the approval and have it available for inspection by any public official at the actual discharge of the fireworks.~~

~~(3) The purchase or receipt of mail order fireworks through any medium of either interstate or intrastate commerce is prohibited unless the purchaser has first obtained an importers license)) during the periods provided in RCW 70.77.395.~~

(2) Penalties for violations of this section are provided in WAC 212-17-515.

#### NEW SECTION

**WAC 212-17-061 Purchase and use of fireworks outside of authorized sale and discharge periods.** (1) A permit issued by the local authority having jurisdiction is required to purchase and discharge consumer fireworks outside of the periods identified in RCW 70.77.395.

(a) Religious organizations or private organizations or adult persons with a permit issued by the local fire authority as outlined in RCW 70.77.311 (2)(d) may be authorized to purchase consumer fireworks or such audible ground devices as firecrackers, salutes, and chasers, from licensed manufacturers, importers, or wholesalers for use on the prescribed date and location for religious or specific purposes for which the permit was issued.

(i) Application must be on forms provided by the state fire marshal (may be attached to any permit application form from a jurisdiction) and will contain the following information:

(A) The name and mailing address of the organization or person desiring to purchase and discharge the fireworks;

(B) The date and time of the proposed discharge;

(C) The location of the proposed discharge;

(D) The quantity and type of fireworks desired to be purchased and discharged;

(E) The reason or purpose of the discharge; and

(F) The signature of the applicant, following a statement that: "The applicant understands and agrees to comply with all provisions of the application and requirements of the approving authority, will discharge the fireworks only in a manner that will not endanger persons or property or constitute a nuisance, and assumes full responsibility for all consequences of the discharge, intended or not."

(ii) Upon approval by the fire official, the applicant will provide a copy of the approval to any licensed wholesaler as proof of authorization to purchase the fireworks listed therein.

(iii) The applicant must retain the approval and have it available for inspection by any public official at the actual discharge of the fireworks.

(b) A local jurisdiction may deny an application for a permit to purchase or use fireworks when the local jurisdiction has:

(i) An established ban or restriction on fireworks greater than that listed in RCW 70.77.395; or

(ii) A burn ban in effect due to increased fire hazards.

(2) This section does not apply to public displays of fireworks.

(3) A person with a valid fireworks wholesale or retail license may solicit orders only for retail sales of consumer fireworks provided that the fireworks:

(a) Are not delivered before June 28th or after July 5th;

(b) Are not delivered before December 27th or after December 31st;

(c) Are delivered to fireworks stand where delivery to the consumer will take place and where the sale, possession, and discharge of fireworks are allowed in the jurisdiction.

(4) Any advertisements for sale of fireworks will contain the fireworks license number and expiration.

(5) The purchase or receipt of fireworks through an unlicensed fireworks wholesaler using any medium of either interstate or intrastate commerce (internet, phone, or mail) order or purchase is prohibited.

(6) Advertising the sale of fireworks by unlicensed persons using any medium of either interstate or intrastate commerce (internet, phone, or mail) is prohibited.

(7) Penalties for violations of this section are provided in WAC 212-17-515.

NEW SECTION

**WAC 212-17-062 Storage of consumer fireworks for personal use.** (1) Purchase and storage of consumer fireworks for personal use is based on the net explosive weight or weight of the pyrotechnic composition that will require the following minimum distances from inhabited buildings, public highways, passenger railways, and other storage buildings.

Net Explosive Weight (lbs.)	Inhabited Building	Public Highway and Passenger Railway
0-125	35 feet	70 feet
126 and above	Prohibited in residential settings.	Prohibited in residential settings.

Where the net explosive weight is unknown, the gross weight of the consumer fireworks, including packaging, may be used to determine the weight of the pyrotechnic composition.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

NEW SECTION

**WAC 212-17-063 Storage of display fireworks for personal use.** (1) The purchase and storage of any display fireworks (1.3g) for personal use must be in compliance with:

(a) Any licensing and permitting requirement of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(b) Any licensing and permitting requirement of the Washington department of labor and industries.

(c) Any permitting required from the local jurisdiction having authority.

(d) NFPA 1124.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

**PART II—((MANUFACTURER)) FIREWORKS LICENSES—MANUFACTURER, IMPORTER AND WHOLESALER**

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

**WAC 212-17-065 Fireworks ((~~manufacturer~~)) general.** (1) Before receiving a state license under RCW 70.77.315 or local permit, persons intending to manufacture, import, or wholesale fireworks in this state ((~~shall~~)) must procure a federal license ((~~from the director of fire protection and a permit from the local governmental agency having jurisdiction prior to engaging in business. Applications for license shall be made on forms provided by the director of fire protection and the annual license fee shall accompany the application.~~)) where required.

(2) All license applications (~~(shall)~~) must be made on or before January 31 of the year for which the license is desired (~~(Fireworks manufacturers domiciled in other than the state of Washington shall have a designated agent in the state of Washington, registered with the director of fire protection)) as provided in RCW 70.77.325.~~

(3) All buildings and structures used for manufacturing, wholesaling, and storage of fireworks are subject to this chapter and all local ordinances relating to building, design, construction, location, and zoning.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

**WAC 212-17-070 Fireworks (~~(manufacturer—)~~) licensing.** (1) Upon receipt of application and license fee, the (~~(director of fire protection)) state fire marshal will cause an investigation to be made. The state fire marshal will grant or deny a license application within ninety days following the receipt of a properly submitted or amended application.~~

(a) If the investigation discloses compliance with state laws governing the manufacture, import, or wholesale of fireworks and that granting of a license would not be contrary to public safety or welfare, a license will be granted.

(b) If the license is denied, then the applicant (~~(shall)~~) will be notified in writing of the reason why license was denied, and (~~(he shall)~~) will:

(i) Be given an opportunity to make such alterations and corrections as are deemed necessary. (~~(License applications shall be either granted or denied by the director of fire protection within ninety days following receipt of a properly submitted or amended application.))~~

(ii) Have the right to request a hearing as provided in RCW 70.77.370 and this chapter.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

**WAC 212-17-075 Fireworks (~~(manufacturer—)~~) local ordinances.** Applicants, before applying for a license, should determine that their facilities conform to local zoning, health and building safety standards, fire safety requirements, and any other local ordinances pertaining to manufacture and storage of fireworks. (~~(See appendix.)) Applicants should refer to requirements in NFPA 1124.~~

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

**WAC 212-17-080 Fireworks (~~(manufacturer—)~~) license limitations.** (1) Manufacturer:

(a) A fireworks manufacturer license, together with a permit from local authorities having jurisdiction, authorizes the holder to engage only in the business of manufacturing fireworks of all types and their sale and transportation to licensed wholesalers in Washington.

(b) If (~~(they)~~) the manufacturer desires to engage in other types of fireworks business, (~~(they shall)~~) the manufacturer must first procure the necessary license.

(~~(2)~~) (c) By virtue of its license, a licensed fireworks manufacturer is permitted to sell fireworks for direct shipment out of this state. Such shipment must be made by a public carrier or by the manufacturer in vehicles owned or leased by the manufacturer.

(2) Importer:

(a) A fireworks importer's license authorizes the holder to import fireworks into this state. This authorization is limited to:

(i) Procurement, delivery, or receipt of firework shipments into the state;

(ii) Buying or contracting of fireworks for shipment into the state;

(iii) A registered tribal member importing fireworks into the state for delivery to the registered member's tribal land;

(iv) Transportation of any type of fireworks licensed for and in compliance with 49 C.F.R., Parts 171 through 183;

(v) Storage of all classes and types of fireworks if there are no restrictions or provisions by the local authority having jurisdiction issuing a permit.

(b) An importer's license does not allow for the distribution or selling of fireworks at retail.

(3) Wholesaler:

(a) A fireworks wholesaler's license authorizes the holder to engage only in the sale of fireworks at wholesale.

(b) A fireworks wholesaler's licensee can sell fireworks to:

(i) Licensed retailers;

(ii) Licensed public display operators;

(iii) Other licensed wholesalers;

(iv) Religious organizations, private organizations, or adult persons that have a permit issued by the local authority having jurisdictions to purchase specific fireworks items in accordance with WAC 212-17-061.

(c) A licensed fireworks wholesaler is authorized to sell fireworks for direct shipment out of this state, provided that:

(i) Such shipment is made by a public carrier, or in vehicles owned or leased by the wholesaler; and

(ii) If the purchaser's state requires a permit to purchase, possess, transport, store, distribute, sell, or otherwise deal with fireworks, the purchaser must possess and present the license to the wholesaler for inspection at the time of sale.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-085 Fireworks (~~(manufacturer—)~~) records and reports.** (~~(Manufacturers shall)~~) (1) License holders will, when requested to do so, submit written reports to the (~~(chief of the Washington state patrol, through the director of fire protection on)) state fire marshal on each type of license type:~~

(a) Manufacturer: Production, sale, and distribution of fireworks and name of the person to whom such fireworks were sold.

(b) Wholesaler: Imports, purchases, sales, and consumption of fireworks items by kind and class.

(c) Importer: Imports, purchases, sales of fireworks items by kind and class.

(d) All licensees: Third-party testing documentation to show compliance of any consumer fireworks they distribute, sell, offer for sale, exchange for consideration, transfer, or provide if used properly will work. The third-party testing company must be approved by the Consumer Product Safety Commission.

(2) All license holders will submit reports of storage of all class and types of fireworks in possession when requested.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

**((PART III — WHOLESALER))**

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

**WAC 212-17-115 Fireworks ((~~wholesaler—General~~) permanent storage.** ((~~Fireworks wholesaler licenses cover those persons engaged in the business of selling fireworks at wholesale to licensed persons in this state. Wholesale licensees may transport the class of fireworks for which they hold a valid license. Fireworks wholesalers domiciled in other than the state of Washington shall have a designated agent in the state of Washington, registered with the director of fire protection.~~)) (1) Permanent fireworks storage is:

(a) Subject to this chapter when the period of time of storage is other than, or longer than that specified for temporary storage.

(b) Subject to the International Fire Code, the International Building Code, and local ordinances.

(2) Storage of fireworks in a facility, not authorized by the license and permit is prohibited.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

**WAC 212-17-130 Fireworks ((~~wholesaler—Local ordinances~~) restrictions.** ((~~Applicants, before applying for a license should determine that their facilities conform to local zoning, health and building safety standards, fire safety requirements, and any other local ordinances pertaining to storage of fireworks. (See appendix.)~~)) The storage, transportation, sale, and transfer of ownership of all classes and types of fireworks by manufacturers will be subject to the restrictions and provisions of the state fireworks law and these rules.

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

**WAC 212-17-145 Fireworks ((~~wholesaler—~~) importing requirements.** ((~~Wholesalers who engage in the business of importing fireworks shall first procure a state license as is required for import licensees.~~)) (1) The state fire marshal must receive notice of interstate shipments of fire-

works under the licensed importers control as the owner, consignee, or broker no later than the next business day when any such shipment is field tested by the Consumer Product Safety Commission (CPSC) or the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) for compliance, meeting the chemical content, design, and construction requirements as required in APA 87-01 and there are any firework device(s) that fail the field test with either:

(a) Additional samples of the fireworks collected for laboratory testing by the CPSC, requiring a bond be placed on the remaining items; or

(b) The quantity of explosive and/or pyrotechnic composition exceeds the limit for inclusion in the Fireworks 1.4G, UN0336 category are classed as Fireworks 1.3G, UN0335 and changes the storage requirement; or

(c) The device failing to conform to the applicable requirements is also deemed a banned hazardous substance.

(2) The importer will provide the following information to the state fire marshal:

(a) Date of inspection by CPSC or BATFE.

(b) Product name, type, and class of firework.

(c) Which requirement the product did not conform to:

(i) Labeling;

(ii) Pyrotechnic material leak;

(iii) Fuse support/side ignition;

(iv) Stability;

(v) Pyrotechnic material weight (overload);

(vi) Burnout/blowout;

(vii) Device malfunction;

(viii) Stick (rockets);

(ix) Chemical analysis.

(3) Upon receiving this notification from the licensed importer, the state fire marshal would provide notification to:

(a) The jurisdiction in which the fireworks are being stored.

(b) The local ATF office for industry compliance with storage.

(c) Other state and local agencies that may license or regulate explosives and explosives storage.

(4) The importer will hold such hazardous substance and not distribute it until further notice from CPSC which may be in the form of a "Letter of Advice (LOA)."

(5) The importer will notify the state fire marshal of the laboratory results by providing a copy of the LOA within five business days of receipt.

(a) Products that are confirmed by a laboratory test will need to be corrected or destroyed.

(b) Any consumer firework that has been found described as Fireworks, UN0336 1.4G that is found to have a quantity of explosive and/or pyrotechnic composition that exceeds the limits for type of firework will be classified as Fireworks, UN0335 1.3G.

(c) Any change in classification other than what the product was imported under will require the product to be stored in an approved, licensed explosive magazine.

(6) The following violations of this section are classified as serious threat to public safety and each day of noncompliance will be considered a separate offense:

(a) Failing to notify the state fire marshal that samples were taken by the CPSC or BATFE and/or results of the samples (LOA).

(b) Failing to store overloaded fireworks.

(c) Notwithstanding the existence or use of any other remedy, any licensed fireworks importer or wholesaler violating this section may have its license suspended or revoked and future license applications denied.

(7) Additional requirements:

(a) Any licensed fireworks importer or wholesaler found to have imported fireworks not meeting the chemical content, design, and construction requirements as required in APA 87-01 and wanting to continue to have a fireworks license may as part of mitigation submit to the following conditions:

(i) Company will become a member of a fireworks trade association:

(ii) Have all future firework products imported into the state of Washington tested prior to shipment for compliance by a third-party testing company approved by the CPSC.

(b) Failure to meet these requirements will void any mitigated penalty and licensing actions.

(8) Penalties for violations of this section are provided in WAC 212-17-515.

**~~((PART IV—IMPORTER))~~**

**PART ~~(V)~~ III—FIREWORKS RETAILER**

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-185 Retailer~~((s))~~ of fireworks—License and permit.** (1) Persons desiring to engage in the business of selling fireworks at retail ~~((shall))~~ must:

~~((a) Secure a license from the ((director of the Washington state patrol fire protection bureau.~~

~~((2) In addition to the state license,))~~ state fire marshal.

~~((b) Obtain a permit ((must be obtained)) from the local governmental officials having jurisdiction.~~

~~((c) The application shall be made on forms provided by the director of fire protection and shall be accompanied by the license fee of forty dollars.~~

~~((b) License applications shall be made on or before May 1 of the year for which the license is desired.~~

~~((c) The director of fire protection shall grant or deny the license within fifteen days of receipt of the application.~~

~~((d) Applicants are cautioned to first determine whether a local retail sales permit for fireworks can be obtained.~~

~~((3))~~ (c) A license and permit are valid and effective from January 1 of the year in which the application is made and ending January 31 of the following year.

(2) A retailer's license to sell fireworks ((shall)) will not:

(a) Authorize the licensee to engage in any other fireworks activity. ((Retailers are limited to selling only those fireworks which have been approved for sale to the public and appear on the list of approved fireworks published annually by the director of fire protection. A copy of the list shall be prominently posted at each retail outlet.)) (b) Be used for the purchase of fireworks at wholesale:

(i) If a CFRS facility is not open for the sale of consumer fireworks to the public; or

(ii) Allow a person to purchase fireworks from a wholesaler when the intent is not to open a CFRS, but to use the consumer fireworks for personal use.

(c) Be transferable, except that any license purchased by a licensed wholesaler may have the business or nonprofit group name added in addition to the wholesalers if required by the local authority having jurisdiction issuing the fireworks permit. The wholesaler will need to have a written agreement similar to any other retail license issued through the wholesaler.

(3) If the license is denied, then the applicant will be notified in writing of the reason of the denial, and will:

(a) Be given an opportunity to make such alterations and corrections as are deemed necessary.

(b) Have the right to request a hearing as outlined in WAC 212-17-475.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-198 ~~((Retailers of))~~ Fireworks—List.** ~~((The following is the list of fireworks that may be sold to the public:~~

~~((1) Ground and hand held sparking devices:~~

~~((a) Dipped stick, sparkler. Stick, or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed 100 grams per item. Those devices containing any perchlorate or chlorate salts may not exceed 5 grams of pyrotechnic composition per item. Wire sparklers which contain no magnesium and which contain less than 100 grams of composition per item, not Class C explosives under DOT regulations, are included in this category.~~

~~((b) Cylindrical fountain. Cylindrical tubes not more than 3/4 inch (19 mm) inside diameter, containing up to 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand held (handle fountain).~~

~~((c) Cone fountain. Cardboard or heavy paper cone containing up to 50 grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain.~~

~~((d) Illuminating torch. Cylindrical tube containing up to 100 grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base, or hand held.~~

~~((e) Wheel. Pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain up to six "driver" units; tubes not exceeding 1/2 inch (12.5 mm) inside diameter and containing up to 60 grams of pyrotechnic composition. Total pyrotechnic composition of each wheel shall not exceed 240 grams. Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a whistling effect.~~

(f) ~~Ground spinner. Small device similar to a wheel in design and effect and placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device.~~

(g) ~~Flitter sparkler. Narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. This device does not have a fuse for ignition. The paper at one end of the tube is ignited to make the device function.~~

(2) ~~Aerial devices.~~

(a) ~~Helicopter, aerial spinner. A tube not more than 1/2 inch (12.5 mm) inside diameter and containing up to 20 grams of pyrotechnic composition. A propeller or blade is attached, which, upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight.~~

(b) ~~Roman candles. Heavy paper or cardboard tube not exceeding 3/8 inch (9.5 mm) inside diameter and containing up to 20 grams of pyrotechnic composition. Upon ignition, up to ten "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several-second intervals.~~

(c) ~~Mine, shell. Heavy cardboard or paper tube up to 2 1/2 inches (63.5 mm) inside diameter attached to a wood or plastic base and containing up to 40 grams of pyrotechnic composition. Upon ignition, "stars," firecrackers, or other devices are propelled into the air. The tube remains on the ground.~~

(d) ~~Aerial shell. A 1 3/4" or smaller cylindrical or spherical cartridge containing up to 40 grams of chemical composition.~~

(e) ~~Mortar. A 1 3/4" or smaller cardboard tube in which aerial shells are discharged into the air.~~

(3) ~~Combination items. Fireworks devices containing combinations of two or more of the effects described in this section.~~

(4) ~~Smoke device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.~~

(5) ~~Division 1.4G explosives classified on January 1, 1984 as consumer fireworks by the United States Department of Transportation except that the term shall not include firecrackers, salutes, chasers, skyrockets or missile type rockets.)~~

(1) Retailers are limited to selling only those consumer fireworks which have been approved for sale to the public and appear on the list of approved fireworks published annually by the state fire marshal.

(2) Retailers must post prominently at each retail outlet this list of the approved consumer fireworks.

(3) The state fire marshal will provide the list to the retailers when licenses are issued.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

#### NEW SECTION

##### **WAC 212-17-199 Prohibited consumer fireworks.**

(1) The following consumer fireworks are prohibited for use, sale, and possession:

(a) Prohibited fireworks as defined in WAC 212-17-025, unless otherwise prescribed in RCW 70.77.311:

(i) "Firecracker" means a small, paper-wrapped or cardboard tube containing not more than 50 mg of explosive composition, those used in aerial devices may contain not more than 130 mg of explosive composition per report. Upon ignition, noise and a flash of light are produced.

(ii) "Salute" means paper-wrapped, cardboard tube, or sphere containing explosive composition in excess of 130 mg (2 grains). Upon ignition, noise and a flash of light are produced.

(iii) "Chaser" means a paper or cardboard tube venting out the fuse end of the tube containing not more than 20 grams of chemical composition. The device travels along the ground upon ignition and often produces a whistling effect, or other noise. Explosive composition may be included to produce a report but may not exceed 50 mg.

(iv) "Sky rocket and bottle rocket" means a cylindrical tube containing not more than 20 grams of chemical composition with a wooden stick attached for guidance and stability. Rockets rise into the air upon ignition. A burst of color and/or sound may be produced at or near the height of flight.

(v) "Missile-type rocket" means a device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability. Missiles will contain no more than 20 grams of total chemical composition.

(b) Those consumer fireworks identified in WAC 212-17-025.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

#### NEW SECTION

##### **WAC 212-17-21504 Retailers—Purchase and sale of fireworks.**

(1) A retail licensee must purchase only Division 1.4G consumer fireworks, not otherwise prohibited by chapter 70.77 RCW, WAC 212-17-199 or local ordinance from state-licensed wholesalers.

(2) Sale of consumer fireworks will occur only from a licensed consumer fireworks retail sales facility (CFRS). Retail sales of fireworks may occur at a non-CFRS when:

(a) An inert sample package of the consumer fireworks is displayed for sale inside a fixed place of business and a CFRS meeting all of the requirements in this chapter is placed outside of the fixed place of business.

(b) The fireworks are paid for inside the business with the customer provided a receipt of purchase with the sales transaction completed when the customer shows proof of purchase and takes possession of the firework package at the CFRS.

(3) Holiday related products incidental but related to these products, may be sold in retail consumer fireworks retail sales facilities.

(4) Failure to comply at any time with the provisions of this section will constitute a violation of chapter 70.77 RCW and may result in:

(a) The temporary suspension of the license or permit;

(b) Immediate revocation of the license or permit for:

(i) A serious health or public safety violation, if the violation poses an immediate risk to any person, the action will

become effective immediately. The duration of the revocation will be based upon the action:

(A) Willful, reckless, or malicious acts would revoke the license for the license year.

(B) Accidental or negligent acts would revoke the license until the licensee can show measures to correct and prevent further violations have been put in place (i.e., training).

(ii) Information provided to obtain a license or permit is subsequently found to be inaccurate or would have prevented the issuance of a license or permit.

(A) The license will be revoked through the remainder of the license year.

(B) The person, group, or business may be denied a future license.

(c) Surrendering the fireworks license to the state fire marshal.

(d) Surrendering the fireworks permit to the issuing jurisdiction.

(e) Temporary closure of the CFRS sales or storage structure, the seizure or forfeiture of some or all of the fireworks, or other criminal penalties as provided by law.

(5) If the license or permit is suspended or denied, then the applicant will:

(a) Be notified in writing of the reason why license was denied;

(b) Be given an opportunity to make such alterations and corrections as are deemed necessary by the state fire marshal;

(c) Have the right to request a hearing as outlined in WAC 212-17-475.

(6) Penalties for violations of this section are provided in WAC 212-17-515.

#### PART IV—CONSUMER FIREWORKS RETAIL SALES FACILITIES (CFRS)

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-21505 ((Retailers of fireworks—General provisions)) CFRS structures.** ((1) The state of Washington hereby fully occupies the entire field of regulation relating to the construction and use of temporary and permanent structures for the retail sale and storage of fireworks including: The location of and areas surrounding, the operation of and the cleanup after the use of said structures, pursuant to RCW 70.77.270.

(2) The state of Washington hereby preempts the authority of local jurisdictions with respect to the retail sale and associated storage of consumer fireworks from temporary structures. This rule constitutes the entire and exclusive authority for regulation of all such matters. Subject to the limitations imposed by chapter 70.77 RCW, a city or county may ban fireworks; or a city or county may restrict the dates of sale, purchase, possession and use of fireworks; or a city or county may restrict the types of fireworks that may be sold and purchased within its boundaries. If a city or county allows the sale of fireworks classified as consumer fireworks from temporary structures these rules preempt that city's or

that county's authority to enact or enforce any other regulations.

~~(3))~~ (1) Consumer fireworks will only be permitted to be sold at retail in any of the following structures:

(a) Temporary, stable structures made from wood, metal, fiberglass, or other material. Any temporary fireworks retail stand greater than four hundred square feet will meet the requirements of a permanent structure, except tents or canopies as defined in the International Fire Code;

(b) Tents, canopies, or structures utilizing temporary membrane material which must be made from fire retardant material or treated with a fire retardant as identified in the International Fire Code. When those requirements are in conflict with other provisions of these rules, the more restrictive provisions will apply;

(c) Permanent buildings or structures constructed in accordance with the building code enforced by the authority having jurisdiction;

(d) Trailers or shipping containers may be used as a CFRS only if they comply with the requirements of a CFRS;

(e) Vehicles, such as vans, buses, motor homes, travel trailers, trucks, and automobiles will not be allowed to operate as a CFRS.

(2) Except as prescribed by this rule, the use of permanent structures or temporary structures over four hundred square feet for fireworks sales and storage ((shall)) will be subject to the provisions of the International Fire Code and the International Building Code, and local ordinances((-

~~(4) The use of temporary structures for the temporary sale or storage of consumer fireworks are exempt from the International Building Code, International Fire Code and local ordinances except that where a city or county ordinance regulates the sale or use of fireworks as a part of that city's or that county's building code or fire code, those provisions of that county's or that city's building code or fire code which are not in conflict with this rule are not hereby preempted or affected.~~

~~(5) Each license and permit shall be issued and shall remain valid and effective for the thirteen-month period beginning on January 1 of the year in which application is made and ending January 31 of the following year.~~

~~(6) Only Division 1.4G consumer fireworks, obtained from state-licensed wholesalers, not otherwise prohibited by chapter 70.77 RCW or local ordinance, and holiday-related products incidental but related to these products, may be sold in retail fireworks stands.~~

~~(7) Except as limited by local ordinance, fireworks may be sold from 12:00 noon to 11:00 p.m. on June 28 through 9:00 p.m. on July 5. Fireworks may not be sold between the hours of 11:00 p.m. and 9:00 a.m. from June 28 through July 3. Fireworks may not be sold from 12:00 midnight on July 4 through 9:00 a.m. on July 5.~~

~~(8) Except as limited by local ordinance, fireworks may be sold from 12:00 noon to 11:00 p.m. on each day from the 27th of December through the 31st of December of each year.~~

~~(9) Licensees shall familiarize all persons working in a retail fireworks stand with the provisions of these rules.~~

~~(10) Failure to comply at any time with the provisions of this rule or any other applicable regulation shall constitute a violation of chapter 70.77 RCW and may result in the tempo-~~



rary suspension or immediate revocation of the license or permit, closure of the fireworks sales or storage structure, the seizure and/or forfeiture of some or all of the fireworks, and other criminal penalties as specified by law.

(11) The local authority having jurisdiction, with the concurrence of the state fire marshal, is authorized to modify any of the provisions of WAC 212-17-21509, 212-17-21511, 212-17-21513, 212-17-21515, and 212-17-21517 upon written application by the licensee or a duly authorized representative). This includes, but may not be limited to, implementing a maximum square footage of any temporary or permanent structure.

(3) The local authority having jurisdiction may prescribe rules regarding CFRS facilities are consistent with WAC 212-17-21509 through 212-17-21517, where there are practical difficulties in the way of carrying out the provisions of these sections((, provided that the spirit of the rule shall be complied with, public safety secured and substantial justice done)) and the state fire marshal approves the rules. The particulars of such modification ((shall)) must be registered with the state fire marshal and the fireworks license issued will include a notation as to the modification approved.

(a) Modification of any provision will be registered to the retail licensee, not the retail sales location or wholesaler.

(b) Any break in licensing will void any approved modifications.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-21509 ((Retailers of fireworks))**

**Location.** (1) CFRS locations will be permitted only in the county shown on the license. If the county needs to be

changed, or other corrections made, the license will be surrendered to the state fire marshal and the state fire marshal will issue a new license for the new county. Any corrections written on a license will void the license.

(2) CFRS locations will only be located at the address for which the permit from the local jurisdiction was approved and placed according to the approved site plan.

(3) Activities or uses subject to this rule ((shall)) will not be limited in location except where such activities or uses are prohibited or controlled by local development regulation, traffic safety or road construction standards.

((2) Temporary retail fireworks)) (4) The CFRS stands ((shall)) will not be located more than one hundred fifty feet from a private way, fire department access road, public road, street or highway as measured by an approved route around the exterior of the stand.

The minimum requirements for a private way ((shall)) will be determined by the local authority having jurisdiction, but ((shall)) will not exceed the requirements of locally adopted street, road and access standards.

((3)) (5) Any two ((retail fireworks)) CFRS stands ((shall)) must be at least one hundred feet apart or ((shall)) will be separated by a road, street or highway not less than thirty feet in width.

((4) Retail fireworks)) (6) CFRS stands ((shall)) must be located as ((required by Table 212-17-21509 in this section-)) follows:

(a) The minimum required area surrounding the stand ((shall)) must be marked or flagged, except that flagging and marking ((shall)) will not block a sidewalk or pedestrian pathway.

(b) Flagging need not exceed twenty feet in any direction.

<b>((Retail Fireworks Stands – Minimum Clearances</b>						
	<u>Buildings</u>	<u>Combustibles</u>	<u>Property Line</u>	<u>Parking</u>	<u>Motor Vehicle Traffic PUBLIC ROAD*</u>	<u>Motor Vehicle Traffic PRIVATE WAY</u>
BACK OF STAND	20 FT.	20 FT.	5 FT.	20 FT.	20 FT.	5 FT.
SIDE OF STAND	20 FT.	20 FT.	5 FT.	20 FT.	20 FT.	5 FT.
FRONT OF STAND	40 FT. 20 FT.**	40 FT. 20 FT.**	20 FT.	20 FT.	20 FT.	20 FT.

NOTE: Clearance distances are not cumulative

\* Measured from the outer edge of the nearest traffic lane.

\*\* If stand is equipped with 135 fusible links which will automatically close all sales doors in case of fire, or is equipped with a wire-mesh screen with openings of not more than one inch which covers not less than 90% of all sales openings.

(5) Retail fireworks))

<b>Minimum Setbacks and Clearances</b>						
	<u>Buildings</u>	<u>Combustibles</u>	<u>Tents</u>	<u>Parking</u>	<u>Stands</u>	<u>Storage</u>
<u>Tents</u>	20 feet	20 feet	20 feet	10 feet	20 feet	20 feet
<u>Stands</u>	20 feet	10 feet	20 feet	10 feet	5 feet	20 feet

<b>Minimum Setbacks and Clearances</b>						
	<u>Property Line</u>	<u>Public Road</u>	<u>Utilities</u>	<u>Fuel station</u>	<u>Bulk Fuel</u>	<u>Generator</u>
<u>Tents</u>	<u>5 feet</u>			<u>50 feet</u>	<u>300 feet</u>	<u>20 feet</u>
<u>Stands</u>	<u>5 feet</u>			<u>50 feet</u>	<u>300 feet</u>	<u>20 feet</u>

(7) CFRS stands ~~((shall))~~ will not be located closer than ~~((one hundred))~~;

(a) Fifty feet from any motor vehicle dispensing station, retail propane dispensing station, flammable liquid storage, or combustible liquid storage. ~~((Retail fireworks stands shall not be located closer than))~~ Measurements will be taken from the pump or above ground tank storage to the CFRS.

(b) Three hundred feet from any bulk storage of flammable or combustible liquid or gas, including bulk plant dispensing areas.

~~((EXCEPTION: 1. Fuel for generators as allowed by WAC 212-17-21513(4);  
2. Fuel within the tanks of motor vehicles.))~~

(8) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-21511 (~~Retailers of fireworks~~) Area around the retail fireworks ~~(stand)~~ sales site.** (1) The minimum areas around the retail fireworks stand specified in WAC 212-17-21509 ~~((shall))~~ will be kept free of accumulation of dry grass, dry brush and combustible debris. No parking ~~((shall))~~ will be permitted within this minimum area.

(2) No motor vehicle or trailer may be parked within twenty feet of a retail fireworks stand except when delivering, loading or unloading fireworks.

(3) Fireworks ~~((shall))~~ will not be discharged within ~~((one))~~ three hundred feet of a retail fireworks stand. Signs reading "NO FIREWORKS DISCHARGE WITHIN ~~((400))~~ 300 FEET" in letters at least ~~((two))~~ four inches high, with a principal stroke of not less than one-half inch, on contrasting background, ~~((shall))~~ will be conspicuously posted on all four sides of the stand.

(4) No smoking ~~((shall))~~ will be allowed within the retail fireworks stand or within the minimum flagged off area. Signs reading "NO SMOKING WITHIN ~~((20))~~ 50 FEET" in letters at least two inches high, with principal stroke of not less than one-half inch, on a contrasting background, ~~((shall))~~ will be conspicuously posted on all four sides of the stand.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-21513 (~~Retailers of fireworks Stand use and construction~~) CFRS electrical.** ~~((1))~~ Fireworks may be sold from:

(a) A permanent structure which meets provisions of WAC 212-17-21505(3).

~~((b))~~ Temporary, stable structures made from wood, metal, fiberglass or other material. Any temporary fireworks retail stand greater than four hundred square feet shall meet the requirements of a permanent structure, except tents or canopies as defined in the International Fire Code.

~~((c))~~ Tents, canopies, or structures utilizing temporary membrane material. All tents, canopies or temporary membrane materials structures shall be made from fire retardant material or treated with a fire retardant as identified in the International Fire Code. Any tent, canopy or temporary membrane material structure falling within the scope of the International Fire Code shall comply with those requirements. When those requirements are in conflict with other provisions of these rules, the more restrictive provisions shall apply.

~~((2))~~ Battery powered equipment, electrical equipment and electrical cords which are used in conjunction with a retail fireworks stand or a temporary storage structure or location must be listed by a recognized laboratory and used in accordance with that listing. ~~((1))~~ If electrical power is supplied by an extension cord, the size ~~((of the cord, the))~~ and length of the cord and, the amperage and ~~((the))~~ voltage supplied ~~((shall))~~ will be in compliance with the requirements of the National Electrical Code, current edition. The cord ~~((shall))~~ must be protected as necessary from "drive-over" and other physical damage.

~~((2))~~ No additional permits from a city or county or state official having jurisdiction ~~((shall))~~ will be required for these temporary uses except as specified in subsection (5) of this section.

(3) All heating units ~~((shall))~~ must:

~~((a))~~ Be listed by a recognized testing laboratory; and ~~((shall))~~

~~((b))~~ Be used in accordance with the listing~~((Heating sources shall)); and~~

~~((c))~~ Have "tip-over" and temperature overheat protection~~((All heating devices shall)); and~~

~~((d))~~ Have sealed type elements (i.e., oil filled or water filled radiator type). Open flame heating devices are prohibited.

(4) Generators which use combustible fuel and which are at least twenty feet from the ~~((retail fireworks stand))~~ CFRS or the temporary fireworks storage structure ~~((shall))~~ will be allowed. Generator fuel ~~((shall))~~ will be limited to not more than five gallons and stored at least twenty feet from all ~~((stands))~~ CFRS.

(5) Compliance with the National Electrical Code, current edition, ~~((shall))~~ will be required for all new, ~~((permanent))~~ electrical installations, including temporary power drops, subject to possible permit fees.

(6) ~~((Retail sales of fireworks and other products which are holiday related shall be from buildings used for no other~~

~~purpose.))~~ Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-21515 (~~Retailers of fireworks~~)  
Operation of (~~retail fireworks stands~~) CFRS.** ~~((1) A clear aisle or walkway not less than twenty-four inches wide shall be maintained inside the full length of the structure. Customers shall only be permitted inside a temporary retail fireworks stand that is greater than four hundred square feet and which meets minimum exit requirements of the International Building Code and International Fire Code, as now or amended hereafter.~~

~~(2) Each temporary retail fireworks stand must have at least two exits, at least twenty-eight inches in width, located at opposite ends of the structure. Exits must remain unlocked and unobstructed during the hours of operation or when the stand is occupied.~~

~~(3)) (1) Licensees must familiarize all persons working in a retail fireworks stand with the provisions of these rules.~~

~~(2) Sleeping inside a retail fireworks stand or an associated temporary fireworks storage facility is prohibited.~~

~~((4)) (3) The location of the nearest permanently mounted telephone must be posted inside the retail fireworks stand and persons working in the stand ((shall)) must be informed of that location.~~

~~((5)) (4) The local emergency telephone number ((shall)) will be conspicuously posted inside the retail fireworks stand.~~

~~((6)) (5) Each retail fireworks stand ((shall)) will be equipped with two approved, pressurized two and one-half gallon water-type fire extinguishers.~~

~~((7)) (6) No open flames nor any type of open flame equipment ((shall)) will be allowed in any retail fireworks stand.~~

~~((8) Retail fireworks stands shall be secured when unoccupied and not open for business if fireworks are kept in the structure during these times. Retail fireworks stands shall never be locked when occupied. The fireworks may be removed and transferred to a temporary storage structure or location approved as a part of the license and permit.~~

~~(9)) (7) At least one adult person, eighteen years of age or older ((shall)) will be present at all times in every retail fireworks stand during the hours of sale to the public and ((shall)) will be responsible for supervision of the retail fireworks stand and its operation.~~

~~(8) No person, other than customers, under the age of sixteen ((shall)) will be allowed within a retail fireworks stand when it is open to the public.~~

~~(9) Fireworks, except for prepackaged assortments, boxes, or similarly packaged containers of more than one item, whether of the same or different kind, must be displayed in a manner which prevents the fireworks from being handled by the public or a customer without the direct intervention of the licensee or his or her representative who ((shall)) will maintain visual contact.~~

~~(10) Retail fireworks stands may be required to be inspected by the state fire marshal and/or the local jurisdiction~~

issuing the permit prior to opening for business and other inspections may occur on other days as warranted but there ((shall)) will be no additional charge for all such inspections.

(11) In order to obtain return of a clean-up bond if required by the local authority having jurisdiction as a condition of permit, the cleanup of debris associated with the retail fireworks activity and the removal of all structures authorized by the license and permit shall occur on or before the last day of the storage period specified in these rules.

(12) Fireworks retailers ((shall)) will not knowingly sell fireworks to persons under the age of sixteen.

(a) A sign reading "no sale of fireworks to persons under the age of sixteen years. PHOTO ID REQUIRED" in letters at least two inches high, with a principal stroke of not less than one-half inch, on contrasting background, ((shall)) will be conspicuously posted on the front of each retail fireworks stand.

(b) Sellers ((shall)) must require proof of age by means of display of a driver's license or photo identification card showing date of birth issued by a public or private school, state, federal or foreign government. No other forms of identification ((shall)) will be accepted.

(13) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-21517 (~~Retailers of fireworks~~)  
Temporary fireworks storage associated with the (~~retail fireworks stand~~) CFRS operation.** (1) Temporary fireworks storage is not permanent fireworks storage.

(2) Temporary fireworks storage is defined as:

(a) Storage associated with retail fireworks sales and may only be from June 13 through July 31; and

(b) From December 12 through January 10 of the following year (~~Permanent fireworks storage is associated with retail or wholesale fireworks activities when the period of time of storage is other than, or longer than that specified for temporary storage. Temporary fireworks storage shall be in accordance with this section. Permanent fireworks storage is subject to the International Fire Code and the International Building Code and local ordinances.~~

(2) Delivery of fireworks to a location, or storage of fireworks in a facility, not authorized by the license and permit is prohibited. If the approved storage location is outside the jurisdiction issuing the permit, the authority issuing the permit shall notify the appropriate authorities of the jurisdiction in which the storage is to be located).

(3) Temporary fireworks storage must be in accordance with this section.

(4) A temporary fireworks storage facility or a temporary fireworks storage location ((shall)) will be authorized as a part of a license and permit if it meets the requirements specified herein.

~~((4) No open flames nor any type of open flame equipment shall be allowed in any temporary fireworks storage structure.))~~

(5) Storage of fireworks authorized by a retail license and permit is legal only during the periods specified in this section.

(6) Temporary fireworks storage structures may be inspected prior to use and other inspections may occur on other days as warranted. There will be no additional charge for all such inspections.

(7) Fireworks may be stored:

(a) In a locked or secured retail fireworks stand; or  
(b) In a locked or secured truck, container, trailer, other vehicle or anything similar which is not less than twenty feet from the retail fireworks stand during hours of retail sales; or

(c) In a locked or secured truck, container, trailer, other vehicle or anything similar which is not less than twenty feet from an inhabited building where the term "inhabited building" is defined as in the International Fire Code; or

(d) In a magazine which meets the minimum standards of Type 4 as prescribed by the International Fire Code, and which is not less than ten feet from an inhabited building where the term "inhabited building" is defined as in the International Fire Code; or

(e) In a locked or secured metal or wooden garage, shed, barn or other accessory building, or anything similar which is not less than:

(i) 20 feet from an inhabited building for storage of fireworks for one or two retail stands; or

(ii) 30 feet from an inhabited building for storage of fireworks for three or more stands.

~~((The term "inhabited building" is defined as in the International Fire Code.))~~

~~((7))~~ (8) The local authority having jurisdiction may reduce the minimum separation requirements of this section provided that safety of life and property is not diminished.

~~((8))~~ (9) No open flames nor any type of open flame equipment shall be allowed in any temporary fireworks storage structure.

(10) No cooking is permitted in a retail fireworks stand or in a temporary fireworks storage structure.

~~((9) Temporary fireworks storage structures may be inspected prior to use and other inspections may occur on other days as warranted. There shall be no additional charge for all such inspections.))~~ (11) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

~~WAC 212-17-21519 ((Retailers of fireworks))~~  
**Cleanup.** (1) At the end of the legal selling period, all fireworks must remain in the retail fireworks stand, temporary storage location authorized by the retail permit or another location approved by the local authority having jurisdiction or his or her designee until returned to the suppliers from which they were obtained, or until transferred to an approved location.

(2) Cities and counties may require a clean-up bond, not to exceed five hundred dollars, as a condition of the permit, to ensure the removal of all structures and debris from the site.

(3) In order to obtain return of a clean-up bond, cleanup of debris associated with the retail fireworks activity and the

removal of all temporary structures authorized by the license and permit ~~((shall))~~ will be completed no later than 11:59 p.m., July 15 for the Fourth of July selling period or no later than 11:59 p.m., January 10 for the New Year's selling season.

(4) Failure of the licensee to comply with subsection (3) of this section ~~((shall))~~ will constitute forfeiture of the clean-up bond and the licensee shall be liable for any clean-up costs incurred by the city or county which exceed the amount of the bond.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

## ~~PART ((V4))~~ V—PYROTECHNIC OPERATOR

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

### **WAC 212-17-220 Pyrotechnic operators—General.**

(1) Pyrotechnic operators are licensed to conduct ~~((public))~~ displays of fireworks and articles pyrotechnic.

(2) No public display license is issued unless at least one licensed pyrotechnic operator is listed on the application as being responsible for conducting the display.

### NEW SECTION

**WAC 212-17-221 Operator qualifications.** (1) The operator must be at least twenty-one years old and licensed in accordance with any and all applicable federal, state, and local laws.

(2) Applicants for licensing as an operator must provide evidence of actual experience as an operator or assistant as part of demonstrating competency.

(3) Applicants for licensing as an operator must successfully complete a written examination of laws, regulations, and safety practices pertaining to the discharge of fireworks that will be administered by the state fire marshal or will otherwise demonstrate knowledge of these areas.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

### NEW SECTION

### **WAC 212-17-223 Pyrotechnic operator license types.**

(1) The general display licensee will have a pyrotechnic operator appropriately licensed for the type of display to conduct any public display.

(2) The license types and displays allowed to be conducted are:

(a) Pyrotechnic operator license - Conducts an outdoor public display of fireworks following the requirements of NFPA 1123.

(b) Proximate display operator license - Conducts a proximate display before a proximate audience following the requirements of NFPA 1126.

(c) Flame effects operator license to conduct a flame special effects following the requirements of NFPA 160.

(d) Special effects operator license to conduct a special effects display used in connection with a television, theatri-

cal, or motion picture production which may or may not be presented before a live audience.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

**WAC 212-17-225 (~~Pyrotechnic operators~~) Application for license.** (1) Application for license ~~((shall))~~ must be made on forms prepared by the ~~((director of fire protection and shall))~~ state fire marshal and must be accompanied by the annual license fee.

(2) Every applicant for a pyrotechnic operators license ~~((shall))~~ must:

(a) Take and pass a written examination administered by the ~~((director of fire protection and shall))~~ state fire marshal or the equivalent out-of-state exam;

(b) Submit evidence attesting to the qualifications and experience of the applicant, including participation in the firing of at least six public displays as an assistant, at least one of which ~~((shall))~~ must have been in the current or preceding year, for the type of operator's license they are applying for; and

(c) Submit information to be true and accurate regarding the experience.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-230 (~~Pyrotechnic operators~~) Examination, investigation and licensing.** (1) Upon receipt of application and license fee, the ~~((director of fire protection shall))~~ state fire marshal will cause an investigation to be made as to the experience and competency of the applicant to conduct and supervise a public or proximate display of fireworks in a safe manner. The investigation will include:

(a) Verification of past experience in assisting in ~~((public))~~ displays ~~((shall be verified))~~ with the licensed pyrotechnic operator under whose supervision the applicant assisted for the type of license applying for.

(b) If experience requirements are satisfactory, the ~~((director of fire protection shall))~~ state fire marshal will schedule a written examination for the applicant.

(i) A passing score of at least eighty percent ~~((shall))~~ must be attained on the written examination.

(ii) An applicant failing the written examination may reapply within thirty days to retake the examination.

(iii) No reexamination ~~((shall))~~ will be taken within thirty days of the previous and no more than two examinations may be taken by the applicant in the same calendar year.

(iv) Any applicant failing to appear for the written examination at the time and location established or who fails the written examination and fails to reapply within thirty days, or fails the examination on the second attempt, is deemed to have forfeited the license fee.

(c) All applicants ~~((shall))~~ must submit to a name and date of birth background check through the Washington state patrol criminal records division. Costs for the background

check ~~((shall))~~ will be the responsibility of the applicant. A background check is not required if:

(i) The person has a valid ATF explosives license; or

(ii) They are employed or contracted to supervise a display for a general display licensee that has an ATF explosives license and the applicant is listed as an approved employee possessor.

(d) The ~~((director of fire protection shall))~~ state fire marshal will grant or deny the license on the basis of the successful completion of the investigation and examination.

(2) Submission of false, inaccurate, or misleading information would be cause to deny a license.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

#### NEW SECTION

**WAC 212-17-232 License renewals.** (1) Renewal of pyrotechnic operator's licenses begins January 2nd of each calendar year for those operator licenses that will expire January 31st. The renewal application must:

(a) Be on forms provided by the state fire marshal.

(b) Provide evidence of experience within the past thirteen months as an operator or assistant as part of at least one display.

(c) Be signed.

(d) Include the annual license fee.

(2) Persons whose operator license is expired longer than the twelve months will be required to submit his or her application as a new applicant.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-235 Pyrotechnic operators—Responsibility.** (1) The pyrotechnic operator ~~((shall be))~~ is responsible for:

(a) Properly setting up the fireworks public display in accordance with the rules and regulations of the ~~((director of fire protection. He/she shall determine))~~ state fire marshal.

(b) Determining that all the mortars, set pieces, are properly installed and that the proper safety precautions have been taken to insure the safety of persons and property. ~~((He/she shall have))~~

(c) Having charge of all activities directly related to handling, preparing and firing all fireworks at the public display, including fixing lifting charges and quick match as needed to aerial shells.

~~((The pyrotechnic operator shall refuse))~~ (i) Refusing to fire any fireworks that are deemed by him/her to be unsafe or where its discharge might jeopardize life or property.

(ii) Strictly observing the provisions of the state fireworks law and these rules.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

PART ~~(VH)~~ VI—PUBLIC DISPLAY LICENSE

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-250 ~~((Public displays of fireworks—))~~**  
**Application, state license.** (1) Application for ~~((fireworks public))~~ "general display" license ~~((shall))~~ must be made on forms provided by the ~~((director of fire protection))~~ state fire marshal and ~~((shall))~~ must be accompanied by the prescribed license fee.

(2) The application for a "general display" license to hold public displays of fireworks will be accompanied by:

(a) The prescribed license fee; and

(b) A surety bond or a certificate evidencing public liability insurance. Such bond and public liability insurance must be noncancellable except upon fifteen days' written notice by the insurer to the director of fire protection.

(3) Failing to submit the license fee, a bond or certificate of liability insurance will be reason to deny a license application.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-260 ~~((Public displays of fireworks—))~~**  
**General display license~~((s)).~~** ~~((Application for a "general" license to hold public displays of fireworks shall be accompanied by a surety bond or a certificate evidencing public liability insurance. Such bond and public liability insurance shall be noncancellable except upon fifteen days' written notice by the insurer to the director of fire protection.))~~ (1) Persons desiring to hold a public display of fireworks will secure a general display license from the state fire marshal and a permit from the agency having jurisdiction. A general display license is needed to secure a local permit for a public display.

(2) Each operator does not need a general display license if he or she is are shooting displays for a company or person that has this license.

(3) A pyrotechnic operator is prohibited from conducting a public display of fireworks without a general display license.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-270 ~~((Public displays of fireworks—))~~**  
**Local permit, application for.** (1) A permit issued by the authority having jurisdiction is required before conducting any type of public fireworks display.

(2) Application for local permit must be made at least ten calendar days before the public fireworks display.

(3) When applying for permit, applicant ~~((shall))~~ must submit information and evidence to local fire authorities covering the following:

~~((+))~~ (a) The name of the organization sponsoring the display, if other than the applicant.

~~((2))~~ (b) The date the display is to be held.

~~((3))~~ (c) The exact location for the display.

~~((4))~~ (d) The name and license number of the pyrotechnic operator who is to supervise discharge of the fireworks and the name of at least one experienced assistant.

~~((5))~~ (e) The number of set pieces, shells (specify single or multiple break), and other items.

~~((6))~~ (f) The manner and place of storage of such fireworks prior to the display.

~~((7))~~ (g) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways, and other lines of communication, the lines behind which the audience will be restrained, the location of all nearby trees, telegraph or telephone lines, or other overhead obstruction.

~~((8))~~ (h) Documentary proof of procurement of:

(i) Surety bond;

(ii) Public liability insurance; or

(iii) A ~~((director of fire protection's))~~ state fire marshal's "general license" for the public display of fireworks.

~~((9))~~ (4) Permittee ~~((shall))~~ will be responsible for compliance with the provisions under which a public display permit has been granted.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-275 ~~((Public displays of fireworks—))~~**  
**Investigation.** (1) The officer to whom the application for permit is made ~~((shall))~~ must:

(a) Make, or cause to be made, investigation of site of the proposed display for the purpose of determining if the fireworks will be of such a character or so located as to be hazardous to property or dangerous to any person. ~~((He shall also))~~

(b) Determine whether the provisions of the state fireworks law and these rules and regulations are complied with in the case of a particular display. ~~((He shall,))~~

(c) In the exercise of reasonable discretion, grant or deny the application subject to reasonable conditions, if any, as he may prescribe, taking into account locations, parking of vehicles, controlling spectators, storage and firing fireworks, and precautions in general against danger to life and property from fire, explosion, and panic.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-280 ~~((Public displays of fireworks—))~~**  
**Permits may not be granted, when.** (1) No permit ~~((shall))~~ will be granted for any public display of fireworks where the discharge, failure to fire, faulty firing, or fallout of any fireworks or other objects would endanger persons, buildings, structures, forests, brush, or other grass covered land.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

**PART ~~(VII)~~ VII—PUBLIC DISPLAYS**

AMENDATORY SECTION (Amending WSR 06-12-010, filed 5/26/06, effective 6/26/06)

**WAC 212-17-295 (~~Public display~~) General.** (1) The intent of this chapter (~~shall be~~) is to provide requirements for clearances upon which the authority having jurisdiction (~~shall~~) will base its approval of an outdoor fireworks display site.

(2) Where added safety precautions have been taken, or particularly favorable conditions exist, the authority having jurisdiction (~~shall~~) will be permitted to decrease the required separation distances as it deems appropriate, upon demonstration that the hazard has been reduced or the risk has been properly protected.

(3) Where unusual or safety-threatening conditions exist, the authority having jurisdiction (~~shall~~) will be permitted to increase the required separation distances as it deems necessary.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-345 Public display—Reports.** After every public display, it (~~shall~~) will be the responsibility of the licensed pyrotechnic operator in charge of the display to submit a written report to the director of fire protection, within ten days following the display, covering:

(1) A brief report of any duds, defective shells, with manufacturer's name, and the type and size of shell.

(2) A brief account of the cause of injury to any person(s) from fireworks and such person's name and address.

(3) A brief account of any fires caused by fireworks.

(4) Any violation of the state fireworks law or of these regulations relating to public display fireworks, with special observations on any irregularities on the part of persons present at the firing site.

(5) The names of pyrotechnic assistants who satisfactorily assisted in all phases of the display, if other than those shown on the license.

(6) Failure to file this report (~~shall~~) will constitute grounds for revocation of the operator's current license and/or rejection of his application for his license renewal.

(7) Penalties for violations of this section are provided in WAC 212-17-515.

**~~(PART IX—PROXIMATE DISPLAYS)~~****PART ~~(VIII)~~ VIII—TRANSPORTATION**

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-425 Transportation—General.** (1) Licensees are authorized to transport the class and quantity of fireworks for which they have a license to possess from the point of acceptance from a licensed source to an approved storage facility or use site.

(2) Transportation (~~shall~~) will be in accordance with the regulations of the United States Department of Transportation and the laws of the state of Washington governing the transportation of Division 1.3G and 1.4G explosives.

(3) Nothing in these rules will restrict the right of any person to transport in a private vehicle, fireworks which have been legally purchased for personal use from a retail fireworks licensee.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-430 Transportation—By common carrier.** (1) No common carrier, as defined in RCW 81.29.010, (~~shall~~) will deliver fireworks from an out-of-state shipper to any person or firm within this state without first determining:

(a) That the person or firm possesses an importer's license, issued by the (~~director of fire protection~~) state fire marshal to receive them(,); or

(b) The shipper has an importer's license, issued by the director of fire protection to ship them into this state.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

**PART ~~(IX)~~ IX—STORAGE**

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-435 Storage—General.** (1) Storage of fireworks (~~shall~~) must be free from any condition which increases or may cause an increase of the hazard or menace of fire or explosion or which may obstruct, delay or hinder, or may become the cause of any obstruction, delay or hindrance, to the prevention or extinguishment of fire.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-440 Storage—Explosive safety.** (1) Any person storing fireworks (~~shall~~) must have a license for the possession (manufacturer, wholesaler, importer, retailer, display) and, in addition, a permit from the local fire authority for the storage site.

(2) If the approved storage location is outside the jurisdiction issuing the permit, the authority issuing the permit must notify the appropriate authorities of the jurisdiction in which the storage is to be located.

(3) Storage (~~shall~~) must be in accordance with requirements of the local fire official, who may use the safety practices in the appendix of these rules as guidelines in approving the storage permit.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-445 Storage—By common carrier.** (1) No common carrier (~~shall~~) will store fireworks while in transit within a building without first obtaining a storage permit from the local fire authority.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

#### PART X—COMPLIANCE WITH ADOPTED STANDARDS

##### NEW SECTION

**WAC 212-17-446 Violation of adopted standards.** (1) The violation of an adopted standard will be classified as regulatory or license and will be assessed using the following standard penalty range:

- (a) Failure to acquire or submit for a license or permit.
- (b) Failure to follow a requirement or process.

(2) If the action or behavior led to an increase hazard or threat to a person or animal the penalty would be moved to the mitigating factor or aggravating factor range.

(3) If the violator is unaware of the rules, standard, or is acting in a negligent manner, the penalty would move to the mitigating factor range.

(4) Disregard for rules, standard, or acting in a reckless or wanton manner would move the penalty to the aggravating factor range.

#### PART ~~(XII)~~ XI—FINES AND PENALTIES

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-450 Fines and penalties.** ~~((+))~~ These rules establish the basis and process by which citations and penalties will be determined and issued for violations of chapters 70.77 RCW and 212-17 WAC.

~~((2) Each violation(s) is classified and penalty(ies) assessed according to violation type and instance.))~~

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-460 General rules.** (1) These rules establish civil penalty criteria for ~~((Types I, II, III, and IV Violations and the instances for each type of))~~ violations of chapter 70.77 RCW and this chapter.

(2) ~~((These rules apply to persons who violate the requirements of chapters 70.77 RCW and/or chapter 212-17 WAC.~~

~~((3))~~ Each separate instance of noncompliance with chapters 70.77 RCW and/or 212-17 WAC ~~((shall))~~ will be considered a separate violation.

~~((4))~~ (3) Each day that a violation continues ~~((shall))~~ will be considered a separate violation.

~~((5))~~ (4) The distribution, sale, use, manufacture, or possession of any amount of illegal fireworks is prohibited and subject to citation and penalty.

~~((6))~~ (5) In addition to the issuance of citations and penalties under these rules, the state fire marshal and local fire marshal acting in accordance with chapters 70.77 RCW and/or 212-17 WAC:

- (a) May confiscate any amount of illegal fireworks; and
- (b) May confiscate other fireworks possessed by persons violating chapters 70.77 RCW and/or 212-17 WAC.

~~((7))~~ (6) In addition to the issuance of citations, penalties, and the confiscation of fireworks, the state fire marshal may also revoke, suspend, or deny any fireworks license provided for under chapter 70.77 RCW to any person who fails to pay a penalty(ies) assessed under these rules.

~~((8))~~ The penalty for each violation shall range from \$0 to \$1,000 per ~~((day and occurrence))~~ violation.

##### NEW SECTION

**WAC 212-17-461 Revocation of license.** The state fire marshal may deny, suspend, or revoke a license:

(1) Upon receiving evidence that any appointee has failed to comply or no longer complies with any requirement or provision of law or this chapter. The following process must be used:

(a) The state fire marshal must give the licensee notice of the action and an opportunity to be heard as prescribed in chapter 24.05 RCW, before denial, suspension, or revocation of the license.

(b) Upon receiving notice of the action, the licensee may, within twenty days from the date of the notice of action, request in writing to the state fire marshal a hearing on the denial, suspension, or revocation of the letter of appointment. An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the state fire marshal's office may, at the request of the licensee, or on its own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in a mutually agreed upon location at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as provided in chapter 34.05 RCW.

(2) Without prior notification if the state fire marshal finds that there is danger to the public health, safety, or welfare which requires immediate action. In every summary suspension of a license, an order signed by the state fire marshal or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instituted and determined. The state fire marshal must give notice as is practicable to the licensee.

(3) Immediately if the licensee's insurance bond is canceled.

(4) If the licensee voluntarily relinquishes the letter, the state fire marshal will be advised in writing of this voluntary relinquishment. After receiving notice, the state fire marshal



will attempt to obtain the licensee's license. If the licensee requests reissuance of the license, the state fire marshal may require a new application.

(5) If the licensee's violations are subject to suspension for the first violation are categorized as major violations any subsequent or continuing major violation may be cause for termination unless the state fire marshal imposes additional suspensions for longer periods, if deemed appropriate.

(a) When considering punitive action for a major violation, the state fire marshal may take into consideration all major and minor violations that occurred within thirty-six months before the date of the current violation.

(b) Terms of disciplinary action - Minor violations of this chapter may be cause for disciplinary action in the following manner:

(i) First violation within a twelve-month period - Letter of written reprimand;

(ii) Second violation within a twelve-month period - Thirty-day suspension;

(iii) Third violation within a twelve-month period - Sixty-day suspension;

(iv) Fourth violation within a twelve-month period - Revocation of the license.

(c) The state fire marshal may increase or decrease the suspension period based on finding aggravating or mitigating factors as provided in WAC 212-17-465.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-465 Violation types and penalty assessments.** (1) ~~(Penalties shall be assessed according to violation type:~~

~~(2) The types of violations are:~~

~~(a) Least - Type I;~~

~~(b) Minimal - Type II;~~

~~(c) Moderate - Type III;~~

~~(d) Severe - Type IV.)~~ Penalties for fireworks violations are:

(a) Group one - Public safety violations that jeopardize public safety committed by nonlicensed persons. Penalties range from a warning to one thousand dollars per violation.

(b) Group two - Regulatory violations are regulatory violations that may be committed by both licensed or unlicensed persons. Penalties range from a warning to one thousand dollars per violation.

(c) Group three - License violations are licensing violations committed by licensees. Penalties range from a warning to one thousand dollars per violation.

(2) The state fire marshal may impose a different penalty than the standard penalties outlined in these schedules based on the following mitigating or aggravating circumstances:

(a) Mitigating circumstances are those that:

(i) May result in fewer days of suspension or a lower monetary penalty assessed. A licensee may demonstrate by implementation of safety or business policies or practices that reduce the risk of future violations. Examples include, but are not limited to:

(A) Having a signed acknowledgment of the practice on file for each employee;

(B) Having an employee training plan that includes annual training on fireworks laws.

(ii) May result in an increase for the period a license is suspended or revoked or increase in the monetary penalty assessed. This would include, but is not limited to, repeated offenses where citations have been issued for the same violation during a given time period.

(b) Aggravating circumstances are those that will result in increased days of suspension, increased monetary penalties, or revocation of a fireworks license. Examples include, but are not limited to:

(i) Business operations or behaviors that create an increased risk for a violation;

(ii) Repeated importation of fireworks that do not meet the standards when inspected by the U.S. Consumer Product Safety Commission;

(iii) Intentional commission of a violation;

(iv) Disregard for the safety of others that may or may not have resulted in an actual injury; or

(v) Repeated offenses where citations have been issued for the same violation during a given time period.

(c) In addition to the examples in (a) and (b) of this subsection, the state fire marshal will provide and maintain a list of business practices for reference as examples where business policies or practices may constitute mitigating or aggravating circumstances. This list will not be all inclusive for determining mitigating or aggravating circumstances, and may be modified by the state fire marshal. The list will be accessible to all stakeholders and the general public via the internet.

(3) The state fire marshal may offer a monetary option in lieu of suspension based on mitigating circumstances during a settlement conference as outlined in this chapter.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-470 Violation assessment at the local level.** (1) Local fire authorities ~~((shall))~~ will have the authority to issue civil penalty citations for violations of chapters 70.77 RCW and/or 212-17 WAC.

(2) A citation may impose a penalty or provide a warning.

(3) After issuing the citation notice, the citation ((shall)) will be forwarded to ((the office of)) the state fire marshal within ten days of issuance. ((Where possible,)) Each citation ((shall)) will be accompanied by a copy of the issuing authority's written report, inspection sheets, evidence receipt, or any other forms that are completed during the process of issuing citations.

(4) The ((office of the)) state fire marshal ((shall)) will review the information contained in the citation and any accompanying documentation.

(5) If the evidence exists that a violation occurred, the state fire marshal will issue ((a notice of civil penalty based upon the information contained in the citation and any accompanying documentation)) an administrative violation notice (AVN) which will include:

(a) A brief narrative description of the charged violation(s);

(b) The date(s) of the violation(s):

(c) A copy of the law(s) or regulation(s) allegedly violated:

(d) A summary of the licensee's or permit holder's options as provided in WAC 314-29-010; and

(e) The recommended penalty.

(6) The civil penalty will be delivered using registered mail.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-475 Hearings for civil penalties.** (1)

Any person may request a hearing regarding the assessment of a civil penalty.

(2) Hearings requests ~~((shall))~~ will be filed with the office of the state fire marshal within fourteen days from the date of the service of civil penalty.

(3) Any person who requests a hearing ~~((shall))~~ will be entitled to a hearing.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-480 Informal conference.** (1) The

~~((office of the))~~ state fire marshal will provide an opportunity for a person to informally discuss a civil penalty that has been assessed against them.

(2) An informal conference may be requested prior to a request for a formal hearing; however, a formal hearing ~~((shall))~~ will be requested within twenty-eight days of the date of service of the notice of civil penalty.

(3) The request for an informal conference may be in any form ~~((;))~~ and must:

(a) ~~((shall))~~ Be addressed to the office of the state fire marshal; and

(b) ~~((shall))~~ Clearly state the subject to be discussed.

(c) ~~((An informal conference concerning civil penalties shall))~~ Not exceed the fourteen days allowed for filing a formal hearing request if the hearing concerns civil penalties.

(d) If the parties agree, an informal conference may be held by telephone.

(e) As the result of an informal conference, the state fire marshal may, for good cause, amend, withdraw, or reduce a civil penalty.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-485 Formal hearing.** (1) A person may

request a formal hearing at any time before or after an informal conference, as long as the twenty-eight day period for requesting a hearing has not lapsed.

(2) The office of the state fire marshal will arrange for a hearings officer to conduct the formal hearing through the office of administrative hearings.

(3) The office of ~~((the state fire marshal))~~ administrative hearings will set a date, time, and location for the formal hearing.

(4) The office of ~~((the state fire marshal))~~ administrative hearings will notify, by letter, the person requesting the hear-

ing (or their designated representative) of the date, time, location and the hearings officer conducting the formal hearing.

(5) The hearings officer will hear the case and render a proposed opinion and order including recommended findings of fact and conclusions of law, according to chapter 34.05 RCW.

(6) The formal hearing ~~((shall))~~ will be conducted as follows:

(a) The hearings officer will act as an impartial third party.

(b) It is not necessary for the person that requested the hearing to be represented by legal council.

(c) Testimony ~~((shall))~~ will be taken under oath.

(d) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible.

(e) Hearsay evidence is admissible if it meets statutory standards for being reliable and trustworthy.

(7) The proposed opinion and order ~~((shall))~~ will be reviewed by the state fire marshal and, if accepted, finalized and issued as a final order.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-490 Penalty adjustment.** (1) The assess-

ment of adjustment of penalties for amounts other than those set by chapter 70.77 RCW ~~((shall))~~ will be done only by the state fire marshal through a hearings process either formally or informally.

(2) The assessment of penalties for not being in conformance with chapters 70.77 RCW and/or 212-17 WAC may be made only after considering:

(a) The gravity and magnitude of the violation;

(b) The person's previous record;

(c) Such other considerations as the state fire marshal may consider appropriate.

(3) During a formal hearing or informal conference, ~~((the office of))~~ the state fire marshal may modify or adjust the citation, cited violations, or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-495 Payment of civil penalty.** (1) The

penalty ~~((shall))~~ must be paid to ~~((the office of))~~ the state fire marshal immediately after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) The attorney general may bring an action in the name of the Washington state patrol, through the director of fire protection, in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 70.77 RCW.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

**WAC 212-17-515 ~~((Type IV violations.))~~ Violation/penalty matrix.** ~~((Type IV violations are subject to pen-~~

alties ranging from one hundred twenty-five dollars to one thousand dollars per day depending on instance and in accordance with WAC 212-17-390.

(2) Examples of Type IV violations include, but are not limited to:

(a) Possession of fifty dollars or more of 1.3G fireworks without the necessary license issued by the office of the state fire marshal and the required permit from the local authority having jurisdiction;

(b) Conducting a public fireworks display without the necessary license issued by the office of the state fire marshal and the required permit from the local authority having jurisdiction;

(c) Purchase of any amount of 1.3G fireworks without the necessary licenses issued by the office of the state fire marshal and/or, where required, the local authority having jurisdiction;

(d) Conducting a public display using illegal or unauthorized fireworks;

(e) Intentional or indiscriminate use of fireworks which injure someone or cause more than two hundred fifty dollars in property damage;

(f) Wholesale sales of fireworks without a valid Washington state wholesalers license;

(g) Importing, or causing to be imported, fireworks into the state of Washington without a valid Washington state importers license.))

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
1	212-17-045(3)	Use of EPCD that results in a fire that does not cause property damage or injury (burn ban period).	\$750	\$500	An effort was made to contain fire or notify 911.	\$1,000	Used during a burn ban period or increased fire danger in the area where the device was used. No effort to contain or call 911.	No
1	212-17-045	Use of EPCD that results in a fire that does not cause property damage or injury (nonburn ban period).	\$500	\$250	An effort was made to contain fire or notify 911.	\$1,000	Used during a burn ban period or increased fire danger in the area where the device was used.	No
1	212-17-045	Use of EPCD that results in a fire that causes property damage or injury.	\$750	\$750	An effort was made to contain fire or notify 911.	\$1,000	Used during a burn ban period or increased fire danger in the area where the device was used. No effort to contain or call 911.	No
2	212-17-045	Possession of an EPCD without a written management plan.	Warning to \$100	\$200	Second or third offense in twelve months.	\$500	Fourth or more offense in twelve months.	No
2	212-17-045(2)	Use of EPCD without a written management plan (federal) or contract (with WDFW).	Warning to \$250	\$500	Third or more offense in twelve months.	\$1,000	Use of EPCD in a reckless or malicious manner that is not reasonable or prudent that threatens to injure or kill wildlife or persons.	No
2	212-17-050(2)	Importing, manufacturing, selling or possessing a firework with prohibited chemicals.	Warning to \$500	\$750	Second or third offense in twenty-four months.	\$1,000	Fourth or more offense in twenty-four months.	Yes
2	212-17-051(1)	Importing or manufacturing a firework that does not meet the CPSC requirements for a consumer firework.	Warning to \$500	\$750	Second or third offense in twenty-four months.	\$1,000	Fourth or more offense in twenty-four months.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
1	212-17-053 (2)(a)	Possess, purchase or discharge of a consumer firework that has been altered.	Warning to \$750	\$1,000	Second or third offense in twenty-four months.	\$1,000	Second or third offense in twenty-four months.	No
2	212-17-053 (2)(a)	Offering for sale, storage or manufacturing a consumer firework that has been altered.	\$1,000	\$1,000	N/A	\$1,000	N/A	Yes
1	212-17-053 (2)(b)	Connecting a consumer firework to electric match without a pyrotechnic operator's license.	Warning to \$500	\$750	Second or third offense in twelve months.	\$1,000	Fourth or more offense in twelve months.	No
2	212-17-053	Altering a consumer firework into an improvised explosive device.	\$1,000	\$1,000	N/A	\$1,000	N/A	Yes
3	212-17-055 (2) (c) (iii)	Importing or manufacturing any firework device without receiving an approval from the U.S. DOT per 49 C.F.R. parts 171-178.	Warning to \$100 per item	\$500 per item	Second or third offense in twelve months.	\$1,000 per item	Fourth or more offense in twelve months.	Yes
2	212-17-055(2)	Importing or manufacturing a firework without the required labeling.	Warning to \$100 per item	\$500 per item	Second or third offense in twelve months.	\$1,000 per item	Fourth or more offense in twelve months.	Yes
2	212-17-057(1)	Possession of dangerous firework. Device has been confiscated for destruction. (Person cited can be responsible for cost of destruction.)	Warning to \$500	\$750	Second offense or if a permit was applied for and conditions were imposed prior to issuance and conditions have not been met.	\$1,000	Third offense or if continued to operate after a permit was denied.	No
2	212-17-057	Licensee that fails to destroy or transport for destruction any dangerous fireworks where an agreed upon plan has been devised and approved by the CPSC.	Warning to \$100 per item	\$500 per item	Destruction not carried out within 5 business days after first action.	\$1,000 per item	Destruction not carried out within 5 business days after second action.	Yes
1	212-17-060	Purchase of fireworks outside of time period or from an unlicensed stand.	Warning to \$500	\$750	Second or third offense in twelve months.	\$1,000	Fourth or more offense in twelve months.	No

<b>Group</b>	<b>WAC - Literal</b>	<b>Description</b>	<b>Penalty Range</b>	<b>Mitigating Circumstance Range</b>	<b>Mitigating Factor</b>	<b>Aggravated Range</b>	<b>Aggravating Factor</b>	<b>License Action</b>
2	212-17-060	Use of fireworks not allowed by conditions of the permit.	Warning to \$100 per item	\$500 per item	Second or third offense in twelve months.	\$1,000	Fourth or more offense in twelve months.	No
2	212-17-060	Violation of permit conditions.	Warning to \$250 per item sold	\$500	Fail to comply after first enforcement contact.	\$750	Fail to comply after second enforcement contact.	No
3	212-17-060	Wholesaler selling firework to a person without a permit.	Warning to \$250 per item sold	\$500	Fail to comply after first enforcement contact.	\$1,000	Fail to comply after second enforcement contact.	Yes
1	212-17-061	Possession or use of fireworks for the use in a religious or holiday celebration outside of the fireworks sales/use periods without a required permit.	Warning to \$250	\$500	Second or third offense in twelve months.	\$750	Fourth or more offense in twelve months.	No
1	212-17-062	Advertisement for the sale or purchase of fireworks by a nonlicensed CFRS.	Warning to \$500	\$750	Second or third offense in twelve months.	\$1,000	Fourth or more offense in twelve months.	No
3	212-17-062	Advertisement for the sale or purchase of fireworks by a licensed CFRS does not include the CFRS license number.	Warning to \$100	\$250	Fail to comply after first enforcement contact.	\$500	Fail to comply after second enforcement contact.	Yes
2	212-17-062	Purchase of fireworks from an out-of-state fireworks wholesaler who is not licensed in Washington.	Warning to \$500	\$100 per item	Second or third offense in twelve months.	\$250 per item	Fourth or more offense in twelve months.	Yes
1	212-17-063	Storage of consumer fireworks for personal use in a residential or commercial setting in excess of 125 net explosive weight without a permit from the local authority having jurisdiction.	Warning to \$50 per item	\$100 per item	Fail to comply after 24 hours from first enforcement contact.	\$250 per item	Fail to comply after 24 hours from second enforcement contact.	No
1	212-17-063	Storage of consumer fireworks for personal use in a residential or commercial setting in excess of 125 net explosive weight where the	Warning to \$100 per item	\$250 per item	Fail to comply after 24 hours from first enforcement contact.	\$500 per item	Fail to comply after 24 hours from second enforcement contact.	No

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
		sale and possession of fireworks is banned or prohibited.						
2	212-17-064	Possession or storage without the appropriate federal explosives license. No permit from local authority having jurisdiction or L&I.	Warning to \$100 per item	\$250 per item	If stored in a manner that is not consistent with industry standards.	N/A	Fireworks to be seized on first contact.	Yes
2	212-17-064	Possession or storage with the appropriate federal explosives license. No permit from local authority having jurisdiction or L&I.	Warning to \$100 per item	\$250 per item	If stored in a manner that is not consistent with industry standards.	N/A	Fireworks to be seized on first contact.	Yes
2	212-17-064	Possession or storage with the appropriate federal explosives license. No permit from local authority having jurisdiction or L&I and the sale and possession of fireworks is banned or prohibited.	Warning to \$100 per item	\$500 per item	If stored in a manner that is not consistent with industry standards.	N/A	Fireworks to be seized on first contact.	Yes
3	212-17-065	Fail to obtain a license to manufacture, import and wholesale consumer fireworks.(Hobbyist - Personal use.)	Warning to \$100 per item	N/A	Fireworks to be seized on first contact.	N/A	Fireworks to be seized on first contact.	Yes
3	212-17-065	Fail to obtain a license to manufacture, import and wholesale display fireworks.(Hobbyist - Personal use.)	Warning to \$250 per item	N/A	Fireworks to be seized on first contact.	N/A	Fireworks to be seized on first contact.	Yes
3	212-17-065	Fail to obtain a license to manufacture, import and wholesale fireworks.(Hobbyist - Personal use.)	Warning to \$100 per item	N/A	Fireworks to be seized on first contact.	N/A	Fireworks to be seized on first contact.	Yes
3	212-17-065	Fail to obtain a license to manufacture, import and wholesale fireworks. (Commercial use.)	Warning to \$200 per item	N/A	Fireworks to be seized on first contact.	N/A	Fireworks to be seized on first contact.	Yes

<b>Group</b>	<b>WAC - Literal</b>	<b>Description</b>	<b>Penalty Range</b>	<b>Mitigating Circumstance Range</b>	<b>Mitigating Factor</b>	<b>Aggravated Range</b>	<b>Aggravating Factor</b>	<b>License Action</b>
3	212-17-065	Manufacturing, importing, and wholesaling fireworks without the appropriate permits from the local jurisdiction having authority.	Warning to \$100 per item	\$250 per item	Fail to comply after 24 hours from first enforcement contact.	\$500 per item	Fail to comply after 24 hours from second enforcement contact.	Yes
3	212-17-070	Manufacturing, importing, and wholesaling fireworks after an application has been denied.	Warning to \$500 per item	\$750 per item	Fail to comply after 24 hours from first enforcement contact.	\$1,000 per item	Fail to comply after 24 hours from second enforcement contact.	Yes
3	212-17-080	Manufacturing, importing, and wholesaling fireworks without a license issued by the state fire marshal.	Warning to \$100 per item	\$250 per item	If activity occurs past when a license could be issued.	N/A	Fireworks to be seized on first contact.	Yes
3	212-17-080	Violation of license limitations.	Warning to \$100 per item	\$250 per item	Fail to comply after 24 hours from first enforcement contact.	\$500 per item	Fail to comply after 24 hours from second enforcement contact.	Yes
3	212-17-085	Fail to produce records and reports when requested by the state fire marshal.	Warning to \$100 per item	\$250 per item	Fail to comply after 72 hours from close of business that documents were to be provided.	\$500 per item	Fail to comply after 96 hours from close of business that documents were to be provided.	Yes
3	212-17-085	Failure to maintain records pertaining to third-party testing of fireworks.	Warning to \$100 per item	\$250 per item	Fail to comply after 72 hours from close of business that documents were to be provided.	N/A	Fireworks to be seized on second contact if not able to produce records.	Yes
3	212-17-115	Storage of any fireworks by a licensed person in an unapproved facility.	Warning to \$100 per item	\$250 per item	Fail to comply after 24 hours from first enforcement contact.	\$500 per item	Fail to comply after 24 hours from second enforcement contact.	Yes
3	212-17-115	Temporary storage that has extended into permanent storage with approval from the local jurisdiction having authority.	Warning to \$100 per item	\$250 per item	Fail to comply after 96 hours from close of business that documents were to be provided.	N/A	Fireworks to be seized on second contact if not able to produce records.	Yes
3	212-17-118	Fail to have consumer fireworks third-party tested for compliance.	Warning to \$10 per item	\$100 per item	Product to be field tested by CPSC. If fails field test, fine to be \$100 per item.	\$500 per item	Product to be laboratory tested by CPSC. If fails field test, fine to be \$500 per item.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-145	Importer failing to notify the state fire marshal of any device(s) failing field testing and additional samples sent in for laboratory testing.	Warning to \$5 per item	\$25 per item	For no more than two pallets of devices that failed.	\$50 per item	For more than two pallets of devices that failed.	Yes
3	212-17-145	Importer failing to notify the state fire marshal that fireworks were reclassified from 1.4g to 1.3g. (Labeling, chemical content, design, and construction.)	Warning to \$50 per item	\$250 per item	For no more than two pallets of devices that failed.	\$500 per item	For more than two pallets of devices that failed.	Yes
3	212-17-145	Importer storing reclassified 1.3g fireworks in an unapproved facility.	Warning to \$100 per item	\$250 per item	For no more than two pallets of devices that failed.	\$500 per item	For more than two pallets of devices that failed.	Yes
3	212-17-145	Importer storing reclassified 1.3g fireworks due to overloading of pyrotechnic material in an unapproved facility.	Warning to \$100 per item	\$250 per item	For no more than two pallets of devices that failed.	\$500 per item	For more than two pallets of devices that failed.	Yes
3	212-17-145	Failing to provide a copy of the letter of advice to the state fire marshal.	Warning to \$5 per item	\$25 per item	For no more than two pallets of devices that failed.	\$50 per item	For more than two pallets of devices that failed.	Yes
2	212-17-185	Conducting retail sales of fireworks without a license. (Nontribal lands.)	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact.	Yes
2	212-17-185	Conducting retail sales of fireworks without a permit issued from the local jurisdiction having authority.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact.	Yes
2	212-17-185	Conducting retail sales of fireworks without a license when license application has been denied. (Nontribal lands.)	\$1,000	N/A	N/A	N/A	N/A	Yes
3	212-17-185	Transferring a license from a nonwholesaler purchaser to a person or business.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact. Fireworks seized.	Yes



<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-185	Obtaining a license only to purchase fireworks at wholesaler. No permit applied for or issued.	Warning to \$250	\$25 per item	If the net explosive weight is greater than 10 pounds (40 gross pounds) but less than 125 pounds.	\$50 per item	If the net explosive weight exceeds 125 pounds (500 gross pounds).	Yes
3	212-17-198	Retail sales licensee failing to display the list of approved consumer fireworks.	Warning to \$150	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from second enforcement contact.	Yes
1	212-17-199	Possession of prohibited fireworks (bottlerockets, firecrackers, missiles). (Can be combined with use.)	Warning to \$25 per item	\$50 per item	Amount exceeds 5 net explosive weight (20 gross pounds). Fireworks seized.	\$1,000	Amount exceeds 20 net explosive weight (80 gross pounds). Fireworks seized.	No
1	212-17-199	Use of prohibited fireworks (firecrackers, chasers). (Can be combined with possession.)	Warning to \$25 per item	\$50 per item	Amount exceeds 5 net explosive weight (20 gross pounds). Fireworks seized.	\$1,000	Amount exceeds 20 net explosive weight (80 gross pounds). Fireworks seized.	No
1	212-17-199	Use of prohibited fireworks (Bottlerockets, missiles). (Can be combined with possession.)	Warning to \$50 per item	\$100 per item	Used during a burn ban or increased fire hazard period. Fireworks seized.	\$250 per item	Used during a burn ban or increased fire hazard period and starts a fire. Fireworks seized.	No
3	212-17-199	Offering for sale prohibited fireworks (bottlerockets, firecrackers, missiles). Nonlicensed person.	Warning to \$25 per item	\$100 per item	Second offense or failing to comply after 6 hours from first enforcement contact.	N/A	Fireworks seized.	Yes
3	212-17-199	Offering for sale prohibited fireworks (bottlerockets, firecrackers, missiles). Fireworks licensee.	Warning to \$25 per item	\$100 per item	Second offense or failing to comply after 6 hours from first enforcement contact.	N/A	All fireworks seized. Revocation of permit and license.	Yes
3	212-17-21504	Retailer purchasing any consumer fireworks from a nonlicensed wholesaler.	Warning to \$250	\$50 per item	Second offense. Fireworks seized.	\$1,000	Subsequent offense. Fireworks seized.	Yes
3	212-17-21504	Retailer selling fireworks from location other than licensed and permitted CFRS.	Warning to \$250	\$50 per item	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from first enforcement contact. Fireworks seized.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-21505	Conducting retail sale of fireworks from an unpermitted CFRS.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact.	Yes
3	212-17-21505	Conducting retail sale of fireworks from a CFRS structure other than those approved.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact.	Yes
3	212-17-21505	Conducting retail sale of fireworks from a CFRS structure that has been modified without approval of the state fire marshal and local authority having jurisdiction.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact.	Yes
3	212-17-21509	Conducting retail sales from a county other than what is on the license issued by the state fire marshal.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	If a permit or license cannot be issued with the correction.	Yes
2	212-17-21509	Conducting retail sales from a location other than what is on the permit approved by the authority having jurisdiction.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from second enforcement contact.	Yes
3	212-17-21509	Failure to maintain minimum required setback distances.	Warning to \$100	\$200	Second or third offense in twelve months.	\$500	Fourth or more offense in twelve months.	Yes
3	212-17-21510	Fireworks must remain in CFRS or temporary storage location until returned to the suppliers from where they were obtained.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$1,000	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21510	Fail to cleanup site prior to 11:59 p.m. on July 15 for the July 4th selling season.	Warning to \$250	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21510	Fail to cleanup site prior to 11:59 p.m. on January 10 for the New Year's selling season.	Warning to \$250	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes

<b>Group</b>	<b>WAC - Literal</b>	<b>Description</b>	<b>Penalty Range</b>	<b>Mitigating Circumstance Range</b>	<b>Mitigating Factor</b>	<b>Aggravated Range</b>	<b>Aggravating Factor</b>	<b>License Action</b>
3	212-17-21511	Failure to maintain area free of dry vegetation and combustible debris.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21511	Failure to post required number of "No Fireworks Discharge within 300 Feet" signs.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21511	Failure to post required number of "No Smoking within 50 Feet" signs.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21513	Extension cords not in compliance with National Electrical Code.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21513	Heating units not listed by a recognized testing laboratory.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21513	Heating sources without "tip-over" temperature overheat protection.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21513	Generator closer than 20 feet from CFRS.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21513	More than 5 gallons of fuel stored less than 20 feet from CFRS.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Sleeping inside CFRS.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	No telephone on-site or phone number and location not conspicuously posted.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Fire extinguisher violation.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Open flame inside CFRS.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-21515	No adult (18 years of age or older) on-site during	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Persons under the age of 16 working in a CFRS.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Failure to clean up the retail site at the end of the fireworks sales period.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Selling fireworks to persons under the age of 16.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21515	Failure to post required number of "no sale of fireworks to persons under the age of 16 years. Photo ID required" signs.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21517 (6)(d)	Storage closer than required separation distance of ten feet.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21517 (6)(e)(ii)	Storage closer than required separation distance of thirty feet.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21517(9)	Cooking or allowing an open flame inside a temporary storage structure.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21517	Temporary storage of fireworks outside of the temporary time periods (June 13 to July 31) and (December 12 to January 10).	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21517	No permit for temporary storage or temporary storage not permitted.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$750	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-21517	Temporary storage in an unapproved container, vehicle, trailer, or structure.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-21517 (6)(b), (c), (e)(i)	Storage closer than required separation distance of twenty feet.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
3	212-17-221	Unlicensed pyrotechnic operator conducting a fireworks display.	Warning to \$500	\$750	Second offense.	\$1,000	Third offense.	Yes
3	212-17-223	Conducting a fireworks display with the wrong pyrotechnic operator's license.	Warning to \$100	\$250	Second offense.	\$500	Third offense.	Yes
3	212-17-225	Submitting an application for a pyrotechnic operator's license with false or inaccurate information regarding experience.	Warning to \$500	N/A	Information would have to be corrected prior to resubmission or reissuance of license.	N/A	Information would have to be corrected prior to resubmission or reissuance of license.	Yes
3	212-17-230	Submitting an application for a pyrotechnic operator's license with false or inaccurate information regarding experience.	Warning to \$500	N/A	Information would have to be corrected prior to resubmission or reissuance of license.	N/A	Information would have to be corrected prior to resubmission or reissuance of license.	Yes
2	212-17-232	Conducting a fireworks display with an expired pyrotechnic operator's license (less than 12 months).	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
2	212-17-235	Failing to supervise personnel or the setup of a fireworks display.	Warning to \$100	\$250	Fail to comply after 6 hours from first enforcement contact.	\$500	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
2	212-17-235	Conducting a fireworks display that is unsafe and jeopardizes life and/or property.	Warning to \$500	\$1,000	Failure to immediately comply before continuing the display.	N/A	N/A	Yes
2	212-17-250	Conducting a fireworks display without a general display license.	Warning to \$100	\$250	Second offense.	\$500	Third offense.	Yes
2	212-17-250	Conducting a fireworks display with a general display license in which the surety bond or certificate of liability insurance is expired or canceled.	Warning to \$500	\$750	Second offense.	\$1,000	Third offense.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-260	Conducting a fireworks display without a general display license or permit from the authority having jurisdiction.	Warning to \$500	\$1,000	Second offense.	N/A	N/A	Yes
3	212-17-260	Licensed pyrotechnic operator conducting a fireworks display without a general display license.	Warning to \$100	\$250	Second offense.	\$500	Third offense.	Yes
3	212-17-270	Failure to submit for a local permit at least ten calendar days in advance of the fireworks display.	Warning to \$100	\$100 per day	Second offense - Every day less than ten that permit is submitted.	\$250	Third offense - Every day less than ten that permit is submitted.	Yes
3	212-17-270	Information submitted for the permit is contrary to what occurred. (Example: Temporary storage or loading of a barge took place at a different location than on the permit.)	Warning to \$500	N/A	Information would have to be corrected prior to resubmission or reissuance of license.	N/A	Information would have to be corrected prior to resubmission or reissuance of license.	Yes
3	212-17-270	Conducting a fireworks display without a permit from the local jurisdiction.	Warning to \$500	\$750	Second offense.	\$1,000	Third offense or display involves a fire or injuries.	Yes
3	212-17-270	Conducting a fireworks display without submitting for a permit from the local jurisdiction.	Warning to \$750	\$1,000	Second offense or display involves a fire or injuries.	\$1,000	Third offense or display involves a fire or injuries.	Yes
3	212-17-280	Conducting a fireworks display without submitting for a permit from the local jurisdiction when the permit would have been denied due to increased hazard or fire danger.	\$1,000	N/A	N/A	N/A	N/A	Yes
3	212-17-295	Conducting a fireworks display without implementing safety precautions required on the permit by the authority having jurisdiction.	Warning to \$500	\$750	Not correcting the deficiency prior to the start of the display.	\$1,000	Not correcting the deficiency prior to the start of the display. Display incurred an injury or fire.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
2	212-17-345	Failure to submit a report to the state fire marshal for any public display conducted.	Warning to \$100	\$500	Second offense.	\$1,000	Any display with no report submitted that resulted in an injury, fire or unplanned incident.	Yes
2	212-17-425	Carrier delivering fireworks without having the proper license to transport such class and quantity of fireworks.	Warning to \$500	\$750	Delivery of between 10 and 125 net weight of explosive fireworks.	\$1,000	Delivery in excess of 125 net weight of explosive fireworks.	No
2	212-17-430	Common carrier delivering fireworks to a person or firm within Washington state without a valid importer's license.	Warning to \$500	\$750	Delivery of between 10 and 125 net weight of explosive fireworks.	\$1,000	Delivery in excess of 125 net weight of explosive fireworks.	No
2	212-17-435	Storage of fireworks that present an increased hazard or menace of fire or explosion.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$750	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
2	212-17-440	Storage without a fireworks license or permit.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$750	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
2	212-17-445	Storage without a fireworks license or permit.	Warning to \$250	\$500	Fail to comply after 6 hours from first enforcement contact.	\$750	Fail to comply after 12 hours from first enforcement contact. Fireworks may be seized.	Yes
2	212-17-446	Violation of an adopted standard by an unlicensed person or business. If the action or behavior leads to an increased hazard or threat to a person or animal, the degree of the hazard would move the penalty from the standard range.	Warning to \$500	\$750	Unaware of the rules, standard, multiple offenses or acting in a negligent manner would move the penalty to the mitigating factor range.	\$1,000	Disregard for rules, standard, multiple offenses or acting in a reckless or wanton manner would move the penalty to the aggravating factor range.	Yes

<u>Group</u>	<u>WAC - Literal</u>	<u>Description</u>	<u>Penalty Range</u>	<u>Mitigating Circumstance Range</u>	<u>Mitigating Factor</u>	<u>Aggravated Range</u>	<u>Aggravating Factor</u>	<u>License Action</u>
3	212-17-446	Violation of an adopted standard by a licensed person or business. If the action or behavior leads to an increased hazard or threat to a person or animal, the degree of the hazard would move the penalty from the standard range.	Warning to \$500	\$750	Unaware of the rules, standard, multiple offenses or acting in a negligent manner would move the penalty to the mitigating factor range.	\$1,000	Disregard for rules, standard, multiple offenses or acting in a reckless or wanton manner would move the penalty to the aggravating factor range.	Yes

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 212-17-001	Title.	WAC 212-17-170	Importers of fireworks—Licensing.
WAC 212-17-010	Purpose.	WAC 212-17-175	Importers of fireworks—License scope.
WAC 212-17-020	Authority.	WAC 212-17-180	Importers of fireworks—Restrictions.
WAC 212-17-030	Definition and classification—"Trick and novelty devices."	WAC 212-17-203	Retailers of fireworks—List to be posted.
WAC 212-17-032	Definition and classification—"Articles pyrotechnic."	WAC 212-17-21503	Retailers of fireworks—Definitions.
WAC 212-17-035	Definition and classification—"Consumer fireworks."	WAC 212-17-21507	Retailers of fireworks—Transportation.
WAC 212-17-040	Definition and classification—"Display fireworks."	WAC 212-17-240	Pyrotechnic operators—Observance of laws, rules and regulations.
WAC 212-17-042	Definition and classification—"Special effects."	WAC 212-17-245	Public displays of fireworks—General.
WAC 212-17-090	Fireworks manufacturer—Restrictions.	WAC 212-17-255	Public displays of fireworks—Type of license.
WAC 212-17-095	Fireworks manufacturer—Building and structures.	WAC 212-17-285	Public displays of fireworks—Spectators.
WAC 212-17-100	Fireworks manufacturer—Personnel.	WAC 212-17-290	Public displays of fireworks—Pyrotechnic operators.
WAC 212-17-105	Fireworks manufacturer—Visitors.	WAC 212-17-300	Public display—Definitions.
WAC 212-17-110	Fireworks manufacturer—Fire nuisance.	WAC 212-17-305	Public display—Construction of shells.
WAC 212-17-120	Fireworks wholesaler—Licensing.	WAC 212-17-310	Public display—Storage of shells.
WAC 212-17-125	Fireworks wholesaler—Investigation.	WAC 212-17-315	Public display—Installation of mortars.
WAC 212-17-135	Fireworks wholesaler—License limitations.	WAC 212-17-317	Public display—Electrical firing unit.
WAC 212-17-140	Fireworks wholesaler—Records and reports.	WAC 212-17-320	Public display—Site selection.
WAC 212-17-150	Fireworks wholesaler—Personnel.	WAC 212-17-321	Public display—Installation of buried mortars.
WAC 212-17-155	Fireworks wholesaler—Visitors.	WAC 212-17-323	Installation of mortar racks.
WAC 212-17-160	Fireworks wholesaler—Fire nuisance.	WAC 212-17-325	Public display—Discharge site.
WAC 212-17-165	Importers of fireworks—General.	WAC 212-17-327	Requirements for chain fusing.
		WAC 212-17-330	Public display—Operation.
		WAC 212-17-335	Public display—Firing of shells.



WAC 212-17-340	Public display—Ground pieces.
WAC 212-17-342	Public display—Floating vessels and platforms.
WAC 212-17-350	Proximate display—Use of proximate before an audience.
WAC 212-17-352	Transportation—By common carrier.
WAC 212-17-355	Proximate display—Proximate permit.
WAC 212-17-360	Proximate display—Pyrotechnic display plans.
WAC 212-17-362	Storage—By common carrier.
WAC 212-17-365	Proximate display—Pyrotechnic display demonstrations.
WAC 212-17-370	Proximate display—Definitions.
WAC 212-17-375	Proximate display—Transportation of pyrotechnic material.
WAC 212-17-380	Proximate display—Storage of pyrotechnic materials and WAC devices.
WAC 212-17-385	Proximate display—Separation from heat sources.
WAC 212-17-390	Proximate display—Identification of pyrotechnic devices or binary systems.
WAC 212-17-395	Proximate display—General fire protection.
WAC 212-17-400	Proximate display—Firing prerequisites.
WAC 212-17-405	Proximate display—Firing safeguards.
WAC 212-17-410	Proximate display—Separation distances from audience.
WAC 212-17-415	Proximate display—Performance.
WAC 212-17-420	Proximate display—After the performance.
WAC 212-17-455	Definitions.
WAC 212-17-500	Type I violations.
WAC 212-17-505	Type II violations.
WAC 212-17-510	Type III violations.
WAC 212-17-900	Appendix.

**WSR 14-24-044**  
**PROPOSED RULES**  
**ENVIRONMENTAL AND**  
**LAND USE HEARINGS OFFICE**

[Filed November 24, 2014, 4:48 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 371-08 WAC contains the procedural rules governing the conduct of pollution control hearings board (PCHB) hearings. Chapter 461-08 WAC contains the procedural rules governing the conduct of shorelines hearings board (SHB) hearings.

The following specific rules of the PCHB are proposed for amendment: WAC 371-08-300, 371-08-305, 371-08-315, 371-08-320, 371-08-325, 371-08-330, 371-08-335, 371-08-340, 371-08-355, 371-08-365, 371-08-375, 371-08-395, 371-08-430, 371-08-435, 371-08-440, 371-08-445, 371-08-450, 371-08-465, 371-08-475, 371-08-485, 371-08-535, 371-08-560, and 371-08-565. The following specific rules of the SHB are proposed for amendment: WAC 461-08-300, 461-08-305, 461-08-315, 461-08-320, 461-08-325, 461-08-335, 461-08-350, 461-08-385, 461-08-395, 461-08-415, 461-08-435, 461-08-455, 461-08-460, 461-08-465, 461-08-470, 461-08-475, 461-08-485, 461-08-490, 461-08-495, 461-08-555, and 461-08-575.

Hearing Location(s): Environmental and Land Use Hearings Office (ELUHO), 1111 Israel Road S.W., Tumwater, WA 98501, on January 7, 2015, at 10:00 a.m.

Date of Intended Adoption: January 13, 2015, at 10:00 a.m.

Submit Written Comments to: Kay Brown, P.O. Box 40903, e-mail [eluh@eluh.wa.gov](mailto:eluh@eluh.wa.gov), fax (360) 586-2253, by January 5, 2015.

Assistance for Persons with Disabilities: Contact Paulette Yorke by phone (360) 664-9171 or e-mail [Paulette.Yorke@eluh.wa.gov](mailto:Paulette.Yorke@eluh.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: One purpose of the amendments to both chapters 371-08 and 461-08 WAC is to allow the boards to routinely accept electronic filing for both filings of the initial petition for review and other types of filings.

Another purpose specifically of the amendments to WAC 371-08-315 is to update the existing rule to reflect additional types of appeals over which the legislature has given the PCHB jurisdiction.

Additional amendments reflect general clean-up and modernization of the rules.

Reasons Supporting Proposal: Allowing appellants and other parties to file by electronic mail saves them time and expense. Listing all of our areas of jurisdiction in one rule assists appellants in identifying where to file their appeals.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.175.

Statute Being Implemented: Chapters 43.21B, 90.58, and 34.05 RCW.

Name of Proponent: ELUHO, governmental.

Name of Agency Personnel Responsible for Drafting: Kay M. Brown, ELUHO, (360) 664-9174; Implementation and Enforcement: Kathleen D. Mix, ELUHO, (360) 664-9160.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No statement is required for adoption of rules described in RCW 34.05.310(4). These proposed rules and rule amendments meet the requirements of RCW 34.05.310 (4)(g) (amendment to rules relating to

procedure, practice, or requirements related to agency hearings). Rules meeting these requirements are not subject to chapter 19.85 RCW. See RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. ELUHO is not an agency specifically listed in RCW 34.05.328.

November 24, 2014  
Kathleen D. Mix  
Director

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-300 Purpose of this chapter and applicability of the board's rules of practice and the civil rules of procedure and the rules of evidence.** (1) The purpose of chapter 371-08 WAC is to provide rules of practice before the pollution control hearings board (hereinafter "board"). The interpretation of these rules of practice may be guided, where relevant, by the civil rules of superior court (hereinafter "civil rules") and the rules of evidence for the superior courts of the state of Washington, as those rules have been construed by Washington state courts.

(2) Except where in conflict with the board's rules, Washington statutes regarding administrative procedure, pre-trial procedures, civil rules and rules of evidence shall be followed in proceedings before the board unless the presiding officer determines that the evidence, although in conflict with the rules of evidence, is admissible pursuant to WAC 371-08-500.

(3) This chapter shall govern practice before the board. The rules in this chapter are consistent with the model rules of procedure issued by the office of administrative hearings, chapter 10-08 WAC, except where specifically noted.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 371-08-305 Definitions.** The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The term "adjudicative proceeding" is used interchangeably with the terms "case" and "appeal" in this chapter.

(2) "Agency" means any state governmental entity, air pollution control authority, local health department or other agency whose decisions are subject to the board's jurisdiction.

(3) "Board" means the pollution control hearings board, a quasi-judicial board created pursuant to chapter 43.21B RCW and described in WAC 371-08-315. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board ~~((during regular office hours.))~~ between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's date stamp placed on the document shall be evidence of the date of filing.

(a) Electronic filing of documents and fax filing of documents ten pages or less are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine and will constitute the date of filing, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case the date of filing will be the next business day.

(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency and parties. ~~((Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.))~~

(7) "Party" means:

(a) A person to whom any agency decision is specifically directed; or

(b) A person named as a party to the adjudicative proceeding, allowed to intervene or joined as a party by the board.

(8) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(9) "Presiding officer" means a member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or vice-chairperson.

(10) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) ~~((Facsimile))~~ Fax transmission with mailing or submission to commercial delivery service of copies on the same day. Service by ~~((facsimile))~~ fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to delivery service of the copies.

(d) Commercial parcel delivery service. Service by commercial parcel delivery service is regarded as complete upon delivery to the parcel delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

**WAC 371-08-315 Membership, function and jurisdiction.** (1) **Members.** The board is composed of three mem-

bers appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals ~~((from the decisions and orders of))~~. The board has jurisdiction to hear and decide appeals from the following decisions of the department of agriculture ((pursuant to chapters 90.48 and 90.64 RCW)), the department of ecology, ((from the decisions of)) the director of ecology, local conservation districts, air pollution control authorities established pursuant to chapter 70.94 RCW, ((from the decisions of)) local health departments, ((when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110, the decisions of)) the department of natural resources, the department of fish and wildlife, ((and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7); forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180; decisions of the department of fish and wildlife to issue, deny, condition or modify a hydraulic project approval permit under chapter 77.55 RCW; decisions of the department of natural resources that are reviewable under RCW 78.44.270 and 78.44.380; and decisions of a)) any state agency that is an authorized public entity under RCW 79.100.010 ((to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120-)), and the parks and recreation commission:

(a) Civil penalties imposed pursuant to RCW 18.104.-155, 70.94.431, 70.95.315, 70.95M.080, 70.95N.260, 70.105.080, 70.105.095(2), 70.107.050, 70.240.050, 70.275.-100, 70.275.110, 76.09.170, ((section 10, chapter 130, Laws of 2010, section 11, chapter 130, Laws of 2010, RCW)) 77.55.291, 78.44.250, ((section 1, chapter 84, Laws of 2010, RCW)) 86.16.081, 88.46.090, 90.03.600, 90.46.270, 90.48.-144, 90.56.310, ((90.56.320,)) 90.56.330, ((90.58.560 and chapter 90.64 RCW)) 90.64.102, and 90.76.080.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.-060, ((18.104.065)) 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.94.640, 70.94.715, 70.95.315, 70.95C.230, 70.105.095, 70.107.060, 86.16.110, 88.46.070, 90.14.130, 90.14.190, 90.46.250, 90.48.120, 90.48.240, and ((chapter 90.64 RCW)) 90.64.040.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, termination or denial of any permit, certificate or license by the department of ecology or any air pollution control authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, a decision to approve or deny a solid waste management plan under RCW 70.95.094, an application for a solid waste permit exemption under RCW 70.95.300, an application for a change under RCW 90.03.383, or a permit to distribute reclaimed water under RCW 90.46.220.

(d) The granting, denial, revocation, or suspension of a water right examiner certificate issued by the department under ~~((chapter 285, Laws of 2010))~~ RCW 90.03.665.

(e) Decisions ~~((by the department disapproving a comprehensive solid waste management plan or any amendments to that plan that are appealed by the submitting entity pursuant to RCW 70.95.094))~~ of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW, including appeals by the department of ecology as provided in RCW 70.95.185.

(f) Decisions of local health departments regarding the ~~((grant or denial of solid waste))~~ issuance and enforcement of permits ((or of)) to use biosolids ((permits pursuant to chapter 70.95 RCW)) under RCW 70.95J.080.

(g) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

(h) Decisions of the department of ecology regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department of ecology regarding waste-derived soil amendments under RCW 70.95.300.

(i) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

(j) Any other decision by the department of ecology ~~((the administrator of marine safety))~~ or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(k) Decisions of the department of natural resources, the department of fish and wildlife, and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(l) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(m) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(n) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(o) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

AMENDATORY SECTION (Amending WSR 12-05-110, filed 2/22/12, effective 3/24/12)

WAC 371-08-320 ((Environmental and land use hearings)) Board office hours((telephone number and

**address)) and contact information.** (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. The board holds meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at [www.eluho.wa.gov](http://www.eluho.wa.gov).

(a) The board is housed at the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington 98501. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

~~((3))~~ (b) The mailing address of the board is:

Pollution Control Hearings Board  
P.O. Box 40903  
Olympia, WA 98504-0903

~~((4))~~ (c) The telephone number of the board is 360-664-9160. The ~~((telefacsimile))~~ fax number is 360-586-2253. The board's e-mail address is [eluho@eluho.wa.gov](mailto:eluho@eluho.wa.gov).

~~((5))~~ (3) The office hours of the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

AMENDATORY SECTION (Amending WSR 12-05-110, filed 2/22/12, effective 3/24/12)

**WAC 371-08-325 Public information about practice before the board and public records.** (1) Questions about practicing before the board may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone, ~~((telefacsimile))~~ fax, or e-mail.

(2) ~~((Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The form for requests for public records is set forth on the agency's web site at [eluho@eluho.wa.gov](mailto:eluho@eluho.wa.gov).~~

(3)) The environmental and land use hearings office maintains a web site with information on the pollution control hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web site may be accessed via the internet at ~~((<http://www.eluho.wa.gov>))~~ [www.eluho.wa.gov](http://www.eluho.wa.gov).

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The procedures for obtaining public records from the board are set forth in chapter 198-14 WAC.

AMENDATORY SECTION (Amending WSR 08-03-045, filed 1/10/08, effective 2/10/08)

**WAC 371-08-330 Board decision making on appeals.** The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 43.21B-305, an appeal that involves a penalty of fifteen thousand dollars or less imposed by the department of ecology, another state agency or an air pollution control authority or that involves a derelict or abandoned vessel under RCW 79.100-120 may be heard by a single member of the board. Such appeals are called short-board appeals. The decision of that single member shall be the final decision of the entire board. For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 only, an administrative appeals judge employed by the board may be substituted for a board member.

(2) **Full-board appeals.** All other types of appeals are called full-board appeals. The chairperson may assign a single member to hold the hearing in a full-board appeal; however, at least two members shall review the record and issue a decision. Two members of the board shall constitute a quorum for making a decision and may act although one position on the board is vacant or one board member is unavailable.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental and land use hearings office to be the presiding officer.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

**WAC 371-08-335 Filing a timely appeal with the board.** (1) An appeal before the board is initiated by filing a notice of appeal with the board at the environmental and land use hearings office and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision unless otherwise provided by law. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, ~~((facsimile,))~~ fax, electronic mail, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal, not the date that the notice is mailed. Upon receiving the notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be

prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-340 Contents of notice of appeal.** The notice of appeal shall contain:

(1) The name, mailing address, telephone number (~~and telefacsimile~~), fax number (if available), and e-mail address (if available) of the appealing party, and of the representative, if any;

(2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency whose decision is being appealed and the person to whom the decision is directed shall be named as parties;

(3) A copy of the order or decision appealed from, and if the order or decision followed an application, a copy of the application;

(4) A short and plain statement showing the grounds upon which the appealing party considers such order or decision to be unjust or unlawful;

(5) A clear and concise statement of facts upon which an appealing party relies to sustain his or her grounds for appeal(-);

(6) The relief sought, including the specific nature and extent;

(7) The signature of the representative of the appealing party or the appealing party. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the notice of appeal and that it is consistent with civil rule 11;

(8) All pleadings shall be so construed as to do substantial justice.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-355 Petitions for declaratory ruling.** (1) As prescribed by RCW 34.05.240, any interested person may petition the board for a declaratory ruling. The board shall consider any petition for declaratory ruling in accordance with these rules and the Administrative Procedure Act.

(2) Two members of the board shall constitute a quorum when the board acts on a petition for a declaratory (judgment petition) order. Two members of the board may act although one position on the board is vacant.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-365 Persons who may appear before the board.** (1) Any person has the right to represent himself or herself in a proceeding before the board.

(2) The only persons who are qualified to represent another person or entity before the board are the following:

(a) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.

(b) An authorized officer, partner, owner, employee or member of an association, partnership, corporation, organization, government subdivision or agency.

(c) Legal interns admitted to practice under the applicable admission to practice rules of the Washington state court rules as long as the conditions and limitations of the applicable rules are satisfied.

(d) Any other individual designated by an entity to serve as spokesperson in a case, with the approval of the board's presiding officer.

(3) No former employee of the department or member of the attorney general's staff may (~~at any time after leaving the employment of the department or the attorney general~~) appear (~~except when permitted by the applicable state conflict of interest laws~~) in a representative capacity on behalf of other parties in a (~~formal~~) board proceeding (~~in which an active part as a representative of the department was taken in the same case or proceeding~~) except when permitted by applicable rules of professional conduct or conflict of interest laws.

(4) No former member of the board shall, for a period of one year after the termination of his or her membership, represent a party before the board on any matter.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-375 Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record (~~together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied~~) consistent with civil rule 71.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

**WAC 371-08-395 Mediation.** In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the (~~environmental hearings~~) board(~~s~~) must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-430 Scheduling letter.** (1) Upon receipt of a notice of appeal which complies with the requirements of these regulations, the board shall mail written notice to each

party of the primary and, if applicable, the secondary hearing dates. The notice or scheduling letter will identify the case to be heard, the identity of the parties and the time and location of the hearing. The letter shall also state that an interpreter can be made available upon reasonable notice to the board for any witness or party who is hearing impaired or who does not speak English.

(2) The letter may set out a filing schedule for motions and prehearing briefs. Where the presiding officer decides to hold a prehearing conference, the letter shall also state the date, time and location of the prehearing conference.

~~((3) The scheduling letter shall control the subsequent course of the appeal unless modified for good cause by subsequent order of the board or the presiding officer.))~~

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-435 Prehearing conferences.** (1) The board may, upon written request by a party or on its own, schedule a prehearing conference on not less than seven days notice mailed to each party to the appeal, at a time and place fixed by the board. ~~((A\*) The purpose of the prehearing conference (parties may engage in settlement negotiations. Where settlement proves unavailing, the presiding officer may schedule all deadlines for motions and discovery and memorialize those dates in a prehearing order. The prehearing order may also identify the issues to be tried, stipulations, admissions, witnesses and exhibits for the hearing))~~ is to prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues. At the prehearing conference, the presiding officer will encourage the parties to engage in settlement negotiations as the case proceeds.

(2) Following the prehearing conference the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, as well as other matters which may bear on the preparation for hearing. The issues which the prehearing order identifies for the hearing shall control the subsequent course of the appeal, and shall be the only issues to be tried at the hearing, unless modified for good cause by subsequent order of the board or the presiding officer.

(3) Appearance by a party or by the party's representative at the prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good cause, the presiding officer may issue an order of default against the absent party or take other appropriate action.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-440 Settlement and mediation agreements.** (1) Where the parties settle an appeal before hearing, the parties shall prepare and submit to the board a written order of dismissal to which the written settlement agreement is attached ~~((If the agreement is in accordance with the law))~~, submit that order to the board, and the board shall enter ~~((the))~~ an order and dismiss the case.

(2) This section also pertains to settlement agreements reached during mediation.

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

**WAC 371-08-445 Use of telephone conferences, motion hearings and hearings.** Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, motion hearing or hearing by telephone call or other electronic means to promote the fair, speedy and economical processing of a matter.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 371-08-450 Motions.** (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, ~~((an))~~ oral argument on the motion. The presiding officer will decide whether or not oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party then has ten days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-465 Dismissal, default or withdrawal of the appeal.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the pre-

siding officer may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests ~~((before the appellant rests its case in chief during the hearing are mandatory and afterwards are permissive))~~ to withdraw an appeal shall be governed by civil rule 41.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 371-08-475 Procedures at hearings.** (1) **Presiding officer.** All hearings are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** All testimony to be considered by the board must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official record of all evidentiary hearings must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence, except that in case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall present its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties may present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department may appear as an expert witness on behalf of other parties in a ~~((formal))~~ board pro-

ceeding in which he or she took an active part in the matter giving rise to the appeal as an employee of the department.

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence must be in short form stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence ~~((and))~~. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 371-08-480 through 371-08-515.

AMENDATORY SECTION (Amending WSR 02-06-013, filed 2/22/02, effective 3/25/02)

**WAC 371-08-485 Standard and scope of review and burden of proof at hearings.** (1) Hearings shall be ~~((formal and))~~ quasi-judicial in nature. The scope and standard of review shall be de novo unless otherwise provided by law.

(2) The board shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

(3) The issuing agency shall have the initial burden of proof in cases involving penalties or regulatory orders. In other cases, the appealing party shall have the initial burden of proof.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 371-08-535 Final decisions and orders.** (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law material to the disposition of the matter.

(2) The record before the board shall be considered by at least two of the members of the board ~~((=));~~ provided, that if two members cannot agree on a decision, the third member must consider the record before the board ~~((=));~~ and provided further, that if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control.

(3) The board shall mail copies of the final decision and order to each party to the appeal or to the attorney or representative of record, if any. Service upon the representative constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 371-08-560 Direct review to the court of appeals upon certification by the board.** (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review by the court of appeals with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own

motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request to file a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review of the board's decision shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

**AMENDATORY SECTION** (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-565 Certification of record.** (1) Within thirty days of receipt of a copy of the petition for judicial review to the superior court or notice of acceptance of the certificate of appealability by the court of appeals, the board shall certify and transmit to the reviewing court the record made before the board. Additional time for certification and transmission of the record may be allowed by the reviewing court.

(2) Normally the record will not include a transcript of the testimony. Unless the board has caused a transcript to be printed, arrangements for and costs of the written transcript shall be the obligation of the party seeking judicial review.

**AMENDATORY SECTION** (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-300 Purpose of this chapter and applicability of the board's rules of practice to the civil rules of procedure and the rules of evidence.** (1) The purpose of chapter 461-08 WAC is to provide rules of practice before the shorelines hearings board (hereinafter "board"). The interpretation of these rules may be guided, where relevant, by the civil rules of superior court (hereinafter "civil rules") and the rules of evidence for the superior courts of the state of Wash-

ington, as those rules have been construed by Washington state courts.

(2) Except where in conflict with the board's rules, Washington statutes regarding administrative procedure, pre-trial procedures, civil rules and rules of evidence shall be followed in proceedings before the board unless the presiding officer determines that the evidence, although in conflict with the rules, is admissible pursuant to WAC 461-08-515.

(3) This chapter shall govern practice before the board. The rules in this chapter are consistent with the model rules of procedure issued by the office of administrative hearings, chapter 10-08 WAC except where specifically noted.

**AMENDATORY SECTION** (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

**WAC 461-08-305 Definitions.** The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Agency" means any state governmental entity.

(2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Date of filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date of actual receipt by the department of the local government's decision.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board (~~during regular office hours~~) between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's date stamp placed on the document shall be evidence of the filing date.

(a) Electronic filing of documents, and fax filing of documents ten pages or less, are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case filing will be the next business day.



(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. ~~(Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.)~~

(7) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

(8) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

(9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(10) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

(11) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice-chairperson.

(12) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) ~~(Facsimile)~~ Fax transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by ~~((facsimile))~~ fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

**WAC 461-08-315 Board membership, function and jurisdiction.** (1) **Members.** The board is made up of six members. Three members are also members of the pollution control hearings board and are appointed by the governor. A fourth member is appointed by the association of Washington cities and a fifth member is appointed by the Washington state association of ((county commissioners)) counties. The

sixth member is the commissioner of public lands or the commissioner's designee.

(2) **Function and jurisdiction.** This board is a quasi-judicial body with powers of de novo review authorized by chapter 90.58 RCW to adjudicate or determine the following matters:

(a) Appeals from any person aggrieved by the granting, denying or rescinding of a permit issued or penalties incurred pursuant to chapter 90.58 RCW;

(b) Appeals of department rules, regulations or guidelines; and

(c) Appeals from department decisions to approve or reject a proposed master program or program amendment of local governments which are not planning under RCW 36.70A.040.

(3) This section is intended to be general and informational only and failure herein to list matters over which the board has jurisdiction shall not constitute a waiver or withdrawal of that jurisdiction.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

**WAC 461-08-320 Board office hours**~~((, telephone number, telefacsimile number and address of the board))~~ **and contact information.** (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. To the extent necessary for rule making, the ~~((appeals))~~ board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at [www.eluho.wa.gov](http://www.eluho.wa.gov).

(a) The board is organized within the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington. The mailing address is:

Shorelines Hearings Board  
P.O. Box 40903  
Olympia, WA 98504-0903

~~((3))~~ (b) The telephone number of the board is 360-664-9160. The ~~((telefacsimile))~~ fax number is 360-586-2253. The board's e-mail address is [eluho@eluho.wa.gov](mailto:eluho@eluho.wa.gov).

~~((4))~~ (3) The office hours of the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

**WAC 461-08-325 Public information about practice before the board and public records.** (1) Questions about board procedures may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone ~~((or by telefacsimile))~~, by fax, or e-mail at [eluho@eluho.wa.gov](mailto:eluho@eluho.wa.gov).

(2) ~~((Case files of appeals pending before the board, past written opinions of the board and other public records main-~~

tained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC 198-14-050. Any person seeking to make copies of such public records may copy the documents at the environmental and land use hearings office for a reasonable charge per page.

~~(3))~~ The environmental and land use hearings office maintains a web site with information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a brief description of the appeal process with helpful information for practice before the board, a set of frequently asked questions, sample forms, and links to the board's rules of procedure and other pertinent statutes and rules. This web site may be accessed via the internet at (~~http://www.eluho.wa.gov~~) www.eluho.wa.gov.

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The procedures for obtaining public records from the board are set forth in chapter 198-14 WAC.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-335 Types of petitions before the board.** The board is empowered to hear and decide the following:

- (1) Petitions for review of permitting decisions;
- (2) Petitions for review of penalties imposed under chapter 90.58 RCW;
- (3) Petitions for review of master programs adopted by jurisdictions that are not ~~((subject))~~ planning pursuant to the Growth Management Act;
- (4) Petitions for review of regulations adopted by the department pursuant to chapter 90.58 RCW;
- (5) Petitions for declaratory rulings;
- (6) Petitions for rule making by the board; and
- (7) Petitions by the department for rescission of permits issued by local government.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-350 Contents of the petition for review.** Petitions for review to the board pursuant to RCW 90.58.180 (1) and (2) shall contain:

- (1) The name, mailing address, telephone number ~~((and telefacsimile))~~, fax number (if available), and e-mail address (if available) of the appealing party, and of the representative, if any;
- (2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency and/or the local government whose decision is being appealed and the person to whom the decision is directed shall be named as parties;
- ~~(3) ((A copy of the application for a shoreline permit which was filed with the local government pursuant to RCW 90.58.140;~~

~~(4))~~ A copy of the decision or permit appealed from;  
~~((5))~~ (4) A short and plain statement showing the grounds upon which the appealing party considers such decision or permit to be unjust or unlawful;

~~((6))~~ (5) A clear and concise statement upon which the appealing party relies to sustain his or her grounds for appeal;  
~~((7))~~ (6) The relief sought, including the specific nature and extent;

~~((8))~~ (7) The signature of the ~~((representative of the))~~ appealing party or ~~((of the appealing party))~~ its representative. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the petition and that it is consistent with civil rule 11;

~~((9))~~ (8) All pleadings shall be so construed as to do substantial justice.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-385 Persons who may appear before the board.** (1) Any person has the right to represent himself or herself in a proceeding before the board.

(2) The only persons who are qualified to represent another person or entity before the board are the following:

(a) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.

(b) An authorized officer, partner, owner, employee or member of an association, partnership, corporation, organization, government agency or local government.

(c) Legal interns admitted to practice under the applicable admission to practice rules of the Washington state court rules as long as the conditions and limitations of the applicable rules are satisfied.

(d) Any other individual designated by an entity to serve as a spokesperson in a case with the approval of the board's presiding officer.

(3) No former employee of the department, or local jurisdiction, or member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a ~~((format))~~ board proceeding ~~((in which an active part as a representative of the department was taken in the same case or proceeding, at any time after leaving the employment of the department or the attorney general))~~, except when permitted by applicable ~~((state))~~ rules of professional conduct or conflict of interest laws.

(4) No former member of the board shall, for a period of one year after the termination of his or her membership, represent a party before the board on any matter.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-395 Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal for the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record ~~((; together with the written consent of the prior attorney or rep-~~

representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied)) consistent with civil rule 71.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

**WAC 461-08-415 Mediation.** In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the (~~pollution control hearings board or shoreline hearings~~) board must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-435 Intervention.** (1) The department and the attorney general may intervene by right within fifteen days from the date of receipt of the petition for review by the department or the attorney general pursuant to RCW 90.58.180(1) in any matter set out therein (~~and if such intervention is sought it shall be granted~~).

(2) The presiding officer may grant a petition for intervention by any person at any time, upon determining that the petitioner qualifies as an intervenor pursuant to civil rule 24, that the intervention will serve the interests of justice and that the prompt and orderly conduct of the appeal will not be impaired.

(3) The presiding officer may impose conditions upon the intervenor's participation in the proceedings.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-455 Prehearing conferences.** (1) The purpose of a prehearing conference (~~shall be:~~

(a) ~~To determine the feasibility of a settlement of the appeal or, failing settlement;~~

(b)) is to prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues (~~and if possible, witnesses, exhibits, stipulations, and admissions~~). At the prehearing conference, the presiding officer will encourage the parties to engage in settlement negotiations as the case proceeds.

(2) Appearance by a party or by the party's representative at a prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good cause, the presiding officer may issue an order of default against the absent party or other appropriate action.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-460 Prehearing orders.** (~~After a~~) Fol-  
lowing the prehearing conference (~~(which has not resulted in settlement,)~~) the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, (~~and lists of witnesses and exhibits or provide for filing such lists,~~) as well as other matters which may bear on the preparation for hearing. The issues stated in the prehearing order shall control the subsequent course of the proceedings, unless modified for good cause by subsequent order.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-465 Settlement and mediation agreements.** (1) Where the parties settle an appeal before hearing, the parties shall prepare a written order of dismissal to which the settlement agreement is attached, (~~and~~) submit that order to the board (~~(-If the agreement is in accordance with the law),~~ and the board shall enter (~~(the)~~ an order and (~~(dis-~~  
~~pose of)~~ dismiss the case.

(2) This section also pertains to settlement agreements reached after mediation.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 461-08-470 Use of telephone conferences, motion hearings and hearings.** Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, oral argument on a motion, or hearing by telephone conference call or other electronic means to promote the fair, speedy, and economical processing of a matter.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 461-08-475 Motions.** (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the (~~(stipulation))~~ agreement of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not an oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions

(including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party then has ten days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

**WAC 461-08-485 Dismissal, default or withdrawal of appeal.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests ~~((before the appellant rests its case in chief during the hearing are mandatory and afterwards are permissive))~~ to withdraw an appeal shall be governed by civil rule 41.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 461-08-490 Hearing briefs.** Hearing briefs, if filed, must be submitted to the board at least seven days before the time of hearing or ~~((other))~~ such other time as directed by the presiding officer. The original brief must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 461-08-495 Procedures at hearings.** (1) **Presiding officer.** All hearings are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** All testimony to be considered by the board must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official recording of all evidentiary hearings must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence except that in the case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall introduce its evidence after the party initially presenting evidence has rested.

~~(c)~~ Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

~~((e))~~ (d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department or the board or the attorney general may appear as an expert witness on behalf of other parties in a ~~((formal))~~ board proceeding in which he or she took an active part in the matter giving rise to the appeal as an employee or representative of the department or board.

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence must be in short form, stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence ~~((and))~~. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 461-08-515 through 461-08-535.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 461-08-555 Final decisions and orders.** (1) **Full-board cases.** When the hearing on the petition for review has been heard by a majority of the board in a full-board case, and upon completion of the record and submission of the issues for decision and order, a written final deci-

sion and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law material to the disposition of the matter: Provided, That in the event that the full board considers the record and that four of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(2) **Short-board cases.** When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and ~~((two))~~ a majority of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(3) The board shall mail copies of the final decision and order to each party to the petition for review or to the attorney or representative of record, if any. Service upon the representative constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

**WAC 461-08-575 Direct review to the court of appeals based upon an accepted certificate of appealability by the board.** (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review by the court of appeals with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request for a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice must include a copy of both the certificate

of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

## WSR 14-24-061

### PROPOSED RULES

### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 25, 2014, 2:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-013.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-128 to adjust period of time a certificate permit is effective while educators complete requirements.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on January 15, 2015, at 8:30.

Date of Intended Adoption: January 15, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by January 8, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by January 8, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New endorsement requirements for out-of-state candidates for teacher certificates will require more time to complete. The temporary permit length of time to be effective is adjusted.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

November 25, 2015 [2014]

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-79A-128 Temporary permits.** Temporary permits may be issued by the superintendent of public instruction and designated agents under the following conditions:

(1) Temporary permits may be issued under this section to those persons who have filed an application for a certificate; who, based on available documentation, including affidavits or other evidence that appears reliable which substantiates the existence of missing documentation, appear to have completed all requirements for certification; and who do not disclose any information which indicates that such applicant fails to meet the character requirement of WAC 181-79A-150(2).

(2) An individual may apply for a permit directly to the superintendent of public instruction or designated agents—i.e., educational service districts or Washington state institutions of higher education.

(3) A permit entitles the holder to serve as a teacher, educational staff associate or administrator consistent with the endorsement(s) on his/her permit.

(4) A permit is valid for a minimum of one (~~hundred eighty consecutive calendar days~~) year calculated to the uniform expiration date in WAC 181-79A-117 (1)(a) and/or (b) unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement. In such cases, the temporary permit shall expire on the date notice of cancellation is received by the applicant and/or the employer.

(5) The temporary permit may be reissued only upon demonstration that the applicant has made a good faith effort to secure the missing documentation; provided, that an individual affected by WAC 181-79A-132 may obtain one additional permit to meet additional endorsement requirements.

(6) Issuing authority. The superintendent of public instruction either directly or through a designated agent shall issue all permits and shall provide institutions of higher education and educational service districts with forms and instructions relevant to application for a permit.

**WSR 14-24-062**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed November 25, 2014, 3:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-062.

Title of Rule and Other Identifying Information: Amends WAC 181-77-041 to permit legally deaf individuals to achieve an endorsement to teach American sign language (ASL) without meeting work experience requirements as an interpreter. Sets standards for all teachers of ASL.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on March 19, 2015, at 8:30.

Date of Intended Adoption: March 19, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by March 11, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by March 11, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Addresses requirements for teaching ASL through a career and technical education certificate.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

November 25, 2014

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

**WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience.** Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought; Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing (RCW), or who's primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

- (i) General and specific safety;
- (ii) Career and technical education teaching methods;
- (iii) Occupational analysis;
- (iv) Course organization and curriculum design;
- (v) Philosophy of vocational education;
- (vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

- (i) School law;
- (ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

- (i) Six quarter hours or sixty clock hours of career and technical education educator training;
- (ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;
- (iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

(b) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American

sign language will require the national interpreter certification, certified deaf interpreter certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410.271.

## WSR 14-24-074

### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed November 26, 2014, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-115.

Title of Rule and Other Identifying Information: WAC 182-546-5000 Nonemergency transportation—General, 182-546-5100 Nonemergency transportation—Definitions, 182-546-5200 Nonemergency transportation—Broker and provider requirements, 182-546-5400 Nonemergency transportation—Client responsibility, 182-546-5500 Nonemergency transportation—Covered trips, 182-546-5550 Nonemergency transportation—Exclusions and limitations, 182-546-5600 Nonemergency transportation—Intermediate stops or delays, 182-546-5700 Nonemergency transportation—Local provider and trips outside client's local community, 182-546-5800 Nonemergency transportation—Trips out-of-state/out-of-country, 182-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian, 182-546-6000 Nonemergency transportation—Authorization, 182-546-6100 Nonemergency transportation—Noncovered, and 182-546-6200 Nonemergency transportation—Reimbursement.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 6, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 7, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 6, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by December 29, 2014, TTY (800) 848-5429, (360) 725-1307, or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to these sections are necessary to:

- Update erroneous rule citations and change "MAA" or "the department" to "the agency" throughout.
- Clarify that a client's freedom of access to health care does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of provider (WAC 182-546-5000).
- Add clarification that health care services must be authorized when required within specific program rules (WAC 182-546-5500).

- Reorganize WAC 182-546-5550 to keep service categories and programs together and remove outdated information about the transitional bridge waiver for clients covered by the disability lifeline program and ADATSA.
- Add complex rehabilitation technology (CRT) to the list of allowable exceptions for brokered transportation (WAC 182-546-5550). Transportation is provided through the brokers for CRT because CRT must be fitted to the client.
- Add clarification that transportation of a client to a pharmacy to obtain one or more prescriptions is allowable when in route to or from the covered service ... (WAC 182-546-5600).
- Add clarification that the agency does not pay for transportation of a client to a pharmacy to obtain medicare part D prescriptions (WAC 182-546-5600).
- Increase the time limit from sixty to ninety days after major surgery that a broker may authorize transportation of a client to a provider outside the client's local community for ongoing treatment of medical conditions (WAC 182-546-5700).
- Rewrite WAC 182-546-5700(7) to make clear the agency's payment policy for nonemergency transportation to a provider outside the client's local community if all local Washington apple health providers refuse to see a client due to the client's noncompliance.
- Changed requirement timeframe for requesting prior authorization from the broker in advance of the client's travel from forty-eight hours to two business days (WAC 182-546-6200).

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Stephen Riehl, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1441.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

November 26, 2014

Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5000 Nonemergency transportation—General.** (1) The ~~((department))~~ medicaid agency covers nonemergency nonambulance transportation to and from

covered health care services, as provided by the Code of Federal Regulations (42 C.F.R. 431.53 and 42 C.F.R. 440.170) subject to the limitations and requirements under WAC ~~((388-546-5000))~~ 182-546-5000 through ~~((388-546-6200))~~ 182-546-6200. See WAC ~~((388-546-1000))~~ 182-546-1000 for nonemergency ground ambulance transportation.

(2) The ~~((department))~~ agency pays for nonemergency transportation for clients covered under state-funded medical programs subject to funding appropriated by the legislature.

(3) Clients may not select the transportation provider~~((s))~~ or the mode of transportation.

(4) A client's freedom of access to health care does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of provider.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5100 Nonemergency transportation—Definitions.** The following definitions and those found in ~~((WAC 388-500-0005))~~ chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC ~~((388-546-5200))~~ 182-546-5200 through ~~((388-546-6000))~~ 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

**"Ambulance"** - See WAC ~~((388-546-0004))~~ 182-546-0001.

**"Broker"** - An organization or entity contracted with the ~~((department))~~ medicaid agency to arrange nonemergency transportation services for ~~((department))~~ clients.

**"Drop off point"** - The location authorized by the transportation broker for the client's trip to end.

**"Escort"** - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

**"Extended stay"** - A period of time spanning seven consecutive days or longer for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals and/or lodging.

**"Guardian"** - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

**"Local community"** - The client's city or town of residence or nearest location to residence.

**"Local provider"** - A provider, as defined in WAC ~~((388-500-0005))~~ 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered are also within the client's local community.

**"Lodging and meals"** - Temporary housing and meals in support of a client's out-of-area medical stay.

**"Mode"** - A method of transportation assistance used by the general public that an individual client can use in a specific situation. Methods that may be considered include:



- Air transport;
- Bus fares;
- Ferries/water taxis;
- Gas vouchers;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;
- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

**"Noncompliance or noncompliant"** - When a client:

- Fails to appear at the ~~((pick-up))~~ pickup point of the trip at the scheduled ~~((pick-up))~~ pickup time;
- Misuses or abuses ~~((department paid))~~ agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, ~~((and/or))~~ or policies of the ~~((department and/or))~~ agency or those of the ~~((department's))~~ agency's transportation brokers, the brokers' subcontracted transportation providers, ~~((and))~~ or health care service providers;
- Poses a direct threat to the health ~~((and/or))~~ or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

**"Pickup point"** - The location authorized by the ~~((department's))~~ agency's transportation broker for the client's trip to begin.

**"Return trip"** - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

**"Short stay"** - A period of time spanning one to six days for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals and/or lodging.

**"Stretcher car or van"** - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

**"Stretcher trip"** - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

~~((**"Trip"** - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.))~~

**"Transportation provider"** - An individual or company under contract with a broker, for the provision of trips.

~~**"Trip"** - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.~~

**"Urgent care"** - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5200 Nonemergency transportation broker and provider requirements.** (1) The ~~((department))~~ medicaid agency requires:

(a) Brokers and subcontracted transportation providers to be licensed, equipped, and operated in accordance with applicable federal, state, and local laws, and the terms specified in ~~((their))~~ the providers' contracts;

(b) Brokers to:

(i) Screen their employees and subcontracted transportation providers and employees prior to hiring or contracting, and on an ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5; and

(ii) Report immediately to the ~~((department))~~ agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5.

(c) Drivers and passengers to comply with all applicable federal, state, and local laws and regulations during transport.

(2) Brokers:

(a) Must determine the level of assistance needed by the client (e.g., curb-to-curb, door-to-door, door-through-door, hand-to-hand) and the mode of transportation to be used for each authorized trip;

(b) Must select the lowest cost available mode or alternative that is both accessible to the client and appropriate to the client's medical condition and personal capabilities;

(c) Must have subcontracts with transportation providers in order for the providers to be paid by the broker;

(d) Must provide transportation services comparable to those available to the general public in the local community;

(e) May subcontract with licensed ambulance providers for nonemergency trips in licensed ground ambulance vehicles; and

(f) May contract with a federally recognized tribe within the broker's service region to provide transportation services when requested by that tribe. When the ~~((department))~~ agency approves the request of a tribe or a tribal agency to administer or provide transportation services under WAC ~~((388-546-5100))~~ 182-546-5100 through ~~((388-546-6200))~~ 182-546-6200, tribal members may obtain their transportation services from the tribe or tribal agency with coordination from and payment through the transportation broker.

(3) If the broker is not open for business and is unavailable to give advance approval for transportation to an urgent care appointment or after a hospital discharge, the subcontracted transportation provider must either:

(a) Provide the transportation in accordance with the broker's instructions and request a retroactive authorization from the broker within two business days of the transport; or

(b) Deny the transportation, if the requirements of this section cannot be met.

(4) If the subcontracted transportation provider provides transportation as described in subsection (3)(a) of this section, the broker may ~~((agree to))~~ grant retroactive authorization and must document the reason in the client's trip record.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5400 Nonemergency transportation—Client responsibility.** (1) Clients must comply with applicable state, local, and federal laws during transport.

(2) Clients must comply with the rules, procedures ~~((and/ or))~~ and policies of the ~~((department))~~ medicaid agency, brokers, the brokers' subcontracted transportation providers, and health care service providers.

(3) A client who is noncompliant may have limited transportation mode options available.

(4) Clients must request, arrange, and obtain authorization for transportation at least two business days before a health care appointment, except when the request is for an urgent care appointment or a hospital discharge.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5500 Nonemergency transportation—Covered trips.** (1) The ~~((department))~~ medicaid agency covers nonemergency transportation for medical assistance clients to and from health care services when all of the following apply:

(a) The health care services are:

(i) Within the scope of coverage of the eligible client's benefit services package; ~~((and))~~

(ii) Covered as defined in WAC ~~((388-501-0050))~~ 182-501-0050 through ~~((388-501-0065))~~ 182-501-0065 and the specific program rules; and

(iii) Authorized, when required within specific program rules.

(b) The health care service is medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(c) The health care service is being provided as follows (see subsection (3) of this section for exceptions):

(i) Under fee-for-service, by ~~((a department contracted))~~ an agency-contracted provider;

(ii) Through ~~((a department contract))~~ an agency-contracted managed care organization (MCO), by an MCO provider; ~~((or))~~

(iii) Through a regional support network (RSN), by an RSN contractor; or

(iv) Through one of the following providers, as long as the provider is eligible for enrollment as a medicaid provider (see WAC 182-502-0012):

(A) A medicare enrolled provider;

(B) A provider in the network covered by the client's primary insurance where there is third-party insurance;

(C) A provider performing services paid for by the Veteran's Administration, charitable program, or other voluntary program (Shriners, etc.).

(d) The trip is to a local provider as defined in WAC ~~((388-546-5100))~~ 182-546-5100 (see WAC ~~((388-546-5700))~~ 182-546-5700(3) for local provider exceptions);

(e) The transportation is the lowest cost available mode or alternative that is both accessible to the client and appropriate to the client's medical condition and personal capabilities;

(f) The trip is authorized by the broker ~~((in advance of))~~ before a client's travel; and

(g) The trip is a minimum of three-quarters of a mile from pick-up point to the drop-off point (see WAC ~~((388-546-6200))~~ 182-546-6200(7) for exceptions to the minimum distance requirement).

(2) Coverage for nonemergency medical transportation is limited to one roundtrip per day, with the exception of multiple medical appointments which cannot be accessed in one roundtrip.

~~((3))~~ Subsection (1)(e) of this section does not apply if the covered health care services is paid for or provided by medicare, a third party insurance, Veteran's Administration, charitable or other voluntary program (Shriners, etc.-))

AMENDATORY SECTION (Amending WSR 11-17-059, filed 8/15/11, effective 8/15/11)

**WAC 182-546-5550 Nonemergency transportation—Exclusions and limitations.** (1) The following service categories ~~((cited))~~ listed in WAC ~~((388-501-0060))~~ 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC ~~((388-546-5200 (1)(d)))~~ 182-546-5200 (2)(e).

~~((c))~~ (Family planning services— Nonemergency transportation is not provided through the brokers for clients that are enrolled only in TAKE CHARGE or family planning only services.

~~((d))~~ (Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC ((388-551-1210)) 182-551-1210.

~~((e))~~ (d) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, ((with the exception of)) except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client.

~~((f))~~ (e) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

~~((g))~~ (f) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

~~((h))~~ (g) Mental health services:

(i) Nonemergency transportation brokers generally provide one round trip per day to or from a mental health service. Additional trips for off-site activities, such as a visit to a recreational park, are the responsibility of the provider/facility.

(ii) Nonemergency transportation of an involuntarily detained person(s) under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. See WAC ~~((388-546-4000))~~ 182-546-4000.

~~((i) Substance abuse services – Nonemergency transportation is not provided through the brokers for substance abuse services for clients under the state-funded medical programs (medical care services program (MCS)). See WAC 388-546-5200(2).~~

~~((j)) (h) Chemical dependency services - Nonemergency transportation is not provided through the brokers to or from the following:~~

~~(i) Residential treatment, intensive inpatient, or long-term treatment at certified facilities which are institutes for mental diseases (IMDs). Transportation may be provided to these services which are identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the catalog of federal domestic assistance (CFDA) program number 93.778);~~

~~(ii) ((Intensive inpatient;)) Recovery house; and~~

~~(iii) ((Recovery house;~~

~~(iv) Long term treatment;~~

~~(v) Information and assistance services, which include:~~

~~(A) Alcohol and drug information school;~~

~~(B) Information and crisis services; and~~

~~(C) Emergency service patrol.) Information and assistance services which include:~~

~~(A) Alcohol and drug information school;~~

~~(B) Information and crisis services; and~~

~~(C) Emergency service patrol.~~

~~(2) The ((following medical assistance programs have limitations on trips:~~

~~((a)) state-funded medical care services (MCS) program ((for clients covered by the disability lifeline program and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)–)) has a limitation on trips. Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The ((department)) medicaid agency does pay for nonemergency transportation to and from medical services ((as specified)) listed in WAC ((388-501-0060)) 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.~~

~~((b) Transitional bridge waiver for clients covered by the disability lifeline program and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) – Non-emergency transportation for mental health services and substance abuse services is not provided through the brokers. The department does pay for nonemergency transportation to and from medical services as covered in the transitional bridge waiver approved by the Centers for Medicare and Medicaid Services, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.) (3) The following programs do not have a benefit for brokered nonemergency transportation through the agency:~~

~~(a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC):~~

~~(b) Family planning services – Nonemergency transportation is not provided for clients that are enrolled only in TAKE CHARGE or family planning only services; and~~

~~(c) Alien emergency medical (AEM) – See WAC 182-507-0115.~~

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5600 Nonemergency transportation—Intermediate stops or delays.** (1) The ((department)) medicaid agency does not pay for any costs related to intermediate stops or delays that are not directly related to the original approved trip, including trips that would, or did, result in additional transportation costs due to client convenience.

(2) Brokers may authorize intermediate stops or delays for clients if the broker determines that the intermediate stop is:

(a) Directly related to the original approved trip; or

(b) Likely to limit or eliminate the need for supplemental covered trips.

(3) The ((department)) agency considers the following reasons to be related to the original trip:

(a) Transportation of the client to and from an immediate subsequent medical referral/appointment; or

(b) Transportation of the client to a pharmacy to obtain one or more prescriptions when in route to or from the covered service and the pharmacy is within a reasonable distance of the usual route to the medical appointment. The agency does not pay for transportation of the client to a pharmacy to obtain medicare Part D prescriptions.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5700 Nonemergency transportation—Local provider and trips outside client's local community.** (1) Clients receiving services provided under fee-for-service and/or through a ((department)) medicaid agency-contracted managed care organization (MCO) are transported to a local provider only.

(a) A local provider's medical specialty may vary as long as the provider is capable of providing medically necessary care that is the subject of the appointment or treatment;

(b) A provider's acceptance of the ((departments')) agency's clients may determine if the provider may be considered as an available local provider, along with whether ((managed care)) MCO, primary care case management, or third party participation is involved.

(2) Brokers are responsible for considering and authorizing exceptions. See subsection (3) of this section for exceptions.

(3) A broker may transport a client to a provider outside the client's local community for covered health care services when any of the following apply:

(a) The health care service is not available within the client's local community.

(i) If requested by the broker, the client or the client's provider must provide documentation from the client's primary care provider (PCP), specialist, or other appropriate provider verifying the medical necessity for the client to be served by a health care provider outside of the client's local community.

(ii) If the service is not available in the client's local community, the broker may authorize transportation ((may be authorized)) to the nearest provider where the service may be obtained.

(b) The transportation to a provider outside the client's local community is required for continuity of care.

(i) If requested by the broker, the client or ~~((their))~~ the client's provider must submit documentation from the client's PCP, specialist, or other appropriate provider verifying the existence of ongoing treatment for medically necessary care by the provider and the medical necessity for the client to continue to be served by the health care provider.

(ii) If the broker authorizes transportation to a provider outside the client's local community based on continuity of care, this authorization is for a limited period of time for completion of ongoing care for a specific medical condition. Each transport must be related to the ongoing treatment of the specific condition that requires continuity of care.

(iii) Ongoing treatment of medical conditions that may qualify for transportation based on continuity of care, include but are not limited to:

- (A) Active cancer treatment;
- (B) Recent transplant (within the last twelve months);
- (C) Scheduled surgery (within the next sixty days);
- (D) Major surgery (within the previous ~~((sixty))~~ ninety days); or
- (E) Third trimester of pregnancy.

(c) The health care service is paid by a third payer who requires or refers the client to a specific provider within their network;

(d) The total cost to the ~~((department))~~ agency, including transportation costs, is lower when the health care service is obtained outside of the client's local community; and

(e) A provider outside the client's local community has been issued a global payment by the ~~((department))~~ agency for services the client will receive and the broker determines it to be cost effective to provide transportation for the client to complete treatment with this provider.

(4) Brokers determine whether an exception should be granted based on documentation from the client's health care providers and program rules. Brokers may refer requests to transport a client to a provider outside the client's local community for health care services to the ~~((department's))~~ agency's medical director or the medical director's designee for review and/or authorization.

(5) When a client or a provider moves to a new community, the existence of a provider-client relationship, independent of other factors, does not constitute a medical need for the broker to authorize and pay for transportation to the previous provider.

(6) The health care service must be provided in the state of Washington or a designated border city, unless the ~~((department))~~ agency specifically authorizes transportation to an out-of-state provider in accordance with WAC ~~((388-546-5800))~~ 182-546-5800.

(7) ~~((The department does not authorize and pay for nonemergency transportation to providers outside the client's local community if the client's noncompliance is the reason a local health care provider or service is not available.))~~ If local Washington apple health providers refuse to see a client due to the client's noncompliance, the agency does not authorize or pay more for nonemergency transportation to a provider outside the client's local community.

(a) In this circumstance, the agency pays for the least costly, most appropriate, mode of transportation from one of the following options:

- (i) Transit bus fare;
- (ii) Commercial bus or train fare;
- (iii) Gas voucher; or
- (iv) Mileage reimbursement.

(b) The agency's payment, whether fare, tickets, voucher, or mileage reimbursement, is determined using the number of miles from the client's authorized pickup point (e.g., client residence) to the location of the local health care provider who otherwise would have been available if not for the client's noncompliance.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5800 Nonemergency transportation—Trips out-of-state/out-of-country.** (1) The ~~((department))~~ medicaid agency reviews requests for out-of-state nonemergency transportation in accordance with regulations for covered health care services, including WAC ~~((388-501-0180, 388-501-0182 and 388-501-0184))~~ 182-501-0180, 182-501-0182 and 182-501-0184.

(2) The agency does not pay for nonemergency transportation ~~((is not provided))~~ to or from locations outside of the United States and U.S. territories, except ~~((for the limitations))~~ as allowed under WAC 182-501-0184 for British Columbia, Canada ~~((, identified in WAC 388-501-0184)).~~

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian.** (1) The ~~((department))~~ medicaid agency may pay for meals and lodging for clients who must be transported to health care services outside of the client's local community. The ~~((department's))~~ agency's transportation brokers determine when meals and lodging are necessary based on a client's individual need.

(2) Brokers may authorize payment for meals and lodging for up to one calendar month. Extensions beyond the initial calendar month must be prior authorized by the broker on a month-to-month, week-to-week, or as-needed basis.

(3) Brokers follow the ~~((department's))~~ agency's guidelines in determining the reasonable costs of meals and lodging. The ~~((department's))~~ agency's guidelines are:

(a) The reasonable cost of lodging for short and extended stays is measured against state per diem rates.

(b) For short stays, the cost of meals is measured against the state per diem rate.

(c) For extended stays, the reasonable cost of meals is measured against the state's basic food program. The maximum monthly allowable meal cost for extended stays is not to exceed the client's calculated monthly food benefit or state per diem rates.

(4) The ~~((department))~~ agency pays for the transportation of an authorized escort, including meals and lodging, when all of the following apply:

(a) The client is present, ~~((with the exception of))~~ except as stated in subsection (5) of this section; and

(b) The broker determines the transportation costs of an ~~escort~~ escort is necessary based upon the client's age, mental state or capacity, safety requirements, mobility requirements, communication or translation requirements, or cultural issues.

(5) The ~~((department))~~ agency may authorize and pay for the transportation of an authorized escort or guardian, with or without the presence of the client, if the broker determines, and documents, that the presence of the authorized escort or guardian is necessary to ensure that the client has access to medically necessary care.

(6) Lodging and meals for all out-of-state nonemergency transportation must be prior authorized by the ~~((department))~~ agency. Border areas as defined by WAC ~~((388-501-0175))~~ 182-501-0175 are considered in-state under this section and subsequent sections.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-6000 Nonemergency transportation—Authorization.** (1) The ~~((department))~~ medicaid agency contracts with brokers to authorize or deny requests for transportation services.

(2) Brokers may refer requests to transport a client to a provider to the ~~((department's))~~ agency's medical director or designee for a review ~~((and/or))~~ or authorization.

(3) Nonemergency medical transportation, other than ambulance, must be prior authorized by the broker. See WAC ~~((388-546-5200))~~ 182-546-5200 (3) and (4) and ~~((388-546-6200))~~ 182-546-6200(4) for granting retroactive authorization.

(4) The broker mails a written notice of denial to each client who is denied authorization of transportation.

(5) A client who is denied nonemergency transportation under this chapter may request an administrative hearing, if one is available under state and federal law.

(6) If the ~~((department))~~ agency approves a medical service under exception to rule (ETR), the authorization requirements of this section apply to transportation services related to the ETR service.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-6100 Nonemergency transportation—Noncovered.** (1) The ~~((department))~~ medicaid agency does not cover ~~((any))~~ nonemergency transportation that is not specifically addressed in WAC ~~((388-546-5000))~~ 182-546-5000 through ~~((388-546-6200))~~ 182-546-6200.

(2) Brokers do not provide nonemergency transportation for admissions under the Involuntary Treatment Act (ITA), as defined in WAC ~~((388-546-4000))~~ 182-546-4000.

(3) The ~~((department))~~ agency does not provide escorts or cover the cost of wages of escorts.

(4) The ~~((department))~~ agency does not cover the purchase or repair of equipment for privately owned vehicles or modifications of privately owned vehicles under the non-emergency transportation program. The purchase or repair of equipment for a privately owned vehicle or modification of a privately owned vehicle is not a health care service. Excep-

tion to rule (ETR) as described in WAC ~~((388-501-0160))~~ 182-501-0160 is not available for ~~((this nonhealth))~~ equipment that is not a health care service.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

**WAC 182-546-6200 Nonemergency transportation—Reimbursement.** (1) To be reimbursed for trips, meals, ~~((and))~~ or lodging, the requestor must receive prior authorization from the broker at least ~~((forty-eight hours))~~ two business days in advance of the client's travel.

(2) A client must request reimbursement of preauthorized expenditures for trips, meals, ~~((and))~~ or lodging within thirty days after his or her medical appointment~~((s))~~. The broker may consider reimbursement requests beyond thirty days if a client shows good cause as defined in WAC 388-02-0020 for having not requested reimbursement within thirty days.

(3) To be reimbursed for mileage, ~~((fuel/gas))~~ fuel, parking, bridge tolls, ~~((and))~~ or ferry fees, the requestor must provide the broker with legible copies of:

- (a) Receipt(s);
- (b) The operator's ~~((driver))~~ valid driver's license;
- (c) ~~((Current))~~ Valid vehicle registration; and
- (d) Proof of insurance for the vehicle/operator at the time of the trip.

(4) The ~~((department))~~ medicaid agency or the broker may retroactively authorize and reimburse for transportation costs, including meals and lodging when:

(a) A client is approved for a delayed certification period as defined in WAC 182-500-0025, or for a retroactive eligibility period as defined in WAC 182-500-0095, or is ~~((approved for a delayed certification period))~~ retroactively eligible for a medically needy program which requires a spenddown as defined in WAC ((388-500-0005)) 182-500-0100;

(b) The transportation costs were not used to meet a client spenddown liability in accordance with WAC ~~((388-519-0110))~~ 182-519-0110;

(c) The transportation costs for which retroactive reimbursement is requested falls within the period of retroactive eligibility or delayed certification;

(d) The client received medically necessary services that were covered by ~~((their))~~ the client's medical program for the date(s) of service for which retroactive reimbursement is requested; and

(e) The request for retroactive reimbursement is made within sixty days from the date of eligibility notification (award letter), not to exceed eight months from the date(s) of service for which reimbursement is requested.

(5) When transportation cost(s) are retroactively authorized, the reimbursement amount must not exceed the reimbursement amount that would have been authorized prior to the date(s) of service.

(6) To be paid by the broker for nonemergency transportation services:

(a) Ambulance providers must be subcontracted with the broker in accordance with WAC ~~((388-546-5200-1(d)))~~ 182-546-5200.

(b) Nonambulance providers must be subcontracted with the broker in accordance with WAC ((388-546-5200-(1)(e))) 182-546-5200.

(7) The ((department)) agency, through its contracted brokers, does not pay for nonemergency transportation when:

(a) The health care service the client is requesting transportation to or from is not a service covered by the client's medical program((-);

(b) The covered health care service is within three-quarters of a mile from the pick-up point, except when:

(i) The client's documented and verifiable medical condition and personal capabilities demonstrates that the client is not able to walk three-quarters mile distance;

(ii) The trip involves an area that the broker determines is not physically accessible to the client; or

(iii) The trip involves an area that the ((department's)) agency's broker considers to be unsafe for the client, other riders, or the driver.

(c) The client has personal or informal transportation resources that are available and appropriate to the clients' needs;

(d) Fixed-route public transportation service is available to the client within three-quarters of a mile walking distance. Exceptions to this rule may be granted by the transportation broker when the need for more specialized transportation is documented. Examples of such a need may be the client's use of a portable ventilator, a walker, or a quad cane; or

(e) The mode of transport that the client requests is not necessary, suitable, or appropriate to the client's medical condition.

### WSR 14-24-075

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed November 26, 2014, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-064.

Title of Rule and Other Identifying Information: WAC 182-547-0800 Hearing aids—Coverage—Clients twenty years of age and younger and 182-531-0375 Audiology services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 6, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 7, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 6, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by December 29, 2014, TTY (800) 848-5429, (360) 725-1307, or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to these sections are necessary to:

- Add bilateral cochlear implants as a covered benefit for clients twenty years of age and younger. The agency uses health technology assessment in determining coverage for new or existing technology when coverage is not mandated by federal or state law. This policy decision complies with a recent health technology assessment decision made by the health technology clinical committee (HTCC).
- Change repair policy to state, "The agency pays for repairs of hearing aids that are less than five years old..."
- Change requirement that repair warranty be for a minimum of six months rather than ninety days.
- Change payment for rental hearing aids from two months to thirty days.

Reasons Supporting Proposal: The bilateral cochlear implant policy decision complies with a recent health technology assessment decision made by HTCC. The changes to the repair policy and rental of hearing aids align with industry standards. Changes to the repair and rental policy were in response to stakeholder's comments during external review.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Jean Gowen, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-2005.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

November 26, 2014

Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-531-0375 Audiology services.** (1) The ((department)) agency covers, with prior authorization, ((the implantation of a unilateral)) cochlear devices for clients twenty years of age and younger with the following limitations:

(a) The client meets one of the following:

(i) Has a diagnosis of profound to severe bilateral, sensorineural hearing loss;

(ii) Has stimutable auditory nerves but has limited benefit from appropriately fitted hearing aids (e.g., fail to meet age-appropriate auditory milestones in the best-aided condition for young children, or score of less than ten or equal to forty percent correct in the best-aided condition on recorded open-set sentence recognition tests);

(iii) Has the cognitive ability to use auditory clues;

(iv) Is willing to undergo an extensive rehabilitation program;

(v) Has an accessible cochlear lumen that is structurally suitable for cochlear implantation;

(vi) Does not have lesions in the auditory nerve and/or acoustic areas of the central nervous system; or

(vii) Has no other contraindications to surgery; and

(b) The procedure is performed in an inpatient hospital setting or outpatient hospital setting.

(2) The ~~((department))~~ agency covers ~~((osseointegrated bone anchored hearing aids (BAHA)))~~ BAHAs for clients twenty years of age and younger with prior authorization.

(3) The ~~((department))~~ agency covers replacement parts and batteries for BAHAs and cochlear devices for clients twenty years of age and younger only. See WAC ~~((388-547-0800))~~ 182-547-0800.

(4) The ~~((department))~~ agency considers requests for removal or repair of previously implanted ~~((bone anchored hearing aids (BAHA)))~~ BAHAs and cochlear devices for clients twenty one years of age and older only when medically necessary. Prior authorization from the ~~((department))~~ agency is required.

(5) For audiology, the ~~((department))~~ agency limits:

(a) Caloric vestibular testing to four units for each ear; and

(b) Sinusoidal vertical axis rotational testing to three units for each direction.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

**WAC 182-547-0800 Hearing aids—Coverage—Clients twenty years of age and younger.** (1) The agency covers new, nonrefurbished, monaural or binaural hearing aid(s), which includes the ear molds, for eligible clients twenty years of age and younger. In order for the provider to receive payment, the hearing aid must meet the client's specific hearing needs and ~~((be under))~~ carry a manufacturer's warranty for a minimum of one year.

(2) The agency pays for the following replacements as long as the need for replacement is not due to the client's carelessness, negligence, recklessness, or misuse in accordance with WAC 182-501-0050(8):

(a) Hearing aid(s), which includes the ear molds, when:

(i) The client's hearing aid(s) are:

(A) Lost;

(B) Beyond repair; or

(C) Not sufficient for the client's hearing loss; and

(ii) All warranties are expired.

(b) Ear mold(s) when the client's existing ear mold is damaged or no longer fits the client's ear.

(3) The agency pays for repairs of hearing aids that are less than five years old as follows:

(a) A maximum of two repairs, per hearing aid, per year, when the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:

(i) All warranties are expired; and

(ii) The repair ~~((is under))~~ warranty is for a minimum of ~~((ninety days))~~ six months.

(b) A rental hearing aid(s) for up to ~~((two months))~~ thirty days while the client's own hearing aid is being repaired. In the case of a rental hearing aid(s), the agency pays separately for an ear mold(s).

(4) The agency pays for ~~((unilateral))~~ cochlear implant and ~~((osseointegrated hearing aids (-)))~~ BAHA((+)) replacement parts when:

(a) The manufacturer's warranty has expired;

(b) The part is for immediate use, not a back-up part; and

(c) The part needs to be replaced due to normal wear and tear and is not related to misuse or abuse of the item (see WAC 182-502-0160)~~((- and~~

~~((d) The part is not an external speech processor))~~.

(5) The agency covers ~~((one))~~ cochlear implant external speech processors, including maintenance and repair.

(6) The agency covers ~~((one))~~ BAHA speech processors, including maintenance and repair.

(7) The agency covers batteries for hearing aids, cochlear implant external speech processors, and BAHA speech processors.

## WSR 14-24-076

### PROPOSED RULES

### DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed November 26, 2014, 2:36 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 246-870 WAC and WAC 246-887-020 and 246-887-030, electronic transmission of prescription information, Uniform Controlled Substances Act, and dispensing Schedule V controlled substances. Implementing SSB 5416 and HB 1609 (chapters 276 and 19, Laws of 2013), to (1) redefine electronic communication of prescription information; (2) revise prescription dispensing requirements for Schedule II through V controlled substances; and (3) replace the name board of pharmacy with pharmacy quality assurance commission.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on January 29, 2015, at 10:00 a.m.

Date of Intended Adoption: January 29, 2015.

Submit Written Comments to: Peggy Crain, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh>.

wa.gov/policyreview/, fax (360) 236-4626, by January 8, 2015.

Assistance for Persons with Disabilities: Contact Peggy Crain by January 15, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5416 (chapter 276, Laws of 2013) redefined electronic communication of prescription information. To be consistent with the law, the pharmacy quality assurance commission (commission) is proposing to amend chapter 246-870 WAC to align rules with statutes. Also as a result of SSB 5416, the commission is proposing to amend WAC 246-887-020 and 246-887-030 to clarify prescription dispensing requirements for Schedule II through V controlled substances.

Additionally, HB 1609 (chapter 19, Laws of 2013) renamed the board of pharmacy with pharmacy quality assurance commission. Therefore, while these rules are open the commission is proposing to change board of pharmacy to pharmacy quality assurance commission in the WAC sections that pertain to electronic communication and scheduled drugs.

Language is being moved and other minor edits are being made that do not change the effect of the rules.

Reasons Supporting Proposal: SSB 5416 and HB 1609 (chapters 276 and 19, Laws of 2013) amended state statutes that require changes to administrative rules to implement the new laws. These changes are consistent with SSB 5416 and HB 1609.

Statutory Authority for Adoption: RCW 18.64.005; SSB 5416 (chapter 276, Laws of 2013); HB 1609 (chapter 19, Laws of 2013).

Statute Being Implemented: RCW 18.64.005; SSB 5416 (chapter 276, Laws of 2013); HB 1609 (chapter 19, Laws of 2013).

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Chris Humberson, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c) and (d), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference without material change Washington state statutes or for rules that only clarify language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared. Under RCW 34.05.328 (5)(b)(iii) and (iv), a cost-benefit analysis is not required for proposed rules that adopt or incorporate by reference without material change Washington state statutes or for rules that only clarify language of a rule without changing its effect.

November 25, 2014  
Chris Humberson, R.Ph.  
Executive Director

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-020 What definitions do I need to know to understand these rules?** (1) ~~("Electronic transmission of prescription information" means the communication from an authorized prescriber to a pharmacy or from one pharmacy to another pharmacy, by computer, by the transmission of an exact visual image of a prescription by facsimile, or by other electronic means other than electronic voice communication, of original prescription information or prescription refill information for a legend drug or controlled substance consistent with state and federal law.~~

(2)) "Commission" means the Washington state pharmacy quality assurance commission.

(2) "Confidential patient information" means information maintained in the patient's health care records or individually identifiable health care records. Confidential information must be maintained and protected from release in accordance with chapter 70.02 RCW and applicable federal law.

(3) "Digital signature" means an electronic identifier that provides for message integrity, nonrepudiation, user authentication, and encryption and is intended to have the force and effect of a manual signature.

(4) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization transmitted verbally by telephone nor a facsimile manually signed by the practitioner.

(5) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a prescription and executed or adopted by an authorized person with the intent to sign the prescription.

~~((5))~~ (6) "Security" means a system to maintain the confidentiality and integrity of patient records including:

(a) Documented formal procedures for selecting and executing security measures;

(b) Physical safeguards to protect computer systems and other pertinent equipment from intrusion;

(c) Processes to protect, control and audit access to confidential patient information; and

(d) Processes to prevent unauthorized access to the data when transmitted over communication networks or when data physically moves from one location to another using media such as magnetic tape, removable drives or CD media.

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-030 What is included in the electronic ~~(transmission and transfer)~~ communication of prescription information?** The electronic ~~(transfer)~~ communication of prescription information includes the communication of prescription ~~(information)~~ or refill authorization by computer ~~(-fax, or other electronic means)~~. It includes the transfer of original and refill prescriptions and the transfer of prescription information from one pharmacy to another pharmacy.

~~((Transmission))~~ (1) Electronic communication of original prescriptions must include:



~~((1))~~ (a) Prescriber's name and the physical address of the prescriber;

~~((2))~~ (b) Prescriber's Drug Enforcement Administration Registration number where required for controlled substance prescriptions;

~~((3))~~ (c) Date of issuance;

~~((4))~~ (d) Patient's name and address;

~~((5))~~ (e) Drug name, dose, route, form, directions for use, quantity;

~~((6))~~ (f) Electronic, digital, or manual signature of the prescriber;

~~((7))~~ (g) Refills or renewals authorized, if any;

~~((8))~~ (h) A place to note allergies and a notation of purpose for the drug;

~~((9))~~ (i) Indication of preference for a generic equivalent drug substitution;

~~((10))~~ (j) Any other requirements consistent with laws and rules pertaining to prescription content and form, RCW 69.41.120 and ~~((21 Code of Federal Regulations))~~ Title 21 C.F.R. Parts 1300, 1304, 1306, and 1311; and

~~((11))~~ (k) Identification of the electronic system readily retrievable for ~~(board of pharmacy)~~ commission inspection.

~~(Transfer)~~ (2) Electronic communication of refill prescription information ~~(from pharmacy to pharmacy by facsimile, or verbally;)~~ must include:

(a) All elements of the original prescription;

(b) Date of transfer maintained in records at each site;

(c) Number of refills remaining and the date of last refill;

(d) State and federal required information for controlled substances;

(e) No further refills may be issued by the transferring pharmacy unless the pharmacies use a common electronic data base for prescription filling which provides an audit trail to document each refill and limits refills to the number authorized.

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-050 What are the requirements for fax machines?** Prescription orders may be transmitted to pharmacists directly from the prescriber using facsimile transmission devices subject to the following requirements:

(1) The order contains the date, time, and telephone number and location of the transmitting device.

(2) Prescriptions for Schedule III, IV, and V drugs may be transmitted at any time.

(3) Prescriptions for Schedule II drugs may be transmitted only under the following conditions:

(a) The order is for an injectable Schedule II narcotic substance that is to be compounded by the pharmacist for patient use; or

(b) The prescription is written for patients in a long-term care facility or a hospice program certified or paid by medicare under Title XVIII of the federal Social Security Act, as defined in RCW 69.50.308;

(c) The prescription must be signed by the prescriber;

(d) In a nonemergent situation, an order for Schedule II controlled substances may be prepared for delivery to a patient pursuant to a facsimile transmission but may not be

dispensed to the patient except upon presentation of a written order;

(e) In an emergent situation, an order for Schedule II controlled substances may be dispensed to the patient upon the oral prescription of a prescriber subject to the requirements of RCW 69.50.308(c). The pharmacy has seven days to obtain a written prescription that covers an emergency Schedule II oral prescription;

(f) To a hospital as defined in WAC 246-873-010 for a patient admitted to or being discharged from the hospital.

(4) The transmitted order shall be filed in the same manner as any other prescription. However, the pharmacist is responsible for assuring that the quality of the order is sufficient to be legible for at least two years pursuant to the records retention requirements of WAC 246-869-100.

(5) Refill authorizations for prescriptions may be ~~((electronically))~~ transmitted~~((-~~

~~((6) The pharmacist is responsible for assuring that each electronically transmitted prescription is valid and shall verify authenticity with the prescriber whenever there is a question.~~

~~((7) No agreement between a prescriber and a pharmacist or pharmacy shall require that prescription orders be electronically transmitted from the prescriber to only that pharmacy)) by fax.~~

AMENDATORY SECTION (Amending WSR 11-12-036, filed 5/25/11, effective 6/25/11)

**WAC 246-870-060 What are the ~~((board))~~ commission's requirements for electronic prescription ~~((transmission))~~ communication systems?** (1) Systems for the electronic ~~((transmission))~~ communication of prescription information must be approved by the ~~((board))~~ commission. ~~((Board))~~ Commission approval of systems will be for a period of three years. The ~~((board))~~ commission will maintain a list of approved systems.

(2) Systems in which prescriptions are transmitted from the prescriber's facsimile machine to the pharmacy facsimile machine do not require ~~((board))~~ commission approval.

(3) Each system shall have policies and procedures on the electronic ~~((transmission))~~ communication of prescription information available that address the following:

(a) Patient access. The system may not restrict the patient's access to the pharmacy of their choice.

(b) Security. The system shall have security and system safeguard designed to prevent and detect unauthorized access, modification, or manipulation of prescription information. Accordingly, the system should include:

(i) Documented formal procedures for selecting and executing security measures;

(ii) Physical safeguards to protect computer systems and other pertinent equipment from intrusion;

(iii) Processes to protect, control and audit access to confidential patient information; and

(iv) Processes to prevent unauthorized access to the data when transmitted over communication networks or when data physically moves from one location to another using media such as magnetic tape, removable drives or CD media.

(c) Systems that utilize intermediaries in the electronic communication or processing of prescriptions such as third party payers shall be responsible to insure that their contracts with these intermediaries require security measures that are equal to or better than those provided by this rule and prohibit the modification of any prescription record after it has been transmitted by the practitioner to the pharmacist.

(d) Confidentiality of patient records. The system shall maintain the confidentiality of patient information in accordance with the requirements of chapters 18.64, 69.50, and 70.02 RCW Health Care Information Act and any applicable federal law.

(e) Authentication. To be valid prescriptions transmitted by an authorized prescriber from computer to fax machine or from computer to computer must use an electronic signature or digital signature.

(4) The system shall provide for the transmission and retention of the information by the sender and the receiver of the prescription as required in WAC 246-870-030.

(5) The system must authenticate the sender's authority and credentials to transmit a prescription.

(a) The system shall provide an audit trail of all prescriptions electronically transmitted that documents for retrieval all actions and persons who have acted on a prescription, including authorized delegation of transmission;

(b) The right of the Washington state (~~(board of pharmacy)~~) commission to access electronically submitted prescriptions for purposes of investigations in disciplinary proceedings.

(6) If a hard copy of an electronic prescription is given directly to the patient, the prescription must be printed on approved tamper-resistant paper and must be manually signed by the prescriber as required in RCW 18.64.500.

(7) The pharmacist is responsible for ensuring that each electronically communicated prescription is valid and shall verify authenticity with the prescriber whenever there is a question.

(8) No agreement between a prescriber and a pharmacist or pharmacy shall require that prescription orders be communicated from the prescriber to only that pharmacy.

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-070 What are the (~~(board)~~) commission's requirements for pharmacies using electronic prescription (~~(transmission)~~) communication systems?** Each pharmacy must have policies and procedures that ensure the integrity and confidentiality of patient information transmitted electronically as required by chapter 70.02 RCW and applicable federal law. All pharmacy employees and agents of the pharmacy are required to read, sign and comply with the policy and procedures.

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-080 Can prescription records be stored electronically?** Prescription records for legend drugs can be stored electronically if they are in compliance with chapter 246-875 WAC (~~(patient medication record systems)~~)

and are readily retrievable by the (~~(board)~~) commission, or its agent for inspection. Controlled substance prescriptions must be maintained in accordance with state and federal regulations.

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-090 Can electronic mail systems be used to transmit patient information?** Electronic mail systems can be used to transmit patient information concerning an original prescription or information concerning a prescription refill if all direct communications between a pharmacist and a practitioner are kept secure and confidential. The system used to communicate patient information (~~(shall)~~) must meet the requirements for security and confidentiality in WAC (~~(246-870-020)~~) 246-870-060.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-887-020 Uniform Controlled Substances Act.** (1) Consistent with the concept of uniformity where possible with the federal regulations for controlled substances (21 C.F.R.), the federal regulations are specifically made applicable to registrants in this state by virtue of RCW 69.50.306. Although those regulations are automatically applicable to registrants in this state, the (~~(board)~~) pharmacy quality assurance commission is nevertheless adopting as its own regulations the existing regulations of the federal government published in the Code of Federal Regulations revised as of April 1, 1991, and all references made therein to the director or the secretary shall have reference to the (~~(board of pharmacy)~~) commission, and the following sections are not applicable: Section 1301.11-.13, section 1301.31, section 1301.43-.57, section 1303, section 1308.41-.48, and section 1316.31-.67. The following specific rules shall take precedence over the federal rules adopted herein by reference, and therefore any inconsistencies shall be resolved in favor of the following specific rules.

(2) A separate registration is required for each place of business (as defined in section 1301.23) where controlled substances are manufactured, distributed or dispensed. Application for registration must be made on forms supplied by the (~~(pharmacy board)~~) commission, and all information called for thereon must be supplied unless the information is not applicable, in which case it must be indicated. An applicant for registration must hold the appropriate wholesaler, manufacturer or pharmacy license provided for in chapter 18.64 RCW.

(3) Every registrant shall be required to keep inventory records required by section 1304.04 (of the federal rules which have been adopted by reference by Rule 1) and must maintain said inventory records for a period of two years from the date of inventory. Such registrants are further required to keep a record of receipt and distribution of controlled substances. Such record shall include:

(a) Invoices, orders, receipts, etc. showing the date, supplier and quantity of drug received, and the name of the drug;

(b) Distribution records; i.e., invoices, etc. from wholesalers and manufacturers and prescriptions records for dispensers;

(c) In the event of a loss by theft or destruction, two copies of DEA 106 (report of theft or loss of controlled substances) must be transmitted to the federal authorities and a copy must be sent to the ~~((board))~~ commission;

(d) For transfers of controlled substances from one dispenser to another, a record of the transfer must be made at the time of transfer indicating the drug, quantity, date of transfer, who it was transferred to and from whom. Said record must be retained by both the transferee and the transferor. These transfers can only be made in emergencies pursuant to section 1307.11 (federal rules).

(4) The records must be maintained separately for Schedule II drugs. The records for Schedule III, IV and V drugs may be maintained either separately or in a form that is readily retrievable from the business records of the registrant. Prescription records will be deemed readily retrievable if the prescription has been stamped in red ink in the lower right hand corner with the letter "C" no less than one inch high, and said prescriptions are filed in a consecutively numbered prescription file which includes prescription and noncontrolled substances.

(5) A federal order form is required for each distribution of a Schedule I or II controlled substance, and said forms along with other records required to be kept must be made readily available to authorized employees of the ~~((board))~~ commission.

(6) Schedule II drugs require that a dispenser have a signed prescription in his possession prior to dispensing said drugs. An exception is permitted in an "emergency." An emergency exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the physician to provide a written prescription for the drug at that time. If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within 72 hours, and further he must note on the prescription that it was filled on an emergency basis.

(7) A prescription for a substance included in Schedule II may not be refilled.

(8) A prescription for a substance included in Schedule II may not be filled more than six months after the date the prescription was issued.

(9) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III, IV, or V, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written, oral, or electronically communicated prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription for a substance included in Schedule III, IV, or V may not be filled or refilled more than six months after the date issued by the practitioner or be refilled more than five times, unless the practitioner issues a new prescription.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-887-030 Dispensing Schedule V controlled substances.

**WSR 14-24-077**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed November 26, 2014, 2:44 p.m.]

### Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards, amending the rule to reference the 2013 version of the National Shellfish Sanitation Program (NSSP) guide for the Control of Molluscan Shellfish (guide).

Hearing Location(s): Department of Health, TC3 Room 229, 243 Israel Road S.E., Tumwater, WA 98501, on January 6, 2015, at 11:00 a.m.

Date of Intended Adoption: January 13, 2015.

Submit Written Comments to: Brandy Brush, P.O. Box 7824, Olympia, WA 98504, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by January 6, 2015.

Assistance for Persons with Disabilities: Contact Brandy Brush by December 30, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The United States Food and Drug Administration (FDA) requires all shellfish-producing states to follow the most current version of the NSSP guide in order to place molluscan shellfish into interstate commerce. The rule currently references the 2011 NSSP guide, leaving the current rules out-of-date. The proposed rule updates the reference to the 2013 version of the NSSP guide.

Reasons Supporting Proposal: The FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish consistent with the NSSP guide. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP guide. Therefore, an update to WAC 246-282-005 is needed so that Washington state remains compliant with the NSSP guide and molluscan shellfish products from the state can continue to be placed into interstate commerce.

### Chapter II.

A new paragraph @.02 Shellfish Related Illness Associated with *Vibrio parahaemolyticus* - **Redefining how to address illness and outbreaks.**

@.06 *Vibrio parahaemolyticus* Control Plan is now @.07 *Vibrio parahaemolyticus* Control Plan - **Format change.**

### Chapter VIII.

@.02 Shellstock Time to Temperature Controls.

I. Shellstock intended for a validated pathogen reduction process where refrigeration would reduce efficacy of the process (and appropriately labeled with name of the receiving dealer) is exempt from the requirements in Chapter VIII. @.02 A. (1) and (2). **This change allows product that is going to be subject to a postharvest process to reduce Vibrio, to be exempt from cooling, if the cooling would make the postharvest processing less efficient.**

.02 Shellstock Harvesting and Handling.

F. (7)(a) When shellstock are harvested from one harvest area on a single day by a single harvester or aquaculture leaseholder, multiple containers may be utilized on a wrapped pallet, in a tote, in a net brailer, in a single boat, vehicle, conveyance or other container and the unit tagged with a single tag in accordance with the requirements of Section .02 F. **This change makes a boat load, or vehicle load, if harvested from the same area on the same day eligible for a bulk tag.**

F. (7)(b)(ii)(ii) Number of individual containers in the unit or an estimate of the total weight, volume or count. **This change allows the harvester to estimate or approximate counts, weights or volume instead of exact counts or measurements.**

#### Chapter XI-XV.

Moved the requirement for Ice to "come from a facility sanctioned by the Authority or the appropriate regulatory agency" from XI, XII, XIII, XIV, XV. .02 E. Protection of Adulterants (4) (c) to XI, XII, XIII, XIV, XV. .02 A. Safety of Water for Processing and Ice Production (2)(b). **This moves the requirement for ice to come from an approved facility from item 12 Protection of Adulterants to item 8, Safety of Water for Processing and Ice Production on the Shellfish inspection form.**

#### Chapter XIII. .01 B. (5)

Product intended for relay, wet storage or depuration, or either geoduck clams (*Panopea generose*), or *Mercenaria* sp which are being cooled utilizing an Authority approved tempering plan are exempt from the requirement listed above in .01 B. (4) above. [C] **Added geoduck clams (*Panopea generose*) to the exemption for shellstock shipping critical control point requirements. The lower temperatures listed in Chapter XIII @ 01.B(4) would cause significant mortality in the animal. There is no record of geoduck clams being associated with vibriosis; laboratory testing of geoduck clams in 2007 by DOH revealed no detected presence of *Vibrio parahaemolyticus*.**

Guidance Documents Section IV.

#### Chapter III added:

.08 Icing, Cold Water Dips and Ice Slurries for Cooling Shellstock.

.09 Irradiation Pre-labeling Guidance.

#### Chapter IV added:

.05 Template for Submission of Post-Harvest Process Validation Studies.

.06 *Vibrio cholera*.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Darin Klein, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3341.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes [that] generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

November 25, 2014

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 14-09-003, filed 4/3/14, effective 5/4/14)

**WAC 246-282-005 Minimum performance standards.** (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (~~((2011))~~ 2013) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

**WSR 14-24-085**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 1, 2014, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-001.

Title of Rule and Other Identifying Information: WAC 260-36-250 Industrial insurance.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 9, 2015, at 9:30 a.m.

Date of Intended Adoption: January 9, 2015.

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 January 8, 2015.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 7, 2015, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify when licensees are covered under industrial insurance and how payment due dates are calculated.

Reasons Supporting Proposal: Licensees are unsure of when and where they have coverage and the amendments better address the questions. Also, due to the work week of the Washington horse racing commission employees, invoices may not be available on the first of each month, so payment dates are flexible depending on date of issuance of the invoices.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 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.

December 1, 2014  
Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

**WAC 260-36-250 Industrial insurance.** (1) The horse racing industry labor and industries account only provides coverage for employees of a trainer licensed in the state of Washington and meets the criteria in this section. At the time of submitting a license application, or as provided in this section, all licensed trainers must provide the commission with the name of all licensed employees, including grooms, assistant trainers, exercise riders - farm, and pony riders - farm. Trainers will be required to maintain accurate payroll records and may be required to submit them to the commission or the department of labor and industries for premium verification and/or claims processing. In addition the trainer will inform the commission of the worksite for each employee. For the purpose of industrial insurance coverage a worksite may only be one of the following locations:

(a) A Washington race track - A race track in the state of Washington granted race dates by the commission. A site will be designated as a Washington race track for the purposes of industrial insurance for only the period of the track's licensed race meet and periods of training when horses are exercised in preparation for competition. This period of time is limited to only that period of time when the stewards have authority on the grounds (WAC 260-24-510(2));

(b) Farm or training center - A farm or training center is any location off the grounds of a licensed race meet. This will include any recognized race track located outside the state of Washington as well as any Washington race track during the period before its period of training or after its licensed race meet. For the purposes of industrial insurance all such locations will be considered a farm or training center.

(2) Grooms and assistant trainers.

(a) A licensed trainer must pay the industrial insurance premiums for all licensed grooms and licensed assistant trainers as established by labor and industries, unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed grooms and licensed assistant trainers (~~(working for the)~~ while performing the duties of their license for and under the direction of a licensed trainer, and excludes all exercise riders, pony riders, and any other licensed employee of the trainer, whether working at a farm or training center. In addition, licensed spouse grooms are exempt from coverage requirements.

(b) A trainer is responsible for accurately reporting to the commission all grooms and assistant trainers in the trainer's employ. If a trainer releases any employee from employment, the trainer must notify the commission within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all grooms and assistant trainers in their employ are properly licensed by the commission.

(c) The industrial insurance premiums will be assessed based on each groom or assistant trainer employed in the coverage month, or a trainer may employ a "temporary groom" and be charged on a per day basis. The daily rate (~~(is ten percent of the monthly rate)~~) for a "temporary groom" will be prorated based on the number of days in the month. The use

of a "temporary groom" for more than fourteen days in the calendar month will not be considered "temporary" and the trainer will be charged a full monthly premium. Premiums will be paid to the commission on a monthly basis. A trainer ~~((must pay))~~ will be invoiced for the assessed industrial insurance premium for each licensed groom and licensed assistant trainer at the end of each month, or before the trainer leaves the grounds taking his/her horses. Multiple trainers may employ the same groom, but each trainer is responsible for the entire applicable labor and industries premium. ~~((Payment of the full premium is normally due prior to the fifteenth of the following month. Failure to make the payment by the fifteenth will result in a fine and, if applicable, a suspension as outlined in WAC 260-84-135.))~~

(3) Track employees.

(a) A trainer must pay the industrial insurance premiums for all track employees employed by the trainer to work on the grounds of a race track unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to track employees, which will include licensed exercise riders - track, and licensed pony riders - track, and excludes all grooms, spouse grooms, assistant trainers, and all farm employees working off the grounds of a Washington race track at a farm or training center.

(b) It is the trainer's responsibility to ensure all track employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover track employees will be assessed on the number of horses, per day, in a month a license trainer has horses on the grounds. The number of horses will include all horses on the grounds under the care of a licensed trainer, including pony horses. Premiums will be paid to the commission on a monthly basis. A trainer ~~((must pay))~~ will be invoiced for the assessed industrial insurance premium for each horse per day at the end of each month, or before the trainer leaves the grounds taking his/her horses.

(i) A trainer is responsible ~~((to))~~ for accurately ~~((report))~~ reporting the correct number and identity of any horse or horses in their care. If the trainer cannot provide documentation of the exact date of a horse's arrival or departure, the trainer will be invoiced for any unreported horse beginning on the first day horses were allowed on the track for arrivals, or a day supported by other evidence acceptable to the commission.

(ii) ~~((A trainer is responsible to report any transfer of a horse in their care to another trainer at the commission office.))~~ Trainers involved in the transfer of any horse into or out of their care are jointly responsible to report the transfer to the commission. A transfer report supplied by the commission must be completed by both parties. Failure to report transfers ~~((will))~~ may result in the previous trainer being assessed the industrial insurance premium for unreported transfers until the commission receives the required notice.

(4) Farm employees.

(a) To be covered under the horse racing industry labor and industries account, a licensed trainer must pay the industrial insurance premiums for all licensed farm employees employed by the trainer to work at a farm or training center unless exempted under reciprocal agreement outlined in sub-

section (5) of this section. Coverage will only apply to licensed farm employees which will include licensed exercise riders - farm, and licensed pony riders - farm, and excludes grooms, spouse grooms, assistant trainers, and all track employees working on the grounds of a Washington race track.

(b) A trainer is responsible for accurately reporting all farm employees in the trainer's employ. A trainer must notify the commission prior to any employee beginning work. If a trainer releases any farm employee from employment, the trainer must notify the stewards within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all farm employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover farm employees will be assessed on the number of employees, per day, multiplied by the number of days in the month the trainer reports the employee working. Trainers must report the anticipated work days and hours of work each day at the start of the month. If the work schedule changes the trainer must immediately notify the commission.

(d) A farm employee may be required to produce to the commission payroll records for verification of work days and/or claims processing.

(5) Reciprocal agreements. The state of Washington has reciprocal agreements with other states. Trainers shipping in from these jurisdictions who have industrial insurance from a reciprocal state need not obtain industrial insurance coverage so long as they comply with the conditions of RCW 51.12.120 and WAC 296-17-31009.

(6) Employees moving from one worksite to another.

(a) A licensed groom or licensed assistant trainer can move from the track to the farm or from the farm to the track. The trainer is not required to notify the commission whenever a licensed groom or licensed assistant trainer moves from the different worksites.

(b) A licensed exercise rider - track or licensed pony rider - track may not move from the track to the farm unless that person first obtains an exercise rider - farm or pony rider - farm license. On those days a track employee moves from the track to the farm, the trainer will be ~~((responsible))~~ invoiced for, at the end of the month, ~~((to pay))~~ an additional farm premium for each employee, for each day they worked at the farm as provided in subsection (4) of this section.

(c) A licensed exercise rider - farm or licensed pony rider - farm can move from the farm to the track. Before moving any such employees, the employee must first also be licensed as an exercise rider - track or pony rider - track. On those days a farm exercise rider or pony rider moves to the track, the trainer will not be responsible to pay any additional premium, as long as the employee continues to have the farm premium assessed. The licensed exercise rider - farm or licensed pony rider - farm, are only covered while performing the duties of their license for and under the direction of a licensed trainer.

(d) A track employee is only covered under the per horse, per day premium, and then only when performing the duties of their license for and under the direction of a licensed trainer while on the grounds of a Washington race track

during its licensed race meet and periods of training. Any time prior to or after the stewards have authority on the grounds granted in WAC 260-24-510(2), the Washington track will be considered, for the purposes of industrial insurance coverage a farm or training center.

(7) Major track versus nonprofit race track.

(a) There ~~((will no longer be a))~~ is no distinction, for industrial insurance purposes, except as provided in (b) of this subsection, between a major (Class A or B) race track and a nonprofit (Class C) race track. Premiums to cover licensed employees will be assessed the same.

(b) License owners at a major race track will be assessed a premium of one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Owners, with partial ownership interest shall be assessed a prorated amount of the full ownership fee in increments of ten percent. Owners at a nonprofit or Class C race track will continue to pay a lesser premium as established annually by the department of labor and industries.

(c) Premiums paid by owners are a fee to subsidize workers compensation coverage for injured workers. The premiums paid by owners do not extend any coverage to owners or their employees.

(8) Coverage outside the state of Washington.

(a) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if that other jurisdiction has a reciprocal agreement with the state of Washington, and if:

(i) The trainer pays the premium for grooms and assistant trainers, and as long as both the trainer and grooms/assistant trainers are licensed by the commission; and

(ii) The trainer pays the premium at the farm rate for exercise riders - farm and pony riders - farm, and as long as both the trainer and all farm employees are licensed by the commission.

(b) Trainers must continue to report Washington employees to the commission prior to the start of each month so an assessment can be made. Failure to report may result in the trainer being referred to the stewards or executive secretary for further action.

(c) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

(9) Trainers will be provided an invoice monthly of premiums due. The invoices will be prepared and mailed or delivered on or before the fifth day of the following month. Total monthly premiums will be rounded to the next whole dollar. Payment of the premium is due prior to fifteen days from the date listed on the invoice. Trainers are responsible for the accuracy of their invoices and must report any errors or omissions to the commission prior to payment. Failure to make the payment by the fifteenth day will result in a fine, and if applicable a suspension as outlined in WAC 260-84-135.

**WSR 14-24-093**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed December 1, 2014, 4:38 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-100-021 Responsibilities and duties—Health care providers, 246-100-036 Responsibilities and duties—Local health officers, 246-138-030 What are the duties and responsibilities of the local health department, and 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis. Each of these rules includes an outdated reference to the Control of Communicable Diseases Manual.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on January 14, 2015, at 1:30 p.m.

Date of Intended Adoption: January 14, 2015.

Submit Written Comments to: David DeLong, P.O. Box 47990, Olympia, WA 98504-7990, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4088, by January 5, 2015.

Assistance for Persons with Disabilities: Contact Melanie Hisaw by January 5, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule change is to update references to the Control of Communicable Disease Manual, as published by the American Public Health Association. As a result the state board of health's (board) rules will reflect national, best current practices for infectious disease control. The proposal will also clarify the board's intent to encourage local health jurisdictions to establish interagency agreements in advance of health emergencies so that disease control measures may be more easily and uniformly implemented.

Reasons Supporting Proposal: The communicable disease control manual is a document that local health officials and health care providers refer to in response to infectious disease. Some of the board's rules reference older manuals that may not provide the most up-to-date information regarding the occurrence, transmission, resistance and control of infectious diseases. Updating the reference will assure the board's rules reflect national, current best practice regarding infectious disease control.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 43.20.050.

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David DeLong, State Board of Health, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4111.

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 not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

December 1, 2014  
Michelle A. Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-100-021 Responsibilities and duties—Health care providers.** Every health care provider, as defined in chapter 246-100 WAC, shall:

(1) Provide adequate, understandable instruction in control measures designed to prevent the spread of disease to:

(a) Each patient with a communicable disease under his or her care; and

(b) Others as appropriate to prevent spread of disease.

(2) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of illness.

Comply with requirements in WAC 246-100-206, 246-100-211, and chapter 246-101 WAC.

(3) Use protocols established in the *Control of Communicable Diseases Manual*, ((seventeenth edition, James Chin, MD, MPH, editor, 2000)) the 20th edition, published by the American Public Health Association, when treating wounds caused by animal bites. A copy of this publication is available for review at the department and at each local health department.

**AMENDATORY SECTION** (Amending WSR 03-17-022, filed 8/13/03, effective 9/13/03)

**WAC 246-100-036 Responsibilities and duties—Local health officers.** (1) The local health officer shall establish, in consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity he or she deems necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination.

(2) Local health officers shall:

(a) Notify health care providers within the health district regarding requirements in this chapter;

(b) Ensure anonymous HIV testing is reasonably available;

(c) Make HIV testing, AIDS counseling, and pretest and post-test counseling, as defined in this chapter, available for voluntary, mandatory, and anonymous testing and counseling as required by RCW 70.24.400;

(d) Make information on anonymous HIV testing, AIDS counseling, and pretest and post-test counseling, as described under WAC 246-100-208 and 246-100-209, available;

(e) Use identifying information on HIV-infected individuals provided according to chapter 246-101 WAC only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; and

(f) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first.

(3) Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the ~~((17th edition, 2000 of the))~~ *Control of Communicable Disease Manual*, the 20th edition, published by the American Public Health Association, or other measures he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information.

(4) A local health department ~~((may make agreements))~~ should seek agreements as necessary with tribal governments, with federal authorities or with state agencies or institutions of higher education that empower the local health officer to conduct investigations and institute control measures in accordance with WAC 246-100-040 on tribal lands, federal enclaves and military bases, and the campuses of state institutions. State institutions include, but are not limited to, state-operated colleges and universities, schools, hospitals, prisons, group homes, juvenile detention centers, institutions for juvenile delinquents, and residential habilitation centers.

**AMENDATORY SECTION** (Amending WSR 00-01-066, filed 12/13/99, effective 1/13/00)

**WAC 246-138-030 What are the duties and responsibilities of the local health department?** Local health departments, during regular hours of operation shall:

(1) Determine whether the good samaritan has sustained an exchange of bodily fluids significantly increasing the odds of being exposed to a deadly infectious disease;

(2) Determine which certain infectious diseases or other infectious diseases are appropriate to test for, which tests should be done and when the tests should be done, based on the nature and time of the exchange of bodily fluids significantly increasing the odds of being exposed to a deadly infec-



tious disease and the natural history of infection for the diseases in question;

(3) Offer counseling and testing, consistent with recommendations in the ~~((sixteenth edition 1995 of))~~ *Control of Communicable Diseases Manual*, ~~((edited by Abram S. Benenson))~~ the 20th edition, published by the American Public Health Association, for those infectious diseases to which the good samaritan is determined to have sustained an exchange of bodily fluids significantly increasing the odds of being exposed to a deadly infectious disease;

(4) Obtain the informed consent of the good samaritan prior to testing;

(5) Provide the good samaritan with the results of the testing and the possible need for retesting;

(6) Refer the good samaritan to an appropriate health care provider for any subsequent needed care in the event of a positive test; and

(7) Maintain the confidentiality of those medical records as required by chapters 70.24 RCW and 246-100 WAC.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis.** Except as specified under WAC 246-215-02250, the PERSON IN CHARGE shall obtain approval from the LOCAL HEALTH OFFICER before reinstating a FOOD EMPLOYEE who was RESTRICTED or EXCLUDED based on:

(1) The ~~((19th edition of the))~~ *Control of Communicable Disease Manual*, the 20th edition, published by the American Public Health Association; or

(2) Other measures the LOCAL HEALTH OFFICER deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information.

**WSR 14-24-097**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket UT-140680—Filed December 2, 2014, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-046.

Title of Rule and Other Identifying Information: This rule making proposes amending rules and eliminating requirements in existing rules in chapter 480-120 WAC, Telephone companies; chapter 480-121 WAC, Registration and competitive classification of telecommunications companies; chapter 480-122 WAC, Washington telephone assistance program; chapter 480-123 WAC, Universal service; chapter 480-140 WAC, Commission general—Budgets; and chapter 480-143 WAC, Commission general—Transfers of property. This rule making also proposes establishing damage reporting requirements in accordance with the 2011 amended underground utilities law, chapter 19.12.02 [19.122] RCW.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on February 12, 2015, at 1:30 p.m.

Date of Intended Adoption: February 12, 2015.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by January 6, 2015. Please include "Docket UT-140680" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by January 29, 2015, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The telecommunications industry has undergone substantial technological and competitive changes in just the last few years. Washington consumers and businesses now have multiple choices of providers for their telephone services, and as a result the incumbent local exchange carriers have experienced significant declines in customers and local telephone service revenues. This proposal addresses the changes that have occurred in the telecommunications marketplace since 2007, the last time the commission revised its rules. In addition, this proposal establishes damage reporting requirements in accordance with the 2011 amended underground utilities law by requiring facilities operators to report damage events to the commission with forty-five days, with specific descriptive data about the event.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 19.122.053, chapter 19.122 RCW, RCW 80.01.040 and 80.04.160.

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

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

Name of Agency Personnel Responsible for Drafting: William Weinman, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1109; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

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

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

December 2, 2014  
Steven V. King  
Executive Director  
and Secretary

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-011 Application of rules.** (1) The rules in this chapter apply to any company that is subject to the jurisdiction of the commission as to rates ~~((and))~~ or services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) Tariffs filed by companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance is not a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC). Tariffs that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleading—General).

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

AMENDATORY SECTION (Amending WSR 05-06-051, filed 2/28/05, effective 3/31/05)

**WAC 480-120-015 Exemptions from rules in chapter 480-120 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to ~~((the rules in this chapter, special))~~ commission rules).

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-021 Definitions.** The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

**"Access charge"** means a rate charged by a local exchange company to an interexchange company for the origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

**"Access line"** means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

**"Affiliate"** means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

**"Affiliated interest"** means a person or corporation as defined in RCW 80.16.010.

**"Ancillary services"** means all local service features excluding basic service.

**"Applicant"** means any person applying to a telecommunications company for new service or reconnection of discontinued service.

**"Average busy hour"** means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

**"Basic service"** means service that includes the following:

- Single-party service;
- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

**"Business"** means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

**"Business days"** means days of the week excluding Saturdays, Sundays, and official state holidays.

**"Business office"** means an office or service center provided and maintained by a company.

**"Business service"** means service other than residential service.

**"Busy season"** means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

**"Call aggregator"** means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

**"Category of service"** means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

**"Central office"** means a company facility that houses the switching and trunking equipment serving a defined area.

**"Centrex"** means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

**"Class A company"** means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

**"Class B company"** means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class B company is specified in WAC 480-120-034

(Classification of local exchange companies as Class A or Class B).

**"Commercial mobile radio service (CMRS)"** means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

**"Commission (agency)"** in a context meaning a state agency, means the Washington utilities and transportation commission.

**"Company"** means any telecommunications company as defined in RCW 80.04.010.

**"Competitively classified company"** means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

**"Control"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

**"Customer"** means a person to whom the company is currently providing service.

**"Customer premises equipment (CPE)"** is equipment located on the customer side of the SNI (other than a company) and used to originate, route, or terminate telecommunications.

**"Department"** means the department of social and health services.

**"Discontinue; discontinuation; discontinued"** means the termination or any restriction of service to a customer.

**"Drop facilities"** means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

**"Due date"** means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

**"Eligible telecommunications carrier (ETC)"** means a carrier designated as an ETC pursuant to 47 U.S.C. Sec. 214(e).

**"Emergency response facility"** means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

**"Exchange"** means a geographic area established by a company for telecommunications service within that area.

**"Extended area service (EAS)"** means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

**"Facility or facilities"** means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

**"Force majeure"** means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidem-

ics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

**"Interexchange"** means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

**"Interexchange company"** means a company, or division thereof, that provides long distance (toll) service.

**"Interoffice facilities"** means facilities connecting two or more telephone switching centers.

**"InterLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

**"IntraLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

**"Local access and transport area (LATA)"** means a local access transport area as defined by the commission in conformance with applicable federal law.

**"Local calling area"** means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

**"Local exchange company (LEC)"** means a company providing local exchange telecommunications service.

**"Major outages"** means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

**"Missed commitment"** means orders for exchange access lines for which the company does not provide service by the due date.

**"Order date"** means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff.

**"Pay phone"** or **"pay telephone"** means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay

telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

**"Pay phone services"** means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

**"Pay phone service provider (PSP)"** means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

**"Payment agency"** means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

**"Person"** means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

**"Prior obligation"** means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

**"Proprietary"** means owned by a particular person.

**"Provision"** means supplying telecommunications service to a customer.

**"Public access line (PAL)"** means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

**"Public safety answering point (PSAP)"** means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

**"Radio communications service company"** has the meaning found in RCW 80.04.010, except that for the purposes of this section it includes only those companies providing two-way voice communication as a common carrier.

**"Residential service"** means basic service to a household.

**"Restricted basic service"** means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

**"Results of operations"** means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

**"Service interruption"** means a loss of or impairment of service that is not due to, and is not, a major outage.

**"Service provider"** means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

**"Special circuit"** means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

**"Standard network interface (SNI)"** means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

**"Station"** means a telephone instrument installed for a customer to use for toll and exchange service.

**"Subscriber list information (SLI)"** means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

**"Subsidiary"** means any company in which the telecommunications company owns directly or indirectly five percent or more of the voting securities, unless the telecommunications company demonstrates it does not have control.

**"Support structure"** means the trench, pole, or conduit used to provide a path for placement of drop facilities.

**"Telecommunications service"** means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

**"Telemarketing"** means contacting a person by telephone in an attempt to sell one or more products or services.

**"Toll restriction" or "toll restricted"** means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

**"Traffic"** means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

**"Trouble report"** means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

**"Trunk"** means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

**"Washington telephone assistance program"** means the program of local exchange service discounts administered by the department.

**AMENDATORY SECTION** (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-026 Tariffs.** Companies that provide their customers with tariffed services must file those tariffs in accordance with chapter 480-80 WAC, Utilities general—Tariffs and contracts. This rule does not apply to companies competitively classified under RCW 80.36.320.

AMENDATORY SECTION (Amending WSR 08-19-001 and 08-20-113, filed 9/3/08 and 9/30/08, effective 10/4/08 and 10/31/08)

**WAC 480-120-071 Extension of service.** (1) This rule applies to local exchange companies receiving federal high-cost universal service support.

(2) **Definitions.** The following definitions apply to this section unless the context clearly indicates otherwise:

"Applicant" means any person applying to a telecommunications company for new ~~((tariffed))~~ residential basic local exchange service. Applicant does not include developers requesting service for developments.

"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, permitting fees, rights of way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade, or similar costs.

"Developer" means any owner of a development who offers it for disposition, or an agent of such an owner.

"Development" means land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units.

"Distribution plant" means telephone equipment and facilities necessary to provide new ~~((tariffed))~~ residential basic local exchange service to a premises, but does not include drop wire.

"Drop wire" means company-supplied wire and pedestals to be placed between a premises and the company distribution plant at the applicant's property line. For drop wire installed after January 15, 2001, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice-grade access lines.

"Extension of service" means an extension of company distribution plant for new ~~((tariffed))~~ residential basic local exchange service to a location where no distribution plant of the extending company exists at the time an extension of service is requested. An extension is constructed at the request of one or more applicants for service. Extensions of service do not include trenches, conduits, or other support structure for placement of company-provided facilities from the applicant's property line to the premises to be served. Extension of service, as defined in this rule, does not apply to extensions of service to developments or to extensions of service for temporary occupancy or temporary service.

"Extraordinary cost" means a substantial expense resulting from circumstances or conditions beyond the control of the company that are exceptional and unlikely to occur in the normal course of planning and constructing facilities contemplated by this rule.

"Order date" as defined in WAC 480-120-021 (Definitions) means the date when an applicant requests service unless a company identifies specific actions a customer must first complete in order to be in compliance with ~~((tariffs or))~~ commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required to be completed by the applicant, the order date becomes the date the company receives the completed application for extension of service.

"Premises" means any structure that is used as a residence, but does not include predominantly commercial or industrial structures.

~~((("Tariffed" means offered under a tariff filed with the commission.))~~

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include intermittent or seasonal use when the intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for construction huts, sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

~~((2))~~ ~~Tariffed~~ (3) **Residential basic local exchange service.**

(a) Each ~~((company required to file tariffs under RCW 80.36.100, and each company required to do so under an alternative form of regulation, must have on file with the commission an extension of service tariff for residential basic local exchange service consistent with this rule. Each company must extend service consistent with its tariff and this section.~~

~~((b))~~ wire line ETC must, within seven business days of an applicant's initial request, ~~((each company to which (a) of this subsection applies must))~~ provide the applicant with an application for extension of service. The company must also provide the applicant a brief explanation of the extension of service rules ~~((, including the requirement that subsequent applicants must contribute to the cost of a previously built extension that is less than five years old)).~~

~~((e))~~ (b) The company must process applications that require an extension of service in a timely manner ~~((, consistent with the following:~~

(i) ~~When there will be no charge for an extension of service as a result of the allowances required under subsection (3) of this section, the company must construct the extension and provide new tariffed residential basic local exchange service within thirteen months of the order date unless the commission grants the company's request to charge the applicant for extraordinary extension of service costs.~~

(ii) ~~For an extension of service that exceeds the allowances provided under subsection (3) of this section, within one hundred twenty days of the order date, the company must provide the applicant a bill for the estimated cost of construction of the extension of service under subsection (4)(a) of this section. The company must include with the bill a notice to the applicant of the right to be reimbursed for a portion of the cost by a subsequent applicant as provided under subsection (5) of this section.~~

(iii) ~~When the company bills for the estimated construction charges, including extraordinary costs as allowed in this section, it must complete the extension of service and provide new tariffed residential basic local exchange service within twelve months after the applicant meets the payment terms established by the company (e.g., payment in full, partial payment on a schedule). If there are multiple applicants under subsection (4)(b) of this section, then all applicants must meet the payment terms established by the company).~~

~~((3))~~ (4) Allowances.

(a) A ~~((company's tariff))~~ company must allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The ~~((tariff))~~ company may allow for an extension of service for distances over the allowance ~~((at no charge to the applicant))~~.

(b) The applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allowance. ~~((When the applicant meets the company's payment terms under subsection (2)(e)(iii) of this section, the company must construct the extension of service.))~~ The ~~((company's tariff))~~ company must permit multiple applicants to aggregate their allowances when an extension of service to two or more applicants would follow a single construction path.

~~((e))~~ ~~If the company determines that the first one thousand feet of an extension of service will involve extraordinary costs, the company may petition for permission to charge the applicant(s) for those costs. The petition must be in the form required under WAC 480-07-370 (1)(b)(ii) and the company must file the petition within one hundred twenty days after the order date. The company must provide notice to the applicant of the petition.~~

~~(4))~~ (5) Determining costs and billing for extensions of service longer than allowances.

(a) The company must estimate the cost of the service extension that is attributable to distribution plant that must be extended beyond the applicable allowance established under subsection ~~((3))~~ (4)(b) of this section.

(b) ~~((When two or more applicants request service and aggregate their allowances, and it is still necessary to construct an extension of service longer than the aggregated incremental allowances, the company must bill each applicant for an equal portion of the allowable charge (e.g., when two applicants aggregate allowances, the charge is divided by two; when five applicants aggregate allowances, the charge is divided by five). Multiple applicants may agree to divide the bill among themselves in amounts different from those billed as long as the billing company receives full payment.~~

~~(e))~~ At the completion of the construction of the extension of service, the company must determine the difference between the estimated cost ~~((provided under subsection (2)(e)(ii) of this section))~~ and the actual cost of construction. The company must provide to the applicant detailed construction costs showing the difference. The company must refund any overpayment and may charge the applicant for reasonable additional costs up to ten percent of the estimate.

~~((d))~~ The company must retain records pertaining to the construction charges paid for a period of at least six years from payment of the charges by the original applicant(s).

(5) Subsequent applicants to existing extensions of service for which construction charges were paid.

(a) If within five years of the order date for an extension of service a subsequent applicant seeks service from that previous extension of service and the original applicant(s) paid construction charges under subsection (4) of this section, then the company tariff must require the subsequent applicant to pay a proportionate share of the original extension of service charges before extending service. The tariff must provide that the amount paid by subsequent applicants will be refunded

proportionately to the original applicant(s) who paid the extension charges.

(b) The company must provide notice to the last known address of the original applicant(s) of the amount of the refund due the applicant(s). Any refund not requested within sixty days of the date notice was sent will be returned to the subsequent applicant(s).

(6) Requirements for supporting structures and trenches.

(a) A company ~~((tariff))~~ may condition construction on completion of support structures, trenches, or both on the applicant's property.

(i) Applicants are responsible for installation of all supporting structures required for placement of company-provided drop wire from the applicant's property line to the applicant's premises. The company may offer to construct supporting structures and dig trenches and may charge for those services, but the ~~((tariff))~~ company must not require that applicants use only company services to construct supporting structures and dig trenches. The offer must clearly state that the applicant may choose to employ a different company for construction services.

(ii) The company ~~((tariff))~~ may require that all supporting structures required for placement of company-provided drop wire from the applicant's property line to the premises are placed in accordance with reasonable company construction specifications. The ~~((tariff))~~ company must require that, once in place and in use, all supporting structures and drop wire will be maintained by the company as long as the company provides service, and any support structure and trenches constructed at company expense are owned by the company.

(b) ~~((The tariff must provide that))~~ Once supporting structures, trenches, or both, have been constructed, the company ~~((will))~~ must provide drop wire to applicants at no charge.

(7) Temporary service. ~~((Each company required to file tariffs under RCW 80.36.100 (Tariff schedules to be filed and open to public—Exceptions), and each company regulated under an alternative form of regulation, must have on file with the commission an extension of service tariff for temporary service consistent with this rule. Each company must extend service consistent with its tariff and this section. A company tariff for extension of temporary service))~~ A company may not provide allowances (e.g., one thousand feet without charge) or discounts on the cost of construction((-

(8) Application of rule.

(a) The prior WAC 480-120-071, as it was in effect on June 1, 2008, will continue to apply to applications for extension of service that a company has completed or accepted before October 4, 2008.

(b) This section, as amended effective October 4, 2008, applies to all other requests for service before and after the effective date)) for extension of temporary service.

AMENDATORY SECTION (Amending WSR 03-22-046, filed 10/29/03, effective 11/29/03)

**WAC 480-120-083 Cessation of telecommunications services.** (1) This rule applies to any telecommunications company that ceases the provision of any telecommunica-

tions service in all or any portion of the state (exiting telecommunications company). This rule does not apply to:

(a) Services offered by tariff that are subject to the statutory notice requirements of RCW 80.36.110 (Tariff changes—Statutory notice—Exception);

(b) Discontinuance of service to an individual customer in compliance with WAC 480-120-172 (Discontinuing service—Company initiated);

(c) Cessation of a service when the provider replaces the terminated service with comparable service without interruption. For example, the notice requirements of this rule do not apply when a local exchange carrier (LEC) providing Centrex-type service with one group of features replaces that service, without interruption, with a version of Centrex-type service that has a different group of features; and

(d) A service being discontinued that has no subscribers. Changes in customers' service providers for local exchange and intrastate toll services when there is a cessation of service are also subject to WAC 480-120-147 (Changes in local exchange and intrastate toll services).

(2) No telecommunications company may cease the provision of any telecommunications service in all or any portion of the state unless it first provides written notice to the following persons at least 30 days in advance of cessation of service:

(a) The commission;

(b) The state 911 program, in the instance of local exchange service, private branch exchange service (PBX), Centrex-type service, or private line service used in the provision of emergency services related to the state 911 program;

(c) Each of its customers, including customers that are telecommunications companies;

(d) Incumbent local exchange carriers (ILECs) providing the exiting telecommunications company with unbundled network elements (UNEs) pursuant to the Telecommunications Act of 1996, 47 U.S.C. Section 151 *et seq.*, if UNEs or combinations of UNEs are part of a telecommunications service provided to some or all of the exiting telecommunications company's customers;

(e) Each telecommunications company providing the exiting telecommunications company with resold telecommunications service, if resold service is part of a telecommunications service provided to some or all of the exiting telecommunications company's customers;

(f) The national number administrator authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.

(3) The notice to the commission and the state 911 program required in subsections (2)(a) and (b) must include:

(a) The name of the exiting telecommunications company;

(b) For each category of service, the date each telecommunications service will cease; and

(c) The number of customers for each telecommunications service and their location, described by exchange or by city and county for each telecommunications service being ceased.

(4) The notice to customers required in subsection (2)(c) must include:

(a) The date telecommunications service will cease;

(b) Information on how to contact the exiting telecommunications company by telephone in order to obtain information needed to establish service with another provider;

(c) An explanation of how customers may receive a refund on any unused service. The exiting telecommunications company must provide information to consumers via its customer service number outlining the procedure for obtaining refunds and continue to provide this information for sixty days after the date of cessation of service.

(d) A second notice provided by one of the two options listed below:

(i) Between ten and thirty days before cessation of service, the exiting telecommunications company must complete one direct call advising every customer of the cessation of service, including the date of cessation of service and a number to call for more information, if necessary. A direct call means a call in which the company leaves a recorded voice message for or speaks directly to the responsible party or its agent on the billing account; or

(ii) At least ten days before cessation of service, the exiting telecommunications company must provide a second written notice of cessation of service including the date of cessation of service and a number to call for more information, if necessary;

(e) A company may seek the commission's assistance in drafting the customer notices.

(5) The notice to ILECs required in subsection (2)(d) must include:

(a) The date telecommunications service will cease;

(b) Identification of the UNE components in relationship to the service information provided to the customer when such information differs from the ILEC's identification information as billed to the exiting telecommunications company. For example, if the ILEC identifies a UNE loop with a circuit identification number, the exiting telecommunications company must provide the ILEC with the customer telephone number assigned to the ILEC's UNE loop circuit identification number; and

(c) The telephone contact information to enable the ILEC or new provider to obtain UNE service and circuit identification information needed to establish service for a customer who will no longer receive service from the exiting telecommunications company.

(6) The notice to suppliers required in subsection (2)(e) must include:

(a) The date telecommunications service will cease;

(b) Identification of the resold service element components in relationship to the service information provided to the customer, when such information differs from the supplier's identification information as billed to the exiting telecommunications company; and

(c) Telephone contact information to enable the regulated supplier or new provider to obtain underlying service and circuit identification information needed to establish comparable replacement service for a customer who will no longer receive service from the exiting telecommunications company.

(7) The notice to the national number administrator required in subsection (2)(f) must include:

(a) Identification of all working telephone numbers assigned to customers;

(b) Identification of all unassigned or administrative numbers available for reassignment to other providers and the date such unassigned telephone numbers will be available for reassignment; and

(c) Authorization of the release of each individual assigned customer's telephone number(s) to subsequent providers selected by the customer.

(8) ILECs and telecommunications companies that are suppliers under subsection (6) must provide the information in the required notice(s) (if received) to the subsequent provider upon a request authorized by the customer.

(9) A telecommunications company ceasing a local exchange service, a PBX service, a Centrex-type service, or a private line service used in the provision of emergency services related to the state 911 program must inform the commission and the state 911 program within twenty-four hours of the cessation of telecommunications service of the number of customers and their location, listed by exchange or by city and county, that remained as customers for the telecommunications service when service ceased.

(10) Canceling registration. A company canceling its registration as a telecommunications company must notify the commission in writing and, as applicable, comply with the requirements of WAC 480-120-083, Cessation of telecommunications services. It remains subject to commission jurisdiction with respect to its provision of telecommunications service during the time it was registered, and it must file an annual report and pay regulatory fees for the period during which it was registered.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-104 Information to consumers. (1)**

Except for services provided under written contract pursuant to competitive classification, each company must provide an applicant for initial service with a confirming notice or welcome letter, either in writing or with permission of the customer, electronically. The confirming notice or welcome letter must be provided to the applicant or customer no later than fifteen days after installation of service and must provide, at a minimum:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, mailing address, repair number, electronic address if applicable, and business office hours, that the customer can contact if they have questions;

(b) Confirmation of the services being provided to the customer by the company, and the rate for each service. If the service is provided under a banded rate schedule, the current rate, including the minimum and maximum at which the customer's rate may be shifted; and

(c) If the application is for local exchange service, the LEC must either provide the following information ((required in WAC 480-120-251 (6)(a) through (f) or must)) or inform the customer that ((additional information pertain-

ing to local exchange service)) it may be found ((in the consumer information guide of the local telephone directory as required in WAC 480-120-251)) on the company's web site:

(i) Process for establishing credit and determining the need and amount for deposits;

(ii) Procedure by which a bill becomes delinquent;

(iii) Steps that must be taken by the company to disconnect service;

(iv) Washington telephone assistance program (WTAP);

(v) Federal enhanced tribal lifeline program, if applicable; and

(vi) Right of the customer to pursue any dispute with the company, including the appropriate procedures within the company and then to the commission by informal or formal complaint.

(2) Except for services provided under written contract pursuant to competitive classification, each company must provide each customer a confirming notice, either in writing or, with permission of the customer, electronically, within fifteen days of initiating a material change in service which results in the addition of a service, a change from one rate schedule to another, or a change in terms or conditions of an existing service. The confirming notice must provide at a minimum, the following information in clear and conspicuous language:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, and business office hours, that customers can contact if they have questions; and

(b) The changes in the service(s), including, if applicable, the rate for each service.

(3) When a LEC is acting as an executing carrier under WAC 480-120-147, it must make the following information available upon request:

(a) The name of the intraLATA and interLATA interexchange company to which the customer's account is currently subscribed; and

(b) A minimum of six months' account history, when available, including the date of the changes and the name of the interexchange company.

(4) When an applicant or customer contacts the LEC to select or change an interexchange company, the LEC must notify the carrier of the customer's selection or recommend that the customer contact the chosen interexchange company to confirm that an account has been or is being established by the interexchange carrier for the applicant.

(5) Each company must provide business offices or customer service centers that are accessible by telephone or in person. A business office or customer service center that serves more than one exchange must provide toll-free calling from each exchange to the office. Each business office or customer service center must be staffed by qualified personnel who can provide information relating to all services and rates, accept and process applications for service, explain charges on customers' bills, adjust charges made in error, and generally act as representatives of the company.



AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-122 Establishing credit—Residential services.** This section applies only to the provision of residential services.

(1) For a local exchange company (LEC) that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering. The LEC may require an applicant or customer of residential basic service to pay a local service deposit only if:

(a) The applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) The applicant or customer has had basic service discontinued by any telecommunications company;

(c) The applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) The applicant's or customer's service is being restored following a discontinuation for nonpayment or acquiring service through deceptive means under WAC 480-120-172(1); or

(e) The applicant or customer has been disconnected for taking service under deceptive means as described in WAC 480-120-172(1).

(2) A LEC may, if provided for in its tariff or rates, terms and conditions of services provided pursuant to competitive classification, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means, pay a deposit, or make advanced payments consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit or advanced payments for ancillary services.

(3) An interexchange company may, if provided for in its tariff or rates, terms and conditions of services provided pursuant to competitive classification, require an applicant or customer of interexchange services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for interexchange services.

(4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the company must offer the applicant or customer the following options:

(a) Pay no more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or

(b) Where technology permits, the applicant or customer must have the option of accepting toll-restricted basic service in lieu of payment of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

A company must remove toll restriction unless the customer requests to retain it when the customer makes full payment of the requested interexchange company deposit or pays fifty percent of the requested deposit and enters into payment arrangements as provided for in (a) of this subsection.

(6) A company may require an applicant or customer to pay a deposit or make advanced payments equal to two months' charges for ancillary service before providing or continuing ancillary services.

(7) A company may require an applicant or customer to pay a deposit if it finds that service was provided initially without a deposit based on incorrect information and the customer otherwise would have been required to pay a deposit.

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice to the customer listing the reason(s) for the request, the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (8) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery, if the notice is delivered in person to the customer.

(8)(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay unbilled toll charges or pay a new or additional deposit amount when the customer's toll charges exceed thirty dollars, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll-restrict a customer's services if the customer is unable pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The company must give the customer the option to pay one of the following:

(i) All outstanding toll charges specified in the notice; or

(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or

(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

(c) When an applicant does not have a customary utilization amount from a previous service, the company may request that the applicant estimate the greatest monthly toll amount the applicant expects to use. If the company asks for an estimate, it must explain that if the customer's toll charges exceed the amounts in (a) of this subsection, the company may toll restrict or require a deposit as permitted in this subsection.

(9) When a residential applicant or customer cannot establish credit or cannot pay a deposit or deposit extended payments, the applicant or customer may furnish a guarantor who will secure payment of bills for service requested in a specified amount not to exceed the amount of required deposit. The company may require that the guarantor:

- (a) Reside in the state of Washington;
- (b) Currently have service with the company requesting the deposit; and
- (c) Have an established satisfactory payment history for each class of service being guaranteed.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

**WAC 480-120-123 Establishing credit—Business services.** (1) As set forth in this section, a company may require a business applicant or customer to demonstrate satisfactory credit by reasonable means appropriate under the circumstances.

(2) **Amount of deposit.** When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(3) **Deposit payment.** Companies may withhold regulated services until the deposit amount associated with such services is paid in full.

**(4) Deposit requirement notice.**

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice of the reasons for the request in writing to the customer, state the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (5) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery if the notice is delivered in person to the customer.

~~((5) Deposit request for high toll.~~

~~(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay a new or additional deposit amount to advanced toll charges when the customer's toll charges exceed the amount currently held as an interexchange deposit, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll restrict a customer's services if the customer is unable pay the toll or deposit amount.~~

~~(b) When a customer has exceeded the toll levels outlined in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in~~

~~toll restriction of the customer's service. The customer must be given the option to pay one of the following:~~

- ~~(i) All outstanding toll charges specified in the notice;~~
- ~~(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or~~
- ~~(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.)~~

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

**WAC 480-120-147 Changes in local exchange and intrastate toll services.** For the purpose of this section "subscriber" is any one of the following: The party identified in the account records of a common carrier as responsible for payment of the telephone bill; any adult person authorized by such party to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such party.

(1) **Verification of orders.** A local exchange or intrastate toll company that requests on behalf of a subscriber that the subscriber's company be changed, and that seeks to provide retail services to the subscriber (submitting company), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:

(a) The company has obtained the subscriber's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in (a)(i) through (vi) of this subsection, having the sole purpose of authorizing a telecommunications company to initiate a preferred company change. The letter of agency, whether written or electronic, must be signed and dated by the subscriber of the telephone line(s) requesting the preferred company change. The letter of agency must not be combined on the same document or on the same screen or web page with inducements of any kind; however, it may be combined with checks that contain only the required letter of agency language as prescribed in (a)(i) through (vi) of this subsection, and the necessary information to make the check a negotiable instrument. The check may not contain any promotional language or material. It must contain, in easily readable, boldface type on the front of the check, a notice that the subscriber is authorizing a preferred company change by signing the check. Letter-of-agency language must be placed near the signature line on the back of the check. Any company designated in a letter of agency as a preferred company must be the company directly setting the rates for the subscriber. If any portion of a letter of agency is translated into another language, then all portions must be translated into that language, as well as any promotional materials, oral descriptions or instructions provided with the letter of agency. The letter of agency must confirm the following information from the subscriber:

(i) The subscriber billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change;

(iii) The subscriber's understanding of the change fee;

(iv) That the subscriber designates (name of company) to act as the subscriber's agent for the preferred company change;

(v) That the subscriber understands that only one telecommunications company may be designated as the subscriber's intraLATA preferred company; that only one telecommunications company may be designated as the subscriber's interLATA preferred company; and that only one telecommunications company may be designated as the subscriber's local exchange provider, for any one telephone number. The letter of agency must contain a separate statement regarding the subscriber's choice for each preferred company, although a separate letter of agency for each choice is not necessary; and

(vi) Letters of agency may not suggest or require that a subscriber take some action in order to retain the current preferred company.

(b) The submitting company has obtained the subscriber's authorization, as described in (a) of this subsection, electronically, by use of an automated, electronic telephone menu system. This authorization must be placed from the telephone number(s) for which the preferred company is to be changed and must confirm the information required in (a)(i) through (vi) of this subsection.

Telecommunications companies electing to confirm the preferred company change electronically must establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) must connect a subscriber to a voice response unit, or similar device, that records the required information regarding the change, including recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth). A company or a company's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection with the third-party verifier has been established. The independent third party must not be owned, managed, controlled or directed by the company or the company's marketing agent; and must not have any financial incentive to confirm preferred company change orders for the company or the company's marketing agent. The content of the verification must include clear and unambiguous confirmation that the subscriber has authorized a preferred company change, and the date of the verification.

(2) Where a telecommunications company is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll) that company must obtain separate authorization, and separate verification, from the subscriber for each service sold, although the authorizations may be made within the same solicitation.

(3) The documentation regarding a subscriber's authorization for a preferred company change must be retained by the submitting company, at a minimum, for two years to serve as verification of the subscriber's authorization to change his or her telecommunications company. The documentation must be made available to the subscriber and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.

(4) **Implementing order changes.** An executing company may not verify directly with the subscriber the submission of a change in a subscriber's selection of a provider received from a submitting company. The executing company must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting company. An executing company is any telecommunications company that affects a request that a subscriber's company be changed. Except as provided by contract, a telecommunications company must submit a preferred company change order on behalf of a subscriber within no more than sixty days of obtaining authorization.

This section does not prohibit any company from investigating and responding to any subscriber-initiated inquiry or complaint.

(5) **Preferred carrier freezes.** A preferred carrier freeze prevents a change in a subscriber's preferred company selection unless the subscriber gives the company from whom the freeze was requested express consent. Express consent means direct, written, electronic, or oral direction by the subscriber. All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all subscribers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intraLATA toll, and interLATA toll). The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All LECs must notify all subscribers of the availability of a preferred carrier freeze, no later than the subscriber's first telephone bill, and once per year must notify all local exchange service subscribers of such availability on an individual subscriber basis (e.g., bill insert, bill message, or direct mailing).

(b) All company-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the subscriber will be unable to make a change in company selection unless he or she lifts the freeze; and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange company may implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred company, as described in subsections (1) and (2) of this section.

(d) All LECs must offer subscribers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A subscriber's written or electronic authorization stating the subscriber's intent to lift the freeze;

(ii) A subscriber's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting company to conduct a three-way conference call with the executing company and the subscriber in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing company must confirm appropriate verification data (e.g., the subscriber's date of birth), and the subscriber's intent to lift the freeze.

(iii) The LEC must lift the freeze within three business days of the subscriber request.

(e) A LEC may not change a subscriber's preferred company if the subscriber has a freeze in place, unless the subscriber has lifted the freeze in accordance with this subsection.

(6) **Remedies.** In addition to any other penalties provided by law, a submitting company that requests a change in a subscriber's company without proper verification as described in this rule must receive no payment for service provided as a result of the unauthorized change and must promptly refund any amounts collected as a result of the unauthorized change. The subscriber may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment must be remitted to the subscriber's authorized telecommunications company.

(7) **Exceptions.** Companies transferring subscribers as a result of a merger, purchase of the company, or purchase of a specific subscriber base are exempt from subsections (1) through (6) of this section if the companies comply with the following conditions and procedures:

(a) The acquiring company must provide a notice to each affected subscriber at least thirty days before the date of transfer. Such notice must include the following information:

(i) The date on which the acquiring company will become the subscriber's new provider;

(ii) The rates, terms, and conditions of the service(s) to be provided upon transfer, and the means by which the acquiring company will notify the subscriber of any change(s) to those rates, terms, and conditions;

(iii) That the acquiring company will be responsible for any company change charges associated with the transfer;

(iv) The subscriber's right to select a different company to provide the service(s);

(v) That the subscriber will be transferred even if the subscriber has selected a "freeze" on his/her company choices, unless the subscriber chooses another company before the transfer date;

(vi) That, if the subscriber has a "freeze" on company choices, the freeze will be lifted at the time of transfer and the subscriber must "refreeze" company choices;

(vii) How the subscriber may make a complaint prior to or during the transfer; and

(viii) The toll-free customer service telephone number of the acquiring company.

(b) The acquiring company must provide a notice to the commission at least thirty days before the date of the transfer. Such notice must include the following information:

(i) The names of the parties to the transaction;

(ii) The types of services affected;

(iii) The date of the transfer; and

(iv) That the company has provided advance notice to affected subscribers, including a copy of such notice.

(c) If after filing notice with the commission any material changes develop, the acquiring company must file written notice of those changes with the commission no more than ten days after the transfer date announced in the prior notice. The commission may, at that time, require the company to provide additional notice to affected subscribers regarding such changes.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

**WAC 480-120-165 Customer complaints.** (1) Each company must have adequate personnel available during regular business days to address customer complaints.

(2) When a company receives an oral or written complaint from an applicant or customer regarding its service or regarding another company's service for which it provides billing, collection, or responses to inquiries, the company must acknowledge the complaint as follows:

(a) Provide the name of the company's contact to the complainant;

(b) Investigate the complaint promptly;

(c) Report the results of the investigation to the complainant;

(d) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(e) Inform the complainant that the decision may be appealed to a supervisor at the company; and

(f) Inform the complainant, if still dissatisfied after speaking to a supervisor, of the right to file a complaint with the commission and provide the commission address and toll-free telephone number.

~~((2))~~ (3) When a company receives a complaint from an applicant or customer regarding another company's service for which it provides only billing service, the company must provide the complainant a toll-free number to reach the appropriate office for the other company that is authorized to investigate and take corrective action to resolve the dispute or complaint.

~~((3))~~ (4) The company must insure that records and information about complaints and disputes are used only for the purposes of resolving the complaint or dispute and improving service and practices.

AMENDATORY SECTION (Amending WSR 02-23-004, filed 11/7/02, effective 1/1/03)

**WAC 480-120-217 Using privacy listings for telephone solicitation.** (1) A local exchange company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers

with nonpublished or unlisted numbers and that the customer has a right to direct that the company make no such calls.

(2) When the company provides the notice required in subsection (1) of this section in writing, the notice must include a toll-free number and an electronic mail address the customer may use to state that solicitation should not be made.

(3) When the company provides the notice in subsection (1) of this section by phone call, the customer must be informed that inclusion in a solicitation list may be declined and if declined, the company must not make any additional solicitation.

(4) If a company uses or provides subscriber list information for purposes other than directory publishing or compliance with 47 U.S.C. Sec. 251 (b)(3), it must exclude from use or disclosure the subscriber list information of any customer who subscribes to a privacy listing, including a non-published or unlisted number, or who directs the company to exclude subscriber list information relating to his or her service.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-255 Information delivery services.** (1)

For purposes of this section:

"Information-delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

"Information provider" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information-delivery service.

"Interactive program" means a program that allows a caller, once connected to the information provider's announcement machine, to access additional information by using the caller's telephone.

(2) Local exchange companies (LECs) offering access to information-delivery services must provide each residential customer the opportunity to block access to all information delivery services offered by that company. ~~((Companies must fulfill an initial request for blocking free of charge. Companies may charge a rate set forth in the tariff or in the rates, terms and conditions of competitively classified services for subsequent blocking requests (i.e., if a customer has unblocked his or her access).))~~

(3) The LEC must inform residential customers of the blocking service through a ~~((single topic))~~ bill insert and publication of a notice in a conspicuous location on the company's web site or in the consumer information pages of the local white pages telephone directory. The LEC must include in the notice and bill insert the residential customers' rights under the law ~~((, the definition of "information delivery services" as defined in subsection (1) of this section, and))~~ to request blocking a statement that these services often are called "900" numbers, and the telephone number to call to request blocking. ~~((The LEC must include notice that customers have the right under Washington law to request free blocking of access to information delivery services on their residential telephone lines, that blocking will prevent access~~

~~to information delivery services from their residential telephone line, that customers may request free blocking of access to information delivery services on their residential telephone lines by calling the LEC at a specified telephone number, that the Washington utilities and transportation commission is authorized under RCW 80.36.500 to enforce this law, and that customers may contact the commission for further information. The LEC must include the commission's address, toll-free telephone number, and web site:~~

Washington Utilities and Transportation Commission  
Consumer Affairs Section  
1300 South Evergreen Park Drive, SW  
P.O. Box 47250  
Olympia, WA 98504-7250  
1-800-562-6150  
[www.wute.wa.gov](http://www.wute.wa.gov))

(4) Any company that provides billing, customer service, or collection services for an information provider must require, as a part of its contract for that service, that the information provider include in any advertising or promotion a prominent statement of the cost to the customer of the information service.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

**WAC 480-120-256 Caller identification service.**

~~((+))~~ The company that provides caller identification service must provide its retail customers the capability of blocking the delivery of their numbers, names, or locations both on a per call basis and on a per line basis. The company must not charge a monthly fee or per call fee for caller identification blocking. The company must not charge a nonrecurring fee for caller identification blocking:

~~((a))~~ (1) When the service is requested at the time an access line is connected;

~~((b))~~ (2) The first time the service is added to an access line; or

~~((c))~~ (3) The first time the service is removed from an access line.

~~((2) At least ninety days before offering caller identification services the company must send notice to its customers. The notice must explain caller identification per call blocking, caller identification line blocking, a customer's right to have the numbers blocked one-time free of charge, and an explanation that call blocking does not apply to the delivery of caller numbers, name, or locations to a 911 or enhanced 911 service, other emergency service, or a customer-originated trace. The notice must include an explanation that call blocking will not work on all services, including, but not limited to, 800 and 900 numbers, long distance, and primary rate interface service.~~

For purposes of this section, "primary rate interface services" means an ISDN service that uses a digital rate of one thousand five hundred forty four Mbits per second, whether used like business trunks for digital PBXs with up to twenty-four circuits at a rate of sixty-four kbits per second per circuit, or used as a single circuit at the DS1 rate. A company may

~~offer caller identification service if the company complies with this section.))~~

#### NEW SECTION

##### **WAC 480-120-258 Collocation.** (1) Definitions.

"CLEC" means a competing local exchange carrier that orders collocation from an ILEC.

"Collocation" means the ability of a CLEC to place equipment, including microwave equipment, within or upon an ILEC's premises.

"Deliver" or "delivery date" means the point when the ILEC turns the collocation space and related facilities over to the CLEC and the space and facilities are ready for service. Deliver or delivery includes, but is not necessarily limited to, providing the CLEC with access to the collocation space for collocation other than virtual collocation, as well as providing power, telephone service, and other services and facilities ordered by the CLEC for provisioning by the delivery date.

"ILEC" means an incumbent local exchange carrier that is required to provide collocation.

"ILEC premises" means an ILEC wire center, central office, or any other location owned and/or controlled by the ILEC at which interconnection with the ILEC's network or access to ILEC unbundled network elements is technically feasible.

"Points of interface (POI)" means the demarcation between the networks of an ILEC and a CLEC. The POI is the point where the ex-change of traffic takes place.

(2) ILEC response to CLEC order for collocation. Within ten calendar days of receipt of an order for collocation, an ILEC must notify the CLEC whether sufficient space exists in the ILEC premises to accommodate the CLEC's collocation requirements. As part of that notification, the ILEC must also notify the CLEC of any circumstance that may delay delivery of the ordered collocation space and related facilities.

(3) Provisioning collocation. If the ILEC notifies a CLEC that sufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) Within twenty-five calendar days of receipt of the order, the ILEC must provide the CLEC with a written quote detailing the nonrecurring and recurring charges applicable to provisioning the ordered collocation. After providing the written quote and upon reasonable notice of a request by the CLEC, the ILEC must permit the CLEC at least one accompanied site visit to the designated collocation space without charge to the CLEC, to enable the CLEC to verify and inspect the space the ILEC offers for collocation. The CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote must be within seven calendar days and does not preclude the CLEC from later disputing the accuracy or reasonableness of those charges.

(b) If the ordered collocation space was included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the ILEC must complete construction of, and deliver, the ordered collocation space and related facilities within forty-five calendar days

after the CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote.

(c) If the ordered collocation space was not included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the commission declines to apply the forty-five calendar day interval in (b) of this subsection and the national standards adopted by the FCC shall apply.

(d) Following any initial notification as required in subsection (2) of this section, the ILEC must notify the CLEC of any change in circumstances as soon as the ILEC is aware of those circumstances and must take all reasonable steps to avoid or minimize any delays caused by those circumstances including, but not limited to, joint provisioning of collocation elements by the ILEC and CLEC, or sole construction by the CLEC, through a mutually acceptable third-party contractor.

(e) If the ILEC fails to deliver the collocation space by the required delivery date, the ILEC must credit the CLEC in an amount equal to one-tenth of the total nonrecurring charge for the ordered collocation for each week beyond the required delivery date. Recurring charges will not begin to accrue for any element until the ILEC delivers that element to the CLEC. To the extent that a CLEC self-provisions any collocation element, the ILEC may not impose any charges for provisioning that element.

(f) The ILEC must provide periodic notices to the CLEC during construction of the CLEC's collocation space, including scheduled completion and delivery dates. At least thirty calendar days prior to the scheduled delivery date, the ILEC must provide the CLEC with sufficient information to enable the ILEC and the CLEC to establish firm common language location identifier (CLLI) codes and any other codes necessary to order interconnection and cross-connection circuits for the equipment the CLEC intends to collocate, and the ILEC must accept and process CLEC orders for such circuits. The ILEC must provision points of interface (POIs) and other circuits concurrent with delivery of the collocation space and related facilities, unless the CLEC agrees to a later date.

(g) The ILEC must conduct an inspection with the CLEC of the collocation space at least five business days prior to completion of construction of the collocation space. The ILEC must correct any deviations to the CLEC's original or jointly amended requirements after the inspection, at the ILEC's sole expense.

(h) Upon order of the CLEC and concurrent with delivery of the collocation space and related facilities, the ILEC must provide basic telephone service to the collocation space under the rates, terms, and conditions of the ILEC's current tariff offering for the service ordered. The ILEC must also provide CLEC employees, contractors, and representatives with reasonable access to basic facilities, such as restroom facilities and parking, while at the ILEC premises.

(4) Denial of order for collocation. If the ILEC notifies a CLEC that insufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) As part of its notification of lack of space, the ILEC must notify the CLEC if any space is available for collocation and, if so, how much space is available. The ILEC must also

verify that the ILEC cannot reclaim space for collocation by consolidating or removing inactive or underutilized equipment.

(b) The ILEC must permit the CLEC to tour the ILEC premises within fourteen calendar days of the CLEC's written request.

(c) If the CLEC notifies the ILEC that it contests the denial of an order for collocation, the ILEC must, within twenty-five calendar days of the notification, file a petition asking the commission to determine that the space requested by the CLEC is not available. Upon request and execution of an appropriate confidentiality agreement, the ILEC must also provide a copy of the petition to the CLEC. The ILEC must prepare the petition at its sole expense, and the petition must include the following information:

- (i) Central office CLLI, where applicable;
- (ii) Ordering CLEC, including the amount of space sought by the CLEC;
- (iii) Written inventory of active, inactive, and underutilized equipment, including the signatures of ILEC personnel certifying the accuracy of the information provided;
- (iv) Color-coded floor plans that identify office space work areas, provide spatial dimensions to calculate the square footage for each area, and locate inactive and underutilized equipment;
- (v) Narrative of the central office floor space use;
- (vi) Total amount of space occupied by interconnecting collocators for the sole purpose of interconnection;
- (vii) Total amount of space occupied by third parties for purposes other than interconnection, and a narrative of the space use;
- (viii) The number of central office employees employed and job titles;
- (ix) Description of central office renovation/expansion plans and time frames for completion;
- (x) Description of conversion of administrative, maintenance, equipment, and storage space plans and time frames for completion; and
- (xi) Description of any internal policies for conversion of administrative, maintenance, equipment, and storage space in central offices.

(d) The commission will decide any petition filed under (c) of this subsection through an expedited proceeding conducted in accordance with the relevant procedural requirements and time lines established in WAC 480-07-650. The ILEC bears the burden to prove to the commission that the ordered collocation is not practical for technical reasons or because of space limitations. The ILEC may be relieved of its obligation to provide collocation at a particular ILEC premises only to the extent expressly provided by commission order.

(e) Each ILEC must maintain a list of all of its central offices in Washington in which insufficient space exists to accommodate one or more types of collocation. The list must specify which types of collocation are unavailable in each office and whether the commission has approved the ILEC's denial of collocation in that office. The ILEC must post this list on its publicly accessible web site and provide a copy of the list to any CLEC upon request. The ILEC must update this list within ten business days of: (i) Denying a CLEC's

order for collocation; (ii) the service date of any order from the commission approving or disapproving such a denial; (iii) providing notice to CLECs previously denied collocation that space has become available in a central office; or (iv) obtaining knowledge through any other means that space for one or more types of collocation is no longer available or has become available in a particular central office.

(f) Each ILEC must maintain for each central office a waiting list of all unfilled orders for collocation space and the date of each order. After an ILEC has announced that one or more types of collocation space are not available in an office, any CLEC may submit a letter of intent to order collocation space in lieu of a collocation order, and this letter of intent must be included on the waiting list. If space for collocation becomes available in any central office, the ILEC must inform all CLECs, that ordered collocation or submitted a letter of intent to order collocation, of the availability of that space and must provide each such CLEC with fifteen calendar days to renew its original collocation order. The ILEC must provision collocation to these CLECs on a first-come, first-served basis according to the dates on which each ordered collocation or submitted a letter of intent to collocate in that central office.

#### NEW SECTION

**WAC 480-120-259 Washington telephone assistance program.** (1) The commission will set by order the telephone assistance rate to be paid by program participants for local service. Every wireline eligible telecommunications company (ETC) must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36-470.

(2) No change of service charge shall be charged to an eligible subscriber for the establishment of service under the telephone assistance program.

(3) Local exchange companies shall maintain their accounting records so that expenses associated with the telephone assistance program can be separately identified.

AMENDATORY SECTION (Amending WSR 07-18-009, filed 8/23/07, effective 9/23/07)

**WAC 480-120-262 Operator service providers (OSPs).** (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to consumers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed

through an access code used to bill a consumer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

"If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones (or "smart" phones). When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars;

or

(iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.



**(8) Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

(9) **Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

**~~((Subpart A: General Rules))~~****~~((Subpart B: Accounting Requirements))~~**

AMENDATORY SECTION (Amending WSR 05-06-051, filed 2/28/05, effective 3/31/05)

**WAC 480-120-339 Streamlined filing requirements for Class B telecommunications company rate increases.**

(1) A Class B company, as defined in WAC 480-120-021 (Definitions), may use the streamlined treatment described in this section for seeking a general rate increase, as an alternative to the requirements in WAC 480-07-510 (General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies).

(2) **General information required.** A Class B company seeking streamlined treatment for a proposed general rate increase must submit the following information at the time of filing or prior to its first notice to customers, whichever occurs first:

(a) A copy of its customer notice as specified in subsection (6) of this section.

(b) A results-of-operations statement, on a commission basis, demonstrating that the company is not presently exceeding a reasonable level of earnings. If the company is exceeding a reasonable level of earnings, the proposed increase must be reduced accordingly.

(c) All supporting documentation used to develop the results-of-operations statement, including supporting documentation for all adjustments.

(d) The results-of-operations statement filed under this subsection must include Washington intrastate results of operations and total Washington results of operations. If a company cannot provide Washington intrastate results of operations with reasonable accuracy, the commission may consider the total Washington results of operations including the interstate jurisdiction.

**(3) Adjustments provided for in the results of operations.**

(a) The results-of-operations statement must provide restating actual adjustments and pro forma adjustments in accordance with (b) of this subsection.

(b) Before the achieved return is calculated, a company must adjust the booked results of operations for restating actual and pro forma adjustments, including the following:

- (i) Nonoperating items;
- (ii) Extraordinary items;
- (iii) Nonregulated operating items; and
- (iv) All other items that materially distort the test period.

(4) ~~((Rate of return. The authorized overall rate of return (for purposes of this section only) is eleven and twenty-five one-hundredths percent.~~

~~((5))~~ **Rate design.** A Class B company filing pursuant to this section must clearly describe the basis for allocating any revenue requirement change proposed by customer class (e.g., residential, business, and interexchange).

~~((6))~~ **(5) Customer notice.** The company must notify customers consistent with the manner outlined in WAC 480-120-194 (Publication of proposed tariff changes to increase charges or restrict access to services), and must include the following information:

- (a) The proposed increase expressed in:
  - (i) Total dollars and average percentage terms; and
  - (ii) The average monthly increases the customers in each category or subcategory of service might reasonably expect;
- (b) The name and mailing address of the commission and public counsel;

(c) A statement that customers may contact the commission or public counsel with respect to the proposed rate change; and

(d) The date, time, and place of the public meeting, if known.

~~((7))~~ **Public meeting(s).** The commission will ordinarily hold at least one public meeting in the area affected by the rate increase within forty-five days after the date of filing.

~~((8))~~ **(6) Final action.** The commission will ordinarily take final action on a filing under this section within ninety days after the date of filing.

~~((9))~~ **(7)** The commission may decline to apply the procedures outlined in this section if it has reason to believe that:

(a) The quality of the company's service is not consistent with its public service obligations; or

(b) A more extensive review is required of the company's results of operations or proposed rate design.

~~((10))~~ (8) Nothing in this rule will be construed to prevent any company, the commission, any customer, or any other party from using any other procedures that are otherwise permitted by law.

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

**WAC 480-120-349 Retaining and preserving records and reports.** (1) Companies must keep all records and reports required by these rules or commission order for three years unless otherwise specified in subsection (2) of this section. No records may be destroyed before the expiration of three years or the time specified in subsection (2) of this section, whichever is applicable.

(2) Companies must adhere to the retention requirements ~~((of))~~ published by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 42, Preservation of Records of Communication Common Carriers ((published by the Federal Communications Commission)) and Part 54, Universal Service. The effective date is stated in WAC 480-120-999, Adoption by reference.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

**WAC 480-120-352 Washington Exchange Carrier Association (WECA).** (1) The Washington Exchange Carrier Association (WECA) may:

- (a) File petitions with the commission;
- (b) Publish and file tariffs with the commission; and
- (c) Represent before the commission those members that so authorize. WECA's rules of procedure are on file with the commission under Docket No. UT-920373, and may be obtained by contacting the commission's records center.

(2) Subject to all the procedural requirements and protections associated with company filings before the commission, WECA must submit to the commission:

- (a) All initial WECA tariffs; and
- (b) All changes to the tariffs.

(3) A member of WECA may file directly with the commission:

- (a) Tariffs and contracts;
- (b) Revenue requirement computations;
- (c) Revenue objectives or petitions for distribution from the "state universal communications services program" filed in accordance with WAC 480-123-110;

- (d) Universal service support cost calculations;
- (e) Total service long run incremental cost studies;
- (f) Competitive classification petition;
- (g) Other reports; or
- (h) Any other item it or the commission deems necessary.

(4) The commission has the authority to supervise the activities of WECA. However, such supervision will not compromise the independent evaluation by the commission

of any filing or proposal that must be submitted to the commission for approval.

~~(5) ((To the extent that WECA is involved in the collection and redistribution of funds under commission orders authorizing certain revenue sharing arrangements under common tariff, it must maintain, provide, and report to the commission annual financial reports, by July 1 of each year, relating to the arrangements. Annual financial reports must include:~~

~~(a) Actual fund collections and distributions to each member company;~~

~~(b) The basis upon which the collection and distribution is made;~~

~~(c) Board membership;~~

~~(d) Special committee membership; and~~

~~(e) The status and description of any open WECA docket proceedings.~~

~~(6))~~ Each local exchange company in the state of Washington has the option of using WECA as its filing agent, tariff bureau, or both. Companies using WECA collectively may file intrastate rates, tariffs, or service proposals.

~~((7))~~ (6) Nothing in this section will be construed as amending or modifying WECA's current methods of administration. ~~((WECA's access charge pooling administration plan is on file with the commission and may be obtained by contacting the commission's records center and requesting the "Ninth Supplemental Order in Docket No. UT-971140 with Attachment" dated June 28, 2000.))~~

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

**WAC 480-120-359 Accounting for telecommunications companies not classified as competitive.** (1)(a) For accounting purposes, each company not classified as competitive must use the *Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies* published by the Federal Communications Commission (FCC) and designated as Title 47, Code of Federal Regulations, Part 32 (47 C.F.R. 32, or Part 32). The effective date for Part 32 is stated in WAC 480-120-999 (Adoption by reference). ~~((Each company not classified as competitive wishing to adopt changes to the USOA made by the FCC after the date specified in WAC 480-120-999, must petition for and receive commission approval. The petition must include the effect of each change for each account and subaccount on an annual basis for the most recent calendar year ending December 31. If the petition is complete and accurate the commission may choose to grant such approval through its consent agenda.))~~

(b) Class B companies may use Class A accounting, but Class A companies must not use Class B accounting.

(2) The commission modifies Part 32 as follows:

(a) Any reference in Part 32 to "Commission," "Federal Communications Commission," or "Common Carrier Bureau" means the Washington utilities and transportation commission.

(b) Each company not classified as competitive must keep subsidiary records to reflect Washington intrastate differences when the commission imposes accounting or rate-making treatment different from the accounting methods

required in subsection ~~((2))~~ (1) of this section. Each company not classified as competitive must maintain subsidiary accounting records for:

- (i) Residential basic service revenues;
  - (ii) Business basic service revenues;
  - (iii) Access revenues for each universal service rate element;
  - (iv) Special access revenues; and
  - (v) Switched access revenues.
- (c) ~~(Part 32 section 24, compensated absences, is supplemented as follows:~~

~~(i) Each company not classified as competitive must record a liability and charge the appropriate expense accounts for sick leave in the year in which the employees use the sick leave.~~

~~(ii) Each company not classified as competitive must keep records for:~~

- ~~(A) Compensated absences that are actually paid; and~~
- ~~(B) Compensated absences that are deductible for federal income tax purposes.~~

~~(d)) Each company not classified as competitive that has multistate operations must keep accounting records that provide Washington results of operations. The methods used to determine Washington results of operations must be acceptable to the commission.~~

~~((e)) (d) Part 32 section 32.11(a) is replaced by WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).~~

~~((f)) (e) Part 32 section 32.11 (d) and (e) are replaced by WAC 480-120-034.~~

~~((g)) (f) Any reference in Part 32 to "Class A" or "Class B" means the classification as set out in WAC 480-120-034.~~

~~(3) ((The commission does not require Part 32 section 32.2000 (b)(4). This rule does not supersede any accounting requirements specified in a commission order, nor will it be construed to limit the commission's ability to request additional information on a company specific basis.)) This rule does not dictate intrastate ratemaking.~~

### ~~((Subpart C: Financial Reporting Requirements))~~

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

**WAC 480-120-382 Annual report for competitively classified telecommunications companies.** The commission will distribute an annual report form including a regulatory fee form. A competitively classified company must:

- (1) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1 of each year;
  - (2) Provide total number of access lines as required on the annual report form;
  - (3) Provide income statement and balance sheet for total company;
  - (4) Provide revenues for Washington and Washington intrastate operations subject to commission jurisdiction;
- ~~((and))~~

(5) Keep accounts using generally accepted accounting principles (GAAP), or any other accounting method acceptable to the commission. In addition, the accounts must allow

for the identification of revenues supporting subsection (4) of this section; and

**(6) Regulatory fees.** The telecommunications annual regulatory fee is set by statute at one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a company must pay is ~~((twenty))~~ one hundred fifty dollars.

~~(c) ((The twenty-dollar minimum regulatory fee is waived for any company with less than twenty thousand dollars in gross intrastate operating revenue.~~

~~(d))~~ The commission does not grant extensions for payment of regulatory fees.

~~((e))~~ (d) If a company does not pay its regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

~~((f))~~ (e) The commission may take action to revoke a company's registration certificate if it fails to pay its regulatory fee.

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

**WAC 480-120-385 Annual report ~~((and quarterly results of operations reports))~~ for telecommunications companies not classified as competitive.** (1) Annual reports for companies not classified as competitive. The commission will distribute an annual report form ~~((as specified in (c)(i), (ii), and (iii) of this subsection, and))~~, a regulatory fee form, and financial information templates. A telecommunications company not classified as competitive must:

(a) ~~((Complete both forms, file them with the commission.))~~ Return the annual report and regulatory fee forms and pay its regulatory fee, no later than May 1 of each year;

(b) Provide total number of access lines (as required on the annual report form referred to in (a) of this subsection); and

(c) ~~((Provide))~~ Complete the financial information templates. The financial information templates include income statement ~~((and))~~, balance sheet ~~((for))~~, and rate base items. The templates also include sections on total company and results of operations for Washington and Washington intrastate. The commission will provide the templates each year and the company must return the completed templates as follows:

(i) Class A companies ~~((that the FCC classified as Tier 1 telecommunications companies in Docket No. 86-182 must file annual report forms adopted by the FCC))~~ must file the required financial information templates no later than May 1st each year.

(ii) ~~((All other Class A companies must file annual reports on the form prescribed by the commission))~~ Class B companies must file the required financial information templates no later than July 1st of each year.

(iii) Class B companies (~~(must file annual reports as prescribed by RCW 80.04.530(2))~~) are not exempt from these filing requirements.

~~(2) (Quarterly reports for companies not classified as competitive:~~

~~(a) All Class A companies must file results of operations quarterly.~~

~~(b) Each report will show monthly and twelve months-ended data for each month of the quarter reported.~~

~~(c) The reports are due ninety days after the close of the period being reported, except for the fourth quarter report which is due no later than May 1 of the following year.~~

~~(3)) Methods used to determine Washington intrastate results of operations must be acceptable to the commission.~~

~~((4)) (3) This rule does not supersede any reporting requirements specified in a commission rule or order, or limit the commission's authority to request additional information.~~

~~((5)) (4) Regulatory fees.~~ The telecommunications annual regulatory fee is set by statute at one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a company must pay is ~~((twenty))~~ one hundred fifty dollars.

~~(c) ((The twenty dollar minimum regulatory fee is waived for any company with less than twenty thousand dollars in gross intrastate operating revenue.~~

~~(d))~~ The commission does not grant extensions for payment of regulatory fees.

~~((e))~~ (d) If a company does not pay its regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

**WAC 480-120-411 Network maintenance.** (1) Each local exchange company (LEC) must:

(a) Provide adequate maintenance to ensure that all facilities are in safe and serviceable condition;

(b) Correct immediately hazardous conditions endangering persons, property, or the continuity of service when found, reported, or known to exist;

(c) Promptly repair or replace broken, damaged, or deteriorated equipment, when found to be no longer capable of providing adequate service; and

(d) Correct promptly transmission problems on any channel when located or identified, including noise induction, cross-talk, or other poor transmission characteristics.

(2) Each LEC must install and maintain test apparatus at appropriate locations to determine the operating characteristics of network systems and provide sufficient portable power systems to support up to the largest remote subscriber carrier site. For the safe and continuous operation of underground cables, each LEC must establish air pressurization policies

and an air pressurization alarm-monitoring program where appropriate.

(3) Central offices equipped with automatic start generators must have three hours' reserve battery capacity. Central offices without automatic start generators must have a minimum of five hours' reserve battery capacity. Central offices without permanently installed emergency power facilities must have access to readily connectable mobile power units with enough power capacity to carry the load and that can be delivered within one half of the expected battery reserve time. The company must retain a reasonable inventory of portable generators to maintain peripheral electronic equipment that is not connected to standby generation, for example, digital loop carrier, servers, etc.

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

**WAC 480-120-439 Service quality performance reports.** (1) ~~((Class A companies.~~ Each Class A company must report monthly the information required in subsections (3), (4), and (6) through (10) of this section. Each company must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).

~~(2) Class B companies.~~ Class B companies need not report to the commission as required by subsection (1) of this section. However, these) All companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with the service quality standards established by WAC 480-120-105 (Company performance standards for installation or activation of access lines), 480-120-112 (Company performance for orders for nonbasic services), 480-120-133 (Response time for calls to business office or repair center during regular business hours), 480-120-401 (Network performance standards), 480-120-411 (Network maintenance), and 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages).

~~((3) Missed appointment report.~~ The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.

~~(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.~~

~~(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company ini-~~

tiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 (Company performance standards for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services).

(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new appointment.

(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.

~~(4) Installation or activation of basic service report.~~ The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.

(a) The company must file a separate report each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

(b) The company must file a separate report each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.

(c) A company may exclude from the total number of orders taken and the total number of uncompleted orders for the month:

(i) Orders for which customer-provided special equipment is necessary;

(ii) When a later installation or activation is permitted under WAC 480-120-071 (Extension of service);

(iii) When a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or

(iv) When the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order.

(d) For calculation of the report of orders installed or activated within five business days in a month, a company may exclude from the total number of orders taken and from

the total number of uncompleted orders for the month, orders that could not be installed or activated within five days in that month due to force majeure if the company supplies documentation of the effect of force majeure upon the order.

~~(5))~~ **(2) Major outages report.** Notwithstanding subsections (1) and (2) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

~~((6) Summary trouble reports.~~ Each month companies must submit a report reflecting the standard established in WAC 480-120-438 (Trouble report standard). The report must include the number of reports by central office and the number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438. The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.

~~(7) Switching report.~~ Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a) (Switches—Dial service), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

~~(8) Interoffice, intercompany and interexchange trunk blocking report.~~ Each company that experiences trunk blocking in excess of the standard in WAC 480-120-401 (3) (Interoffice facilities) and (5) (Service to interexchange companies) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.

**(9) Repair report.**

(a) For service interruption repairs subject to the requirements of WAC 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages); each company must report the number of service interrup-

tions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the repair interval standard as provided for in WAC 480-120-440.

~~(b) For service impairment repairs subject to the requirements of WAC 480-120-440, each company must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.~~

~~(10) **Business office and repair answering system reports.** When requested, each company must report compliance with the standard required in WAC 480-120-133 (Response time for calls to business office or repair center during regular business hours). If requested, each company must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.~~

~~((11)) (3) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.~~

~~((12)) (4) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:~~

~~(a) The company cannot reasonably provide the measurement or reports as required;~~

~~(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and~~

~~(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.~~

~~((13)) (5) Subsection ((12)) (4) of this section does not preclude application for an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC).~~

#### NEW SECTION

##### **WAC 480-120-445 Damage reporting requirements.**

(1) Facility operators and excavators, as defined in RCW 19.122.020 (10) and (11), who observe or cause damage to an underground facility must report the damage event to the commission using either the commission's web-based damage reporting tool or its successor, or the damage reporting form located on the commission's web site.

(a) Each report must include the subject matter set forth in RCW 19.122.053 (3)(a) through (n).

(b) If the facility operator believes that the excavation was started before a facilities locate was completed, the facility operator must also report the name, address, and phone

number of the person or entity that the facility operator has reason to believe may have caused the damage. The facility operator must include this information in the comment section of the web-based damage reporting tool form or send it to the commission separately. If the facility operator chooses to send the information separately, it must include sufficient information to allow the commission to link the name of the party believed to have caused the damage with the damage event reported through the damage reporting tool.

(c) Each facility operator must retain for a period of two years all damage claim records it creates related to damage events, including photographs and documentation supporting any conclusion under (b) of this subsection that a facilities locate was not timely completed, and it must make those records available to the commission upon request.

(2) Each facility operator must provide to an excavator who damages an operator's facility the following information set forth in chapter 19.122 RCW:

(a) Notification requirements for excavators under RCW 19.122.050(1);

(b) A copy of RCW 19.122.053; and

(c) Information concerning the safety committee referenced under RCW 19.122.130, including committee contact information, and the process for filing a complaint with the safety committee.

(3) A facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission, pursuant to RCW 19.122.053(2).

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

**WAC 480-120-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications - "Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications"** (ATIS 0100510) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed 2008.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-2005) is published by the ANSI and the IEEE.

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

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the 2012 edition.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 C.F.R., is published by the United States Government Printing Office.

(a) For this publication as referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports), the commission adopts the version of the relevant sections in effect on October 1, ~~((1998))~~ 2012.

(b) For this publication as referenced in WAC 480-120-202 (Customer proprietary network information), WAC 480-120-146 (Changing service providers from one local exchange company to another), and any other reference in chapter 480-120 WAC except for WAC 480-120-359 and 480-120-349, the commission adopts the version of the relevant sections in effect on October 1, 2011.

(c) ~~((The 1998 version of C.F.R. Title 47 is available online in pdf format via GPO Access and the National Archives and Records Administration at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).~~

~~((d))~~ The 2011 and 2012 versions of C.F.R. Title 47 ~~((is))~~ are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-120-105	Company performance standards for installation or activation of access lines.
WAC 480-120-112	Company performance for orders for nonbasic services.
WAC 480-120-124	Guarantee in lieu of deposit.
WAC 480-120-125	Deposit or security—Telecommunications companies.
WAC 480-120-127	Protecting customer prepayments.
WAC 480-120-132	Business offices.
WAC 480-120-148	Canceling registration.

WAC 480-120-218	Using subscriber list information for purposes other than directory publishing.
WAC 480-120-219	Severability.
WAC 480-120-252	Intercept services.
WAC 480-120-325	Definitions.
WAC 480-120-331	Filing information.
WAC 480-120-335	Additional reports.
WAC 480-120-344	Expenditures for political or legislative activities.
WAC 480-120-355	Competitively classified companies.
WAC 480-120-365	Issuing securities.
WAC 480-120-369	Transferring cash or assuming obligations.
WAC 480-120-375	Affiliated interests—Contracts or arrangements.
WAC 480-120-389	Securities report.
WAC 480-120-395	Affiliated interest and subsidiary transactions report.
WAC 480-120-399	Access charge and universal service reporting.
WAC 480-120-440	Repair standards for service interruptions and impairments, excluding major outages.
WAC 480-120-540	Terminating access charges.
WAC 480-120-560	Collocation.

AMENDATORY SECTION (Amending WSR 02-11-080, filed 5/14/02, effective 6/17/02)

**WAC 480-121-040 Granting or denying ~~((petitions))~~ applications for registration.** (1) The commission secretary may grant an application for registration without hearing when the application is on a form prescribed by the commission and contains the following:

- The name and address of the company;
- The name and address of its registered agent, if any;
- Name, address, and title of each officer or director;
- The most current balance sheet;
- The latest annual report, if any; and
- A description of the telecommunications services it offers or intends to offer.

(2) The commission may deny an application for registration if, after hearing, the commission finds that the application is not consistent with the public interest or that the applicant:

- Failed to provide the information required by RCW 80.36.350;
- Failed to provide the performance bond described in RCW 80.36.350 and WAC 480-120-127, if required;
- Does not possess adequate financial resources to provide the proposed service; or

(d) Does not possess adequate technical competency to provide the proposed service.

(3) The commission may deny an application for registration submitted by an alternate operator services company if, after hearing, the commission finds that the services or charges offered by the company are not consistent with the public convenience and advantage.

AMENDATORY SECTION (Amending WSR 02-11-081, filed 5/14/02, effective 6/17/02)

**WAC 480-121-065 Customer notice requirements—Petition for competitive classification of a service or a company.** (1) When a telecommunications company petitions for competitive classification of a telecommunications service(s), the company must provide notice to each affected customer at least thirty days before the requested effective date.

(2) Each customer notice must include, at a minimum:

(a) The date the notice is issued and the proposed effective date of the competitive classification;

(b) The company name and address;

(c) A clear explanation of the proposal to give customers the basis for understanding the proposal and the potential impact of the change. The company may satisfy this requirement with its own explanation or by using commission-developed language available from the commission's designated public affairs officer;

(d) A description of how customers may contact the company if they have specific questions or need additional information about the proposal; and

(e) Public involvement language. A company may choose from:

(i) Commission-suggested language that is available from the commission's designated public affairs officer; or

(ii) Company-developed language that must include the commission's mailing address, toll-free number, and docket number, if known, and a brief explanation of:

(A) How to participate in the commission's process by mailing or faxing a letter, or submitting an e-mail; and

(B) How to contact the commission for process questions or to be notified of the scheduled open meeting at which the proposal will be considered by the commission.

(3) Methods of notice permitted include a bill insert, bill message, printing on the billing envelope, a separate mailing to all affected customers or, if the company has the capability and the customer has authorized, by e-mail.

(4) Within ten days of making a filing requiring posting, publication, or customer notice, a company must file a declaration with the commission's records center that the required notice has been posted, published, and/or mailed. The declaration must include:

(a) The methods used to post, publish, and/or give notice to customers;

(b) When the notice was first posted, published, and/or issued to customers;

(c) How many customers are affected; and

(d) A copy of the notice.

(5) A company may request assistance from the commission's designated public affairs officer with efforts to comply with this section.

(6) The commission may require notice to customers other than those described in this rule when the commission determines that additional customer education is needed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 480-121-011 Application of rules.
- WAC 480-121-015 Exemptions from rules in chapter 480-121 WAC.
- WAC 480-121-016 Additional requirements.
- WAC 480-121-017 Severability.
- WAC 480-121-018 Delivery of a filing.
- WAC 480-121-026 Rejecting a filing.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 480-122-010 Definitions.
- WAC 480-122-020 Washington telephone assistance program rate.
- WAC 480-122-050 Other charges.
- WAC 480-122-080 Accounting.

AMENDATORY SECTION (Amending WSR 98-04-028, filed 1/28/98, effective 2/28/98)

**WAC 480-123-010 Federal universal service contracts.** For purposes of schools and libraries receiving federal universal service funding under 47 C.F.R., Part 54 of the Federal Communications Commission rules, the following intra-state discounts shall apply:

SCHOOLS AND LIBRARIES			
DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?			
% of students eligible for national school lunch program	urban discount (%)	rural discount (%)	
<1	20	25	
1-19	40	50	
20-34	50	60	
35-49	60	70	
50-74	80	80	
75-100	90	90	



AMENDATORY SECTION (Amending WSR 14-12-008, filed 5/22/14, effective 6/22/14)

**WAC 480-123-020 Definitions.** As used in this chapter:

"Applicant" means any person applying to an ETC for new service or reconnection of discontinued service.

"Communications provider" or "provider" means a company providing communications service that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

"Communications services" includes telecommunications services and information services and any combination of these services.

"Eligible telecommunications carrier" and "ETC" mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

"Facilities" means for the purpose of WAC 480-123-030 (1)(b) any physical components of the telecommunications network that are used in the transmission or routing of the services that are supported by federal universal service mechanisms.

".shp format" means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS™.

"Program" means the state universal communications services program created in RCW 80.36.650.

"Service area" means all of the designated exchanges served by a company in the state.

"Service outage" means a significant degradation in the ability of an end user to establish and maintain a channel of voice communications as a result of failure or degradation in the performance of a communications provider's network.

"Substantive" means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, benefits for customers. For example, information about investments and expenses that will provide, increase, or maintain service quality, signal coverage, or network capacity, and information about the number of customers that benefit, and how they will benefit is sufficient to enable evaluation.

"Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

**WAC 480-123-030 Contents of petition for eligible telecommunications carriers.** (1) Petitions for designation as an ETC must contain:

(a) A description of the area or areas for which designation is sought;

(b) A statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC);

(c) A description of how it will provide each supported service;

(d) A substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;

(e) A statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of applicable telephone assistance programs, such as Lifeline, that is reasonably calculated to reach low-income consumers not receiving discounts;

(f) For wireless petitioners, a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals;

(g) Information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates ((it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch)) that, when commercial power is not available, it has a reasonable amount of backup power (fixed, portable or other backup power source) for its cell sites, and backup power for its switches is as prescribed in WAC 480-120-411(3) for LEC central offices; and cell sites do not include any small cell facility as defined in RCW 80.36.375 (2)(d) or any in building wireless installation; and

(h) Information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. Information regarding the version of the CTIA code adopted and where to obtain it is set forth in WAC 480-123-999.

(2) A company officer must submit the petition in the manner required by RCW 9A.72.085.

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

**WAC 480-123-060 Annual certification of eligible telecommunications carriers.** (1) Each ETC seeking certification of the ETC's use of federal high-cost funds pursuant to 47 C.F.R. ((§§ 54.307, 54.313, or)) § 54.314 must request certification by July ((31)) 1 each year. The ETC must certify that ((it will use federal high-cost universal service fund support)) all federal high-cost support provided to the ETC within Washington state was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of ((the)) facilities and services for which the support is intended. The certification must be submitted by a company officer in the manner required by RCW 9A.72.085.

(2) The commission will certify an ETC's use of federal high-cost universal service fund support, pursuant to 47

C.F.R. (~~(§§ 54.307, 54.313, or)~~) § 54.314 only if the ETC complies with the requirements in WAC 480-123-070, and the ETC demonstrates that it will use federal high-cost funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended through the requirements of WAC 480-123-080.

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

**WAC 480-123-070 Annual certifications and reports.**

Not later than July ~~((3+))~~ 1 of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity related to Washington state in the period January 1 through December 31 of the previous year. A company officer must submit the certifications in the manner required by RCW 9A.72.085.

Note: **Information already on file with the commission.** To the extent a company has already filed any of the information required under this rule the company need not reprovide that same information so long as the company identifies the docket number, documents, and location within those documents in which the company has already provided that information.

**(1) Report on use of federal funds and benefits to customers.**

(a) ~~((For an ETC that receives support based only on factors other than the ETC's investment and expenses,))~~ The report must provide a substantive description of investments made and expenses paid with support from the federal high-cost fund.

~~((For ETCs that receive any support based on the ETC's investment and expenses, the report must provide a substantive description of investment and expenses, such as the NECA-1 report, the ETC will report as the basis for support from the federal high-cost fund.))~~ The report must include the company's gross capital expenditures and maintenance expense in the preceding calendar year along with a description of major projects and affected exchanges. A rate of return wireline ETC must also include a copy of its NECA-1 report for the preceding calendar year.

(b) Every ETC must provide a substantive description of the benefits to consumers that resulted from the investments and expenses reported pursuant to (a) of this subsection.

**(2) Local service outage report.** ~~((ETCs not subject to WAC 480-120-412 and 480-120-439(5) are required to report local service outages pursuant to this subsection.))~~

(a) The report must include detailed information on ~~((every local service outage thirty minutes or longer in duration experienced by the ETC. The report))~~ any outage in the service area (during the prior calendar year) of at least thirty minutes in duration in which the ETC owns, operates, leases, or otherwise utilizes facilities, that potentially affect:

(i) At least ten percent of the end users; or

(ii) A 911 special facility, as defined in 47 C.F.R. Sec. 4.5(e).

(b) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

~~((a))~~ (i) The date and time of onset and duration of the outage;

~~((b))~~ (ii) A brief description of the outage and its resolution;

~~((c))~~ (iii) The particular services affected ~~((, including whether a public safety answering point (PSAP) was affected));~~

~~((d))~~ (iv) The geographic areas affected by the outage;

~~((e))~~ (v) Steps taken to prevent a similar situation in the future; and

~~((f))~~ (vi) The ~~((estimated))~~ number of customers affected.

**(3) Report on failure to provide service.** ~~((ETCs not subject to WAC 480-120-439 are required to report failures to provide service pursuant to this subsection.))~~ The report must include ~~((detailed information on))~~ the number of requests for service from ~~((applicants))~~ potential customers within its designated service area(s) that were unfulfilled ~~((for))~~ during the ~~((reporting period))~~ prior calendar year. The ETC must also ~~((describe in))~~ detail how it attempted to provide service to those ~~((applicants))~~ potential customers.

**(4) Report on complaints per one thousand ~~((handsets or lines))~~ connections (fixed or mobile).** The report must provide separate totals for the number of complaints that the ETC's customers made to the Federal Communications Commission ~~((, or))~~ and the consumer protection division of the office of the attorney general of Washington. ~~((The report must also generally describe the nature of the complaints and outcome of the carrier's efforts to resolve the complaints.))~~ The ETC must also report the number of consumer complaints in each general category (for example, billing disputes, service quality).

**(5) Certification of compliance with applicable service quality standards and consumer protection rules.** Certify that it met substantially the applicable service quality standards and consumer protection rules found in WAC 480-123-030 (1)(h).

**(6) Certification of ability to function in emergency situations.** Certify that it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-030 (1)(g).

**(7) Advertising certification, including advertisement on Indian reservations.** Certify it has publicized the availability of its applicable telephone assistance programs, such as Lifeline, in a manner reasonably designed to reach those likely to qualify for service, including residents of federally recognized Indian reservations within the ETC's designated service area. Such publicity should include advertisements likely to reach those who are not current customers of the ETC within its designated service area.

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

**WAC 480-123-080 Annual plan for universal service support expenditures.** (1) Not later than July ~~((3+))~~ 1 of each year, every ETC that receives federal support from any category in the federal high-cost fund must report ~~((or~~

~~((a))~~ the planned use of federal support related to Washington state that will be received during the ~~((period October 1 of the current year through the following September, or~~

~~(b) The planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund) coming calendar year. The report must include the company's budgeted gross capital expenditures and maintenance expense for the coming calendar year along with a description of major projects and affected exchanges.~~

(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

(3) As part of the ~~((filing required by this section to be submitted in 2007))~~ initial ETC petition for federal high-cost support, and at least once every three years thereafter, a wireless ETC must submit a map in .shp format that shows the general location where it provides commercial mobile radio service signals.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

**WAC 480-123-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

(2) The commission adopts the version in effect on January 1, ~~((2012))~~ 2014.

(3) This publication is referenced in WAC 480-123-030 (contents of petition for eligible telecommunications carriers).

(4) Copies of the CTIA Consumer Code for Wireless Service are available at <http://www.ctia.org>.

AMENDATORY SECTION (Amending WSR 99-23-065, filed 11/15/99, effective 12/16/99)

**WAC 480-140-010 Definitions. Commission** means Washington utilities and transportation commission.

**Net utility plant in service** means plant in service less accumulated depreciation and amortization.

**Public service company** means every gas company, electrical company, ~~((telecommunications company,))~~ and water company subject to regulation under the provisions of Title 80 RCW as to rates and service by the commission.

AMENDATORY SECTION (Amending WSR 99-23-065, filed 11/15/99, effective 12/16/99)

**WAC 480-140-040 What to file.** Budgets, in a format selected by the reporting company, must show amounts needed for construction, operation and maintenance during the ensuing year. The reporting company must provide the information by industry (water, gas, and electrical ~~((, and telecommunications)))~~ to the extent such information has been prepared. All major construction projects must be identified

in the budget. Major construction projects will be determined ~~((as described below:~~

~~((1)))~~ for water, gas, and electrical companies, ~~((major projects include))~~ as all projects where the Washington-allocated share of the total project is greater than five-tenths of one percent of the company's latest year-end Washington-allocated net utility plant in service, but does not include any project of less than three million dollars on a total project basis. This determination for companies providing combined industry services will be done on an industry-specific basis.

~~((2))~~ For telecommunications companies, major projects include all construction projects where the intrastate Washington jurisdictional share is greater than one million dollars ~~((.))~~

AMENDATORY SECTION (Amending WSR 99-08-055, filed 4/1/99, effective 5/2/99)

**WAC 480-143-100 Application of rules.** The rules in this chapter apply to any public service company that meets the requirements for commission regulation or jurisdiction under RCW 80.04.010. The rules do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. Other local exchange companies should also refer to commission orders specifying the appropriate treatment of transfers of property.

The commission may waive or modify the application of any rule to a public service company upon written request or upon the commission's own motion, except when such provisions are fixed by statute. The waiver or modification must be approved by the commission in writing. Violations of these rules will be subject to the penalty provisions of chapter 80.04 RCW.

## WSR 14-24-106

### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2014-12—Filed December 2, 2014, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-19-079.

Title of Rule and Other Identifying Information: Fraternal benefit society risk-based surplus (RBS) standards.

Hearing Location(s): Insurance Commissioner's Office, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98504-0258, on January 6, 2015, at 10:00 a.m.

Date of Intended Adoption: January 7, 2015.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax (360) 586-3109, by January 5, 2015.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by January 5, 2015, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider rules to amend the RBS trend test for fraternal

benefit societies to comport with changes in the trend test in the NAIC model law.

Statutory Authority for Adoption: RCW 48.36A.100.

Statute Being Implemented: RCW 48.36A.100 and 48.05.340.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Bill Michels, P.O. Box 40259, Olympia, WA 98504-0259, (360) 725-7214.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not require a small business economic impact statement under the provisions of RCW 19.85.025(3). The proposed rule amendment does not impose any additional costs on a business. It raises the risk-based capital threshold from 2.5 to 3.0.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

December 2, 2014

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 98-09-016, filed 4/6/98, effective 5/7/98)

**WAC 284-36A-040 Society action level event.** (1) "Society action level event" means any of the following events:

(a) The filing of an RBS report by a fraternal benefit society which indicates that the fraternal benefit society's has total adjusted surplus which is greater than or equal to its society action level RBS but less than the product of its authorized control level RBS and ~~((2.5))~~ 3.0 and has a negative trend;

(b) The notification by the commissioner to the fraternal benefit society of an adjusted RBS report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBS report under WAC 284-36A-060; or

(c) If, pursuant to WAC 284-36A-060, a fraternal benefit society challenges an adjusted RBS report that indicates the event in (a) of this subsection, the notification by the commissioner to the fraternal benefit society that the commissioner has, after a hearing, rejected the fraternal benefit society's challenge.

(2) In the event of a society action level event, the fraternal benefit society shall prepare and submit to the commissioner an RBS plan which shall:

(a) Identify the conditions which contribute to the society action level event;

(b) Contain proposals of corrective actions which the fraternal benefit society intends to take and would be expected to result in the elimination of the society action level event;

(c) Provide projections of the fraternal benefit society's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, and surplus. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(d) Identify the key assumptions impacting the fraternal benefit society's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the fraternal benefit society's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBS plan shall be submitted:

(a) Within forty-five days of the society action level event; or

(b) If the fraternal benefit society challenges an adjusted RBS report pursuant to WAC 284-36A-060, within forty-five days after notification to the fraternal benefit society that the commissioner has, after a hearing, rejected the fraternal benefit society's challenge.

(4) Within sixty days after the submission by a fraternal benefit society of an RBS plan to the commissioner, the commissioner shall notify the fraternal benefit society whether the RBS plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBS plan is unsatisfactory, the notification to the fraternal benefit society shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBS plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the fraternal benefit society shall prepare a revised RBS plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBS plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the fraternal benefit society challenges the notification from the commissioner under WAC 284-36A-060, within forty-five days after a notification to the fraternal benefit society that the commissioner has, after a hearing, rejected the fraternal benefit society's challenge.

(5) In the event of a notification by the commissioner to a fraternal benefit society that the fraternal benefit society's RBS plan or revised RBS plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the fraternal benefit society's rights to a hearing under WAC 284-36A-060, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every fraternal benefit society that files an RBS plan or revised RBS plan with the commissioner shall file a copy of the RBS plan or revised RBS plan with the insurance com-

missioner in any state in which the fraternal benefit society is authorized to do business if:

(a) Such state has an RBS provision substantially similar to WAC 284-36A-035(1); and

(b) The insurance commissioner of that state has notified the fraternal benefit society of its request for the filing in writing, in which case the fraternal benefit society shall file a copy of the RBS plan or revised RBS plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBS plan or revised plan with the state; or

(ii) The date on which the RBS plan or revised RBS plan is filed under subsections (3) and (4) of this section.

### WSR 14-24-107

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed December 2, 2014, 2:12 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-014.

Title of Rule and Other Identifying Information: Chapter 246-358 WAC, Temporary worker housing and chapter 246-359 WAC, Temporary worker housing construction standard, amending and creating new sections to clarify terms and conditions, increase agency program efficiencies, clarify inspection frequencies, improve health and safety standards, and make general housekeeping changes. Repealing chapter 246-361 WAC, Cherry harvest camps, and incorporating all cherry harvest camp requirements into chapters 246-358 and 246-359 WAC.

Hearing Location(s): Best Western Plus Skagit Valley Inn Convention Center, Fidalgo Conference Room, 2300 Market Street, Mount Vernon, WA 98273-5449, on January 6, 2015, at 6:00 p.m.; and at the Department of Labor and Industries, 15 West Yakima Avenue, Suite 100, Yakima, WA 98902-3480, on January 8, 2015, at 9:00 a.m.

Date of Intended Adoption: February 9, 2015.

Submit Written Comments to: Debra Fisher, P.O. Box 47852, Tumwater, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2321, by January 6, 2015.

Assistance for Persons with Disabilities: Contact Debra Fisher by December 29, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will implement program efficiencies while supporting important program activities to support the reduced licensing fees and improve certain health and safety regulations. The proposal ensures consistency with federal law in areas such as toilet facilities, square footage, water supply, and family shelters. The proposal also clarifies the department's authority to regulate temporary worker housing (TWH). Housekeeping, streamlining and reformatting are proposed to increase clarity and readability. The department will renumber all sections in proposed chapter 246-358 WAC prior to final adoption.

Reasons Supporting Proposal: The proposed changes satisfy a 2012 legislature directive to evaluate operational and construction regulations regarding TWH and cherry harvest camps. After collecting stakeholder feedback, the department submitted a legislative report in 2013. Through this process, the department received input from stakeholders for proposed program efficiencies, inspection frequency, health and safety improvements, and reformatting of the rules.

Statutory Authority for Adoption: RCW 43.70.335, 43.70.337, 43.70.340, and chapter 70.114A RCW.

Statute Being Implemented: RCW 43.70.335, 43.70.337, 43.70.340, and chapter 70.114A RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington state department of health (DOH) and the department of labor and industries are required to adopt joint rules for TWH (RCW 70.114A.065). State rules should be congruent with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. §1801-§1872) because of applicable state and federal law. MSPA regulations apply to the Occupational Safety and Health Administration (OSHA) regulations on housing in 29 C.F.R. 1910.142 (29 C.F.R. §500.132(a)).

State law requires that any rules adopted for TWH that apply to an employer subject to MSPA must comply with the housing provisions of the federal act (RCW 70.114A.100). MSPA is applicable to any person who provides housing to "migrant agricultural workers" (*See* 29 U.S.C. 1823(a); 29 C.F.R. §500.1(d)). "Migrant agricultural workers" means: An individual who is employed in agricultural employment of a seasonal or temporary nature, and who is required to be absent overnight from his permanent place of residence (*See* 29 U.S.C. 1802 (8)(a)). The state definition of TWH is consistent with housing used by "migrant agricultural workers" because it is a place for agricultural workers to use for temporary, seasonal occupancy (RCW 70.114A.020).

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Debra Fisher, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2942; and Enforcement: Dave Magby, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4660.

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

#### Small Business Economic Impact Statement

**Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

DOH is updating its rules regarding construction, licensing and operation of TWH provided by agricultural employers and other licensed operators for seasonal use by migrant farm workers.

The proposal includes amended and new sections in chapter 246-358 WAC, Temporary worker housing (operations standards), and chapter 246-359 WAC, Temporary worker housing construction standards. The entire chapter 246-361 WAC, Cherry harvest camps, is proposed for repeal, and its content moved to appropriate sections of chapter 246-358 or 246-259 [246-359] WAC. Repealing the cherry harvest camp rules and moving their content to the remaining chapters eliminates duplication and is intended to make the rules clearer.

With the exception of sections covering fees, chapters 246-358 and 246-361 WAC were last revised in 2000, and the TWH construction standards chapter 246-359 WAC was last amended in 1999. All three chapters contain obsolete references and language that is inconsistent with current administration of the TWH program or with the underlying state statutes for TWH, chapter 70.114A RCW, and RCW 43.70.334 through 43.70.340.

Several sections of the proposal are amended to be consistent with federal migrant housing regulations at 29 C.F.R. 1910.142. RCW 70.114A.100 states that the TWH rules must comply with the federal Seasonal Agricultural Worker Protection Act (SAWPA, 29 U.S.C. Section 1801). The United States Department of Labor - OSHA adopts the federal regulations implementing SAWPA.

In 2014 there are two hundred sixty-six TWH sites licensed by the department. These sites are licensed to house nearly sixteen thousand eight hundred occupants, including seasonal farm workers and, in some cases, nonworking children or adult family members. Of the two hundred sixty-six licensed TWH facilities, nineteen are cherry harvest camps that are mainly commercial tents rented by the TWH operator for the cherry season, that are then removed after the season ends. The remaining two hundred forty-seven TWH facilities are mainly permanent (fixed) buildings that house migrant farm workers only during agricultural seasons. Some licensed TWH are portions of apartment buildings or motels rented for use by farm workers, or are former single-family homes owned or leased by the licensed TWH operator. Some farm workers bring their own recreational vehicles, trailers or tent housing for use at licensed TWH sites, and the proposed rules regulate some aspects of this worker-supplied housing.

Of the two hundred forty-seven fixed TWH facilities, ninety-nine facilities house thirty or fewer occupants; one hundred eighteen facilities house thirty-one to one hundred occupants, and the remaining thirty TWH facilities house more than one hundred occupants. Not all of the occupants are agricultural employees - some are children or other non-working adults housed with their employee relatives in "family shelter units." There are more than one thousand sixty family shelter units located on the two hundred forty-seven licensed TWH sites. The balance of fixed TWH facilities are "common" dormitory or bunk house style units that house multiple farm workers.

The proposal is, in part, a result of a 2012 TWH program evaluation and report to the legislature under a budget proviso in section 219(32) of 3ESHB 2127 (chapter 7, Laws of 2012 2nd sp. sess.). The proviso asked the department to, "... evaluate (TWH) program regulations including but not lim-

ited to the use of occupancy levels to determine the fee structure and frequency of inspections."

**Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are. Table A below shows the different NAICS business classifications potentially impacted by the rule.**

**Table A: Selected agricultural businesses required to comply with the proposed rule using the NAICS codes and minor cost thresholds under RCW 19.85.020.**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of businesses in WA (2013) <sup>1*</sup>	Minor Cost Threshold = 1% of Average Annual Payroll 2012 <sup>2</sup>	Minor Cost Threshold = 0.3% of Average Annual Receipts 2013 <sup>1</sup>
11121	Vegetable and melon farming	109	\$3,766	\$2,728
111331	Apple orchards	56	\$5,862	\$3,064
111332	Grape vineyards (without wine making)	25	\$2,681	\$295
111333	Strawberry farming	6	\$1,599	\$514
111334	Berry farming, except strawberries	55	\$9,499	\$8,578
111336	Fruit and tree nut farming	9	\$5,942	\$809
111339	Other noncitrus fruit farming	50	\$2,386	\$388
111998	General combination crop farming	123	\$5,322	\$554
312130	Grape farming and making wine	673	\$2,679.87	\$1,827

\*Note: There are significant differences in how businesses provided data to the state departments of revenue and employment security. For example: Fifty-six businesses reported 2013 income data to department or [of] revenue as "apple orchards" under NAICS number 111331, while nine hundred seventeen businesses reported 2012 payroll data to department or [of] employment security as "apple orchards" under NAICS number 111331. These differences impact the calculation of payroll and income thresholds to determine if a small business economic impact statement (SBEIS) is required for the proposed rules. DOH is unable to reconcile these differences to present a single number of businesses in each NAICS category with available data.

<sup>1</sup>Washington State Department of Revenue, 2013 data. Percent of revenue is based on the total 2013 reported gross business income by NAICS category, divided by number of businesses reporting, and multiplied by .003. See the note after Table A.

<sup>2</sup>Washington State Department of Employment Security, 2012 average wage data, the latest full-year data available. Percent of payroll is based on the total 2012 reported wages paid by NAICS category, divided by the number of firms reporting, and multiplied by .01. See the note after Table A.

**Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

This analysis, in most cases, represents per-unit costs to comply with proposed rules. Due to the wide variety of configurations of licensed TWH, and because many existing TWH facilities may already meet some of the proposed requirements, it is not practical to estimate the aggregate costs of these proposed rules on individual TWH licensees or to all TWH licensees.

The following proposed WAC sections will likely result in costs (or in some cases reduce costs) of compliance for a percentage of TWH businesses:

**A. Chapter 246-358 WAC, Temporary worker housing—Operations standards.**

**1. WAC 246-358-029 Maximum capacity for TWH occupants (new).** The proposed rule changes the minimum square footage in TWH rooms used for both sleeping and kitchen purposes from fifty square feet *per occupant* (plus twenty square feet for the first occupant), to one hundred square feet *per temporary worker* consistent with 29 C.F.R. 1910.142.<sup>3</sup>

<sup>3</sup>This proposed amendment may be considered exempt from analysis under RCW 34.05.310(4) because it would adopt a requirement from a federal rule, 29 C.F.R. 1910, without material change. However, the department has elected to analyze the cost of compliance with the proposed rule in this SBEIS.

The proposed amendment typically applies to space in a family shelter unit that houses up to fifteen individuals (TWH workers and other family members who are nonworkers who may be (or be caring for) children and elderly occupants), and would not apply to common TWH dormitories or bunkhouses where a sleeping area cannot open directly into a kitchen area. The current rule bases square footage on all occupants in a family shelter unit. The proposed rule would count only workers in calculating required minimum square footage, and requires fifty square foot [feet] per worker if sleeping and kitchen areas are separated, but one hundred square feet per worker if sleeping and kitchen area[s] are not separate (such as open-concept rooms).

The current rule requires a maximum of seven hundred seventy square feet for family shelter units regardless of unit configuration. The proposed rule may require up to one thousand five hundred square feet if all individuals in the family shelter unit are workers, but only if sleeping and kitchen space is not separated. Options for complying with the proposed amendment include:

i. Providing a separator between the kitchen and sleeping areas. Ceiling-mounted fire-retardant screens are available for about \$25, or installing an 8x12 foot partition wall may cost about \$230 including lumber, drywall, supplies, and labor.

ii. Increasing the total square footage of family shelter units from the current maximum of seven hundred seventy square feet up to a maximum one thousand five hundred square feet, or as much as required to meet the projected

number of workers the unit would house, at an estimated cost of \$35 per square foot.

iii. Moving some workers to other TWH common facilities to match existing family shelter unit square footage to the number of workers projected to be housed in each unit. However, this may cause the operator to need to provide additional sleeping space or other facilities.

Costs of equipment, engineering services, or permit costs may apply if the TWH operator chooses to increase square footage to comply with the proposed amendments. This analysis assumes that the best method to comply would be to erect a partition wall to separate the sleeping area from kitchen area in family shelter units. This would reduce the required sleeping area to fifty square feet per worker.

**2. WAC 246-358-050 TWH management plan (new).** The proposed rule provides greater detail on what must be included in a TWH management plan than the standard in current WAC 246-358-045(2), and requires that the operator post the plan in a central area and provide the plan to occupants in their native language if requested. Estimated costs to provide a two thousand word, four-page plan include sixteen cents per word for professional translation of the plan (\$320), and ten cents per page to provide the plan to up to two hundred fifty occupants (\$100). There would be no expected costs of equipment, labor, or supplies.

**3. WAC 246-358-055 Water supply.** The current rules require hot and cold water be supplied for drinking, cooking, bathing, and laundry. The proposed rule adds that hot water must also be supplied to hand wash sinks. Hand washing with soap and warm water is the most effective method for killing germs and reducing the spread of germs, particularly after a person uses the toilet or handles raw foods in food preparation areas. Some TWH facilities already supply hot water to hand wash sinks, and in these cases the amendment would not apply. TWH facilities that do not supply hot water to hand wash sinks may comply with the proposed rule by:

i. Installing individual "instant" hot water systems at each sink, at an estimated cost of up to \$200 for a 1.5 gallon/minute electric unit, including \$160 for the unit, and up to \$40 for water connections that may be installed without special tools or training. A 110/120 volt power outlet would be needed for each unit, or

ii. Installing a small hot water tank and service lines to serve multiple sinks. Estimated costs include \$248 for a six gallon capacity tank, copper pipe and connections at about \$15 per sink, and \$60 to \$75 per hour for labor. Each unit requires 120 volt power, or

iii. Installing additional connections to sinks from existing hot water storage. Estimated costs include copper piping and connections at \$5 per lineal foot, and \$60 to \$75 per hour for labor.

The smallest common facilities may have two or three hand wash sinks total (one sink for every six occupants), while the largest may have about thirty-five hand wash sinks. For most TWH operations, this analysis assumes the least expensive method of complying with the proposed rule may be to install a six gallon hot water tank for every six hand wash sinks, and provide short water supply lines to the sink(s).

The proposed rule would require setting hot water tank temperature between 110 and 120 degrees Fahrenheit (F). Hot water at 120 degrees F is considered low enough to reduce the risk of second or third-degree scalding burns, especially by young children staying in family shelter units. The Centers for Disease Control and Prevention and Consumer Product Safety Commission recommend water heaters be set to a maximum of 120 degrees F.<sup>4</sup> This analysis assumes that many operators may currently maintain hot water at higher than 120 degrees. Lowering water temperature to 120 degrees may result in modest water heating cost savings.

<sup>4</sup><http://www.cdc.gov/safechild/Burns/>; [www.cpsc.gov/PageFiles/121522/5098.pdf](http://www.cpsc.gov/PageFiles/121522/5098.pdf).

Compliance with this proposed rule should not require costs for professional fees or increase in administrative costs.

**4. WAC 246-358-075 Building requirements and maintenance.** The proposed rule amendments include the following changes that require TWH operators to:

- Prevent condensation and mold in dwelling units to the degree that it does not cause a health or safety risk to occupants.
- Provide locking mechanism on exterior, bedroom, and bathroom doors. Provide doors to toilet or shower rooms, and locking mechanisms on toilet and shower stalls that have doors.
- Provide indoor heating sources (in addition to existing heat sources) in TWH facilities capable maintaining 70 degrees F.
- Not use lead-based paint.

Excess condensation can build up inside ceilings and walls when there is either insufficient insulation or insufficient ventilation in a structure. This condensation can contribute to water damage to occupants' food, clothing and other belongings, or may increase the risk of mold growth. Mold on surfaces is an indicator of moisture buildup from exterior leaks, from plumbing leaks, or from other moisture sources that does not dry adequately. Mold can contribute to breathing issues for individuals with asthma or allergies.<sup>5</sup> Where excess condensation or mold exist, the operator will need to take steps necessary to reduce the condensation or mold. Depending on the TWH facility, these steps could include improving the effectiveness of existing ventilation or heating, increased ventilation, additional insulation or ceiling batting, fixing water leaks, repairing walls or flooring, or other actions. Condensation or mold often has a site-specific cause requiring a site-specific solution. Due to wide variety of conditions creating condensation or mold, and variety of possible remediation methods, it is not possible to estimate the typical costs of reducing condensation or mold.

<sup>5</sup><http://www.cdc.gov/niosh/topics/indoorenv/mold.html>.

Providing exterior, bedroom and bathroom door handles/knobs that lock from the inside, and locking mechanisms (as simple as a hook and eye) for toilet and shower stalls is intended to increase occupant security and privacy in their sleeping quarters or while they use toilet or shower facilities. Many TWH operators may already provide locking exterior doors on dwelling units. Bedroom and interior bathroom door

handles are available that lock from the inside but can be opened from the outside in an emergency by inserting a small rod or screwdriver into the door knob to unlock it. Lockable exterior door handles are available for about \$8 each, and interior doors that lock from one side are available for about \$9 each. The number of locking door handles/knobs needed by a TWH operator to comply with the rule may vary widely depending on the number and configuration of TWH units. Many family shelter units may need one exterior locking door handle, and one or two interior locking door knobs for toilet and sleeping rooms, or only one door handle if the sleeping area is not a separate room. Common TWH facilities may need more than one exterior door, and one or more bedroom or toilet facilities, or may have sleeping facilities (such as bunkhouses) with no internal doors. Common toilet facilities that have nonlocking stall doors may have a hook-eye latch mechanism installed to comply with the proposed rule, for about \$1 per stall door.

The current rules require TWH facilities to have "adequate heating." But this standard cannot be applied or enforced consistently. If current heat sources are unable to maintain 70 degrees F, the operator must provide additional heaters. Electric space heaters are available for under \$20 to about \$35. The number of heaters needed would depend on the size of spaces needing supplemental heating.

Exposure to lead is a known health hazard, especially to brain development in young children. The Centers for Disease Control and Prevention say that there is no safe level of lead exposure for children.<sup>6</sup> Lead-based building paint is not available for purchase, so there should be no additional cost for TWH operators to comply with this standard.

<sup>6</sup>[http://www.cdc.gov/nceh/lead/ACCLPP/blood\\_lead\\_levels.htm](http://www.cdc.gov/nceh/lead/ACCLPP/blood_lead_levels.htm).

Compliance with the proposed rule should not result in costs of professional services or an increase in administrative costs.

**5. WAC 246-358-080 Carbon monoxide alarms, smoke detectors, and fire extinguishers (new).** The proposed rules requires [require] operators to have carbon monoxide alarms and smoke detectors in TWH facilities, as well as a working fire extinguisher in each family shelter and in common sleeping or kitchen facilities. Fuel burning heating and cooking devices can emit carbon monoxide (CO) (a colorless, odorless gas) even if no smoke is present. These devices also present possible fire dangers. CO and smoke detectors can help save lives by detecting CO or smoke before it can reach unsafe or deadly levels, and alerting occupants to evacuate the room. The number of CO/smoke detectors [detector] monitors needed would depend on numbers of family dwelling units and common facilities at each TWH facility. Combination battery powered CO/smoke monitors cost about \$40 each and \$2 per year for batteries, and can be installed without special tools.

During a fire, a working fire extinguisher is important to help occupants clear a safe path to a fire exit; but it should not be used to fight the fire. Fire extinguishers are available in single-use units that must be replaced after use, or in reusable units that must be checked by a qualified inspector and recharged regularly. Single-use fire extinguishers would cost about \$40 per unit. The number needed would depend on the



number and distribution of family shelter units and common facilities at a TWH site. The smallest TWH facilities may need two combination CO/smoke detectors, and two single-use fire extinguishers. The largest facilities may need fifteen to twenty CO/smoke detectors and fifteen to twenty single-use fire extinguishers, depending on the mix and configuration of family shelter units and common facilities.

Compliance with the proposed rule should not result in costs of labor or an increase in administrative costs, and would require professional services only if the TWH operator chose to install permanent fire extinguishers that need annual inspection and recharging.

**6. WAC 246-358-093 Toilet facilities (new).** Proposed amendments would require a minimum of two toilets in common facilities (or four toilets where facilities are provided for men and for women), as required by 29 C.F.R. 1910.142. The current rule requires one toilet minimum per gender. The rule would not impact family shelter units. While larger TWH sites would likely be in compliance, smaller TWH facilities with fewer than fifteen occupants in common facilities may need to add toilet capacity to comply with the proposed rule. TWH operators may meet the two-toilet requirement by providing chemical toilets (sanicans), one each for men and women until permanent toilets are added, at a cost of \$167 per month, including and [an] interior sink and weekly maintenance, during the months the TWH is occupied.

The proposed new rule would require privacy partitions or walls between toilets in common facilities, and that partitions or walls have a smooth, cleanable and nonabsorbent surface. Installing wood frame toilet stalls with water-resistant painted plywood or "OSB" board walls and doors would be the least expensive method to comply with the rule. Estimated cost of compliance with proposed amendments would be \$65 per stall for lumber, paint, hardware and supplies, and up to \$60 per hour for labor if outside labor is used. The smallest TWH common facilities may need partitions for two stalls, while the largest facilities may need ten to eighteen stalls depending on the ratio of common facilities to family shelter unit with toilets.

Compliance with the proposed rule should not result in costs of equipment, professional services or an increase in administrative costs.

**7. WAC 246-358-095 Handwashing and bathing facilities.** The proposed rule would also require installation of privacy partitions between showers "stalls" or curtain partitions in common shower facilities. Providing shower curtains or stalls helps provide privacy for TWH occupants. Simple ceiling-mounted shower rods and curtains would cost an estimated \$15 per shower stall. Common TWH facilities must have one shower for every ten occupants. The smallest TWH common facilities may need one shower curtain to separate two showers at a cost of \$15 while the largest may need up to twenty-five showers [shower] curtains costing up to \$375 depending on the ratio of common facilities to family shelter units with showers.

Compliance with the proposed rule should not result in costs of equipment, professional services or an increase in administrative costs.

**8. WAC 246-358-125 Cooking and food handling facilities.** The proposed amendments require TWH operators

to have a minimum one stove burner or electric hotplate for every 2.5 workers (or one four-burner stove for every ten workers) in common TWH facilities, consistent with federal [rule] 29 C.F.R. 1910.[.]142.<sup>7</sup> This is nearly double the current requirement in TWH rules. The requirement for one stove (with four burners) in family shelter units is unchanged. Some operators may need to add electric hotplates in common food handling facilities to comply with the rule, at a cost of \$18 for single burner units or \$30 for double burner.

<sup>7</sup>This proposed amendment could be considered exempt from analysis under RCW 34.05.310(4) because it would adopt a requirement from a federal rule, 29 C.F.R. 1910, without material change. However, the department has elected to analyze the cost of compliance with the proposed rule in this SBEIS.

Compliance with the proposed rule should not result in costs of supplies, professional services or an increase in administrative costs.

**9. WAC 246-358-135 Cots, beds, bedding, and personal storage.** The proposed rules set new requirements for bunk beds, requiring that the bottom bunk be at least twelve inches above the floor. Top bunks must also have rails to prevent individuals from falling. Cost of compliance would be about \$1 per bunk unit for height extenders, and about \$5.25 per bunk unit to add a 2x4 eight-foot rail on both exposed side of top bunks. The number of bunks per TWH facility cannot be estimated. Compliance with the proposed rule should not result in costs of equipment, professional services or an increase in administrative costs.

The rules also require the operator to provide one lockable personal locker or space for each farm worker in the licensed TWH. This would not apply to nonworker occupants. The worker must provide his/her own lock. Foot lockers are available for about \$22 each. The smallest TWH sites may need fewer than ten lockers (\$220 or less), while the largest sites may need up to two hundred fifty lockers (costing up to \$5,500). Compliance with the proposed rule would not result in costs of equipment, labor, professional services or an increase in administrative costs.

**10. WAC 246-358-145 First aid and safety.** The proposed amendments require TWH operators to provide a means of communication for occupants to contact emergency services or the operator's designated first-aid certified staff person. Some TWH facilities may not have landline phones or cell phone reception, especially in more remote areas of eastern Washington. Operators may comply with the rule by providing a walkie-talkie or intercom device centrally located at the TWH site so that occupants may contact a designated staff person who can provide first aid or contact emergency services, at a cost of about \$30 for a set of two "track phone" type battery operated two-way radios.

Compliance with the proposed rule should not result in costs of supplies, labor, professional services or an increase in administrative costs.

**11. WAC 246-358-990 Fees.** The proposed rule would waive the "facility portion" of licensing fees (\$4 per occupant) for TWH operators who qualify for the self-survey program under WAC 246-358-027. Potential savings range from \$40 per year for the smallest TWH facilities to about \$1,000 per year for the largest facilities that qualify. TWH occupants benefit by staying in facilities that fully comply with the

health and safety requirements of the proposed rules. Thirteen TWH facilities are in the self-survey program in 2014, but under current rules they do not receive a license fee reduction or waiver.

The proposal also allows TWH operators who have fewer occupants than estimated at the time they apply for a license to request a refund of \$4 per occupant. However, TWH operators who have more occupants than projected at the time they apply for their annual license will need to pay the facility fee difference at a rate of \$4 per additional occupant. Operators would have small increase in administrative costs to request a revised license. Operators who have paid license fees but decide not to open their TWH prior to the harvest season may have up to two-thirds of their license fee refunded, less a \$50 processing fee, depending on whether the department has or has not conducted on-site inspections. Requests for refunds must be in writing.

Compliance with the proposed rule should not result in costs of supplies, equipment, labor, or professional services. Operators applying for a refund would have minor increased administrative costs to request a refund.

**B. Chapter 246-359 WAC, Temporary worker housing—Construction standards.** The proposed changes to chapter 264-359 [246-359] WAC apply to new TWH applicants or existing TWH operators making significant remodeling changes or additions to existing facilities. The changes to this chapter are consistent with proposed changes to chapter 246-358 WAC as they apply to new construction, and costs of compliance are described in section A above. There are no costs of compliance with this revised chapter for existing TWH operators who do not plan to remodel their facilities.

**Analyze whether compliance with the proposed rule will cause businesses to lose sales or revenue.** Compliance with the proposed rules is not likely to cause affected businesses to lose sales or revenue. Compliance could cause affected TWH operators to temporarily shift payment from other expenses to the cost of rule compliance. Generally, costs to comply would be a one-time expense. Costs to comply with amendments to construction standards in chapter 246-359 WAC would impact a current TWH licensee only when the licensee adds new or substantially remodels existing TWH facilities. Compliance may improve the quality and livability of some licensed TWH facilities, which may allow operators of those facilities to attract more highly skilled workers, which could lead to higher productivity for the farm operation.

**Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.** Available agricultural employer revenue and labor statistics do not distinguish between employers who do or do not provide TWH. The proposed rules are anticipated to impose more than minor costs on agricultural employers with licenses to provide TWH compared to other agricultural employers. This SBEIS analyzes these costs. Because the department is unable to determine if the compliance cost of the proposed rule exceeds the minor cost thresholds, it is electing to complete the SBEIS.

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest busi-**

**nesses required to comply with the proposed rule.** This analysis assumes that the proposed rules may have a disproportionate impact on TWH licensees who employ fifty or fewer employees, compared to the largest businesses that are licensed TWH operator businesses. This assumption is based on the premise that anticipated costs of the rule will have a greater impact on smaller businesses than on larger businesses, largely due to the different amount of revenue based on the size of the businesses (number of employees, anticipated revenue, etc.).

**Describe how small businesses were involved in the development of the proposed rule.** Small TWH operators, organizations representing agricultural employers, and advocates representing farm workers participated in development of the proposed rules at four stakeholder meetings in 2012 to evaluate the current TWH rules for the 2013 report to the legislature; and again at four rule development meetings in 2014. Stakeholders also had opportunities to provide written input and suggestions on the current rules during the 2012 rule evaluation and on a working draft of the proposed rules in May 2014. Input from small TWH operators and other stakeholders was considered at each stage of rule development and many of their suggestions were incorporated into the proposed rules where feasible.

**Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.** The proposed rules are not likely to cause workers to lose jobs. Some very short-term jobs may be created if TWH operators hire workers to install fixtures necessary to comply with the proposed rules.

**Identify efforts to reduce (mitigate) costs imposed by the rule on small businesses, where legal and feasible in meeting the stated objectives of the underlying statutes. The analysis must consider all of the following:** (a) Reducing, modifying, or eliminating substantive regulatory requirements;

- o **WAC 246-358-029.** Proposed minimum square footage requirements for family shelter unit[s] are modified to count only temporary workers, consistent with 29 C.F.R. 1910, rather than counting all occupants in the unit under the current rule. As a result, operators may use smaller family shelter units than currently allowed if the unit houses fewer than eight workers, even if the unit houses additional occupants who are not workers (children or adults who do not work), if the sleeping area in the unit is separate from the kitchen area.
- o **WAC 246-358-093.** Small TWH operators who must increase the number of toilets to meet the proposed two toilet minimum in 29 C.F.R. 1910.142(5) may use chemical toilets until permanent facilities can be built. Larger TWH facilities will likely meet the minimum requirement.
- o **WAC 246-358-990.** TWH operators who qualify for the self-survey program are exempt from paying the facility portion of the license fee for at least two years. This is a savings of \$40 to about \$1,000 per year depending on TWH's licensed occupancy. The rule also makes partial license fee refunds available if the actual number of TWH occupants is lower

than anticipated at the time the license application was submitted.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

The proposed rule does not decrease recordkeeping or reporting requirements applicable to all TWH operators. Operators who qualify for the self-survey program under WAC 246-358-027 will have increased recordkeeping, but this is offset by their not needing to prepare for a department inspection. In addition operators qualifying for self-survey are exempt from paying the facility portion of the TWH license fee in WAC 246-358-990.

(c) Reducing the frequency of inspections;

**WAC 246-358-025.** The proposed rule represents a decrease in on-site inspections compared to actual practice. TWH facilities have received up to four on-site inspections annually. The proposal states that one inspection will occur before a license is issued. The department may conduct additional on-site inspections if needed to ensure operator compliance.

(d) Delaying compliance timetables;

The department plans to delay until January 1, 2016, compliance with proposed rules that require TWH operators to install additional fixtures, appliances, partitions, or equipment; or to translate materials required to be distributed to TWH occupants.

(e) Reducing or modifying fine schedules for noncompliance; or

Not feasible. Fine schedules for noncompliance are established in statute, and are not included in the proposed rules.

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

Small TWH businesses or their advocates have suggested mitigation regarding the proposed rules. During pre-draft stakeholder meetings, TWH operators and associations made a variety of recommendations, including but not limited to:

- Changing the self-survey program to three years rather than two, or creating a tiered eligibility process. The department felt that the proposed rule would be simpler than a tiered system, while still requiring an on-site inspection in the third year for the department to confirm that all standards in the rule are being met.
- Streamlining applications. The department is implementing this suggestion administratively.
- Reducing fees. In a related rule amendment, adopted in May 2014, the department substantially reduced licensing fees for nearly all TWH operators, from a flat \$9 per TWH occupant, to two-part fee consisting of a \$50 administrative portion per license, and a facility portion of \$4 per occupant (with a \$90 total minimum fee). This represents a fee savings for all but the smallest operators who house ten or fewer persons in TWH.

A copy of the statement may be obtained by contacting Andy Fernando, P.O. Box 47852, Olympia, WA 98504-7852,

phone (360) 236-4692, fax (360) 236-2321, e-mail andy.fernando@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Andy Fernando, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4692, fax (360) 236-2321, e-mail andy.fernando@doh.wa.gov.

November 25, 2014

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-001 Purpose and applicability.** (1) Purpose. This chapter is adopted by the Washington state department of health to implement the provisions of chapter 70.114A RCW and RCW 43.70.334 through 43.70.340, and establish minimum health and safety requirements for temporary worker housing and cherry harvest camps.

(2) Applicability.

(a) This chapter applies only to operators of temporary worker housing ~~((Operators using tents within the cherry harvest season must refer to WAC 296-307-16300, Part L-1, or chapter 246-361 WAC.))~~, including cherry harvest camps, provided by agricultural employers or operators in the state of Washington; and

(b) Operators ~~((with ten or more occupants are required to be licensed under this chapter. Operators with nine or less employees are not required to be licensed, but must comply with these standards))~~ of temporary worker housing shall be licensed under this chapter if the housing meets the criteria identified in WAC 246-358-025.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-010 Definitions.** ~~((For the purposes of this chapter,))~~ The following ~~((words and phrases will have the following meanings))~~ definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes, but is not limited to, the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Bathing facility" means an enclosed area provided by the operator for occupants to bathe or shower, and may be located within a family shelter or a common facility.

(4) "Building" means any structure used or intended by the operator to be used by occupants for ~~((supporting or shel-~~

tering any use or occupancy that may include)) cooking, eating, sleeping, ((and)) sanitation, or other facilities.

((4)) "Common food handling facility" means an area designated by the operator for occupants to store, prepare, cook, and eat their own food supplies.)

(5) ("Current certificate (first aid)" means a first-aid training certificate that has not expired.

(6) "Department" means the Washington state department of health and/or the department of labor and industries.) "Cherry harvest camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers or TWH operators for their use while employed for the harvest of cherries in the state of Washington.

(6) "Common" means a shared facility provided by the operator for all occupants of the TWH.

(7) "Dining hall" means a cafeteria-type eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, by occupants.

(8) "Drinking fountain" means a fixture equal to a nationally recognized standard or a designed-to-drain faucet which provides potable drinking water under pressure. "Drinking fountain" does not mean a bubble-type water dispenser.

(9) "Dwelling unit" means a shelter, tent, building, or portion of a building, ((that)) which may include cooking and eating facilities, ((which)) that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and ((common-use)) common areas. As used in this subsection, "physically separated" means a physical wall separating rooms.

(10) "Family shelter" means a dwelling unit with sleeping facilities for up to fifteen occupants that may include toilet or cooking facilities. If services such as bathing, food-handling, or toilet facilities are provided in the family shelter, they are for the sole use of the occupants of the family shelter.

(11) "First-aid ((qualified)) trained" means ((that)) the person holds a current certificate of first-aid training ((from the American Red Cross or another course with equivalent content or hours)).

((11)) (12) "Floor space" means the area within a dwelling unit with a minimum ceiling height of seven feet.

(13) "Food-handling facility" means ((a designated,)) an enclosed area ((for preparation of)) provided by the operator for occupants to prepare their own food, and may be within a family shelter or common facility.

((12)) (14) "Group A public water system" means a public water system ((and includes community and noncommunity water systems:

(a) ~~A community water system means any Group A water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents.~~

~~(b) A noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:~~

~~(i) Nontransient (NTNC) water system that provides service opportunity to twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year.~~

~~(ii) Transient (TNC) water system that serves:~~

~~(A) Twenty-five or more different people each day for sixty or more days within a calendar year;~~

~~(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or~~

~~(C) One thousand or more people for two or more consecutive days within a calendar year.~~

~~(13)) as defined under WAC 246-290-020.~~

(15) "Group B public water system" means a public water system((=Constructed to serve less than fifteen residential services regardless of the number of people; or constructed to serve an average nonresidential population of less than twenty-five per day for sixty or more days within a calendar year; or any number of people for less than sixty days within a calendar year.

(14)) that is not a Group A public water system, and is defined under WAC 246-291-005.

(16) "Habitable room" means a room or space in a structure ((with a minimum seven-foot ceiling)) used for living, sleeping, eating, or cooking. ((Bathrooms)) Bathing facilities, toilet ((compartments)) facilities, closets, halls, storage or utility space, and similar areas are not considered habitable ((space)) rooms.

((15) "Health officer" means the individual appointed as such for a local health department under chapter 70.05 RCW or appointed as the director of public health of a combined city-county health department under chapter 70.08 RCW.

(16)) (17) "Livestock" means horses, cows, pigs, sheep, goats, poultry, etc.

((17) "Livestock operation" means any place, establishment, or facility consisting of pens or other enclosures in which livestock is kept for purposes including, but not limited to, feeding, milking, slaughter, watering, weighing, sorting, receiving, and shipping. Livestock operations include, among other things, dairy farms, corrals, slaughterhouses, feedlots, and stockyards. Operations where livestock can roam on a pasture over a distance may be treated as outside the definition.

(18) "MSPA" means the Migrant and Seasonal Agricultural Worker Protection Act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq).

(19)) (18) "Occupant" means a temporary worker or a person who resides with a temporary worker at the ((housing site)) TWH.

((20)) (19) "Operating license" or "license" means a document issued annually by the department ((of)) of health ((officer authorizing the use of temporary worker housing)).

((21)) (20) "Operator" means a person holding legal title to the land on which ((temporary worker housing)) the TWH is located. However, if the legal title and the right to possession are in different persons, "operator" means a per-

son having the lawful control or supervision over the (~~temporary worker housing~~) TWH.

~~((22))~~ (21) "Recreational park trailers" means a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use, that meets the following criteria:

(a) Built on a single chassis, mounted on wheels;

(b) Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode; (~~and~~)

(c) Certified by the manufacturer as complying with (~~ANSI~~) American National Standards Institute standards A119.5; and

(d) Compliant with chapter 296-150P WAC.

~~((23))~~ (22) "Recreational vehicle" means a vehicular type unit that is compliant with chapter 296-150R WAC and primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive of power or is mounted on, or towed by, another vehicle. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers, but does not include pickup trucks with camper shells, canopies, or other similar coverings.

~~((24))~~ (23) "Refuse" means solid wastes, rubbish, or garbage.

~~((25))~~ (24) "Temporary worker" or "worker" means an agricultural employee employed intermittently and not residing year-round at the same TWH site.

(25) "Tent" means an enclosure or shelter used at a cherry harvest camp that is constructed of fabric or pliable material composed of rigid framework to support a tensioned membrane that provides a weather barrier.

(26) "Temporary worker housing (TWH)" or "housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees for temporary, seasonal occupancy. TWH includes cherry harvest camps and tents.

(27) (~~"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW, administered by the Washington state department of labor and industries.~~) "Worker-supplied housing" means housing provided by the worker and made available to the same worker on the operator's TWH site. Worker-supplied housing includes recreational park trailers, recreational vehicles, tents, or other structures that meet the requirements of this chapter.

## NEW SECTION

**WAC 246-358-015 Technical assistance—Notice of violation.** (1) The department of health or the department of labor and industries may provide technical assistance to assist in compliance with this chapter if requested by an operator.

(2) The department of health may charge a fee for construction review technical assistance in accordance with WAC 246-359-990(6).

(3) During a technical assistance visit or within a reasonable time thereafter, the department of health shall inform the operator of the TWH on any violations of law or agency rules as follows:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department of health requires compliance to be achieved; and

(d) Notice of the means to contact any technical assistance services provided by the department of health or other sources of technical assistance.

**AMENDATORY SECTION** (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-025 (~~Operating license~~) Licensure.** (~~The operator~~)

(1) (~~Must request a~~) Any operator providing TWH shall apply for a TWH operating license from the department of health (~~or health officer~~) when:

(a) (~~Housing~~) The TWH consists of:

(i) Five or more dwelling units; or

(ii) Any combination of dwelling units, or spaces that house ten or more occupants;

(b) Compliance with (~~MSPA~~) the Migrant and Seasonal Agricultural Worker Protection Act (96 Sta. 2583; 29 U.S.C. Sec. 1801 et. seq.) requires a license; or

(c) (~~Construction of camp buildings requires a license under~~) The operator provides housing consisting of four or fewer dwelling units or any combination of dwelling units or spaces that house nine or fewer occupants and elects to comply with chapter 246-359 WAC (~~Temporary worker housing construction standard~~).

(2) (~~Must apply for an operating license~~) The operator shall submit to the department of health a completed application that:

(a) Is on a form provided by the department of health;

(b) Identifies the maximum number of occupants during the period of licensure. This number must not exceed the maximum capacity as determined by WAC 246-358-029;

(c) Proves the TWH is permitted for occupancy by the department of health or the local government building department with jurisdiction;

(d) Proves that the water system(s) serving the TWH is in compliance with chapter 246-290 or 246-291 WAC, or local board of health rules. Operators using a Group B public water system must also provide water quality test results from a certified laboratory accredited under chapter 173-50 WAC with an official scope of accreditation for drinking water analytical parameters. Water quality test results must document compliance with the following water quality standards and frequency on a form produced by the laboratory conducting the test:

(i) Satisfactory coliform within the previous twelve months; and

(ii) Ten milligrams per liter or less nitrate within the previous three years; and

(e) Includes a fee as specified in WAC 246-358-990.

(3) The operator will receive a TWH license for the maximum number of occupants identified in the application. This

number must not exceed the maximum capacity as determined by WAC 246-358-029.

(4) The operator will receive a TWH license when:

(a) The application requirements from subsections (2) and (5) of this section are met;

(b) The TWH is in compliance with this chapter as demonstrated by:

(i) A preclosure inspection completed by the department of health; or

(ii) Except as provided for in subsection (10) of this section, a self-survey completed by the operator and approved by the department of health; and

(c) The operator complies with any corrective action plan established by the department of health.

(5) The operator shall submit the documentation in subsection (2) of this section:

(a) For a new TWH site, by at least forty-five days prior to ((either the use of housing or the expiration of an existing operating license by submitting to the department of health or health officer:

(a) A completed application on a form provided by the department or health officer;

(b) Proof water system is current with all water tests required by chapter 246-290 or 246-291 WAC; and

(c) A fee as specified in WAC 246-358-090.

(3) Will receive an operating license for the maximum number of occupants as determined by WAC 246-358-029 when:

(a) The application requirements from subsection (2) of this section are met;

(b) The housing is in compliance with this chapter as demonstrated by:

(i) A licensing survey completed by the department of health; or

(ii) A self-survey completed by the operator and approved by the department of health; and

(c) The operator complies with the corrective action plan established by the department.

(4)) the new TWH site operation date; or

(b) For a previously licensed TWH site, by February 28th of the year the operator intends to operate the TWH.

(6) Except as provided for in subsection (10) of this section, the department of health may allow the use of ((housing)) TWH without a renewed license when all of the following conditions exist:

(a) The operator timely applied for renewal of an operating license in accordance with ((subsection (2) of)) this section ((at least forty five days before occupancy,)) as evidenced by the post mark;

(b) The department of health ((or health officer)) has not inspected the ((housing)) TWH or issued an operating license;

(c) Other local, state, or federal laws, rules, or codes do not prohibit use of the ((housing)) TWH; and

(d) The operator provides and maintains ((housing)) the TWH in compliance with this chapter.

((5) Must post the operating license in a place readily accessible to occupants of the housing.

(6) Must notify the department of health or health officer of a transfer of ownership.

(7) Must cooperate with the department or health officer during on-site inspections.)) (7) An operating license is not transferable.

(8) The operator shall post the operating license or a copy of the operating license in a place readily accessible to occupants of the TWH.

(9) The operator will receive an annual occupancy inspection completed and approved by the department of health.

(10) For licensure and operation of cherry harvest camps:

(a) Subsections (4)(b)(ii) and (6) of this section do not apply;

(b) A TWH license to operate a cherry harvest camp is limited to one week before the start through one week following the conclusion of the cherry harvest within the state of Washington.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

WAC 246-358-027 Requirements for self-survey program. ((If a licensed)) Except for an operator of a cherry harvest camp, an operator ((meets)) meeting the requirements provided in this section ((, then the operator)) may participate in the self-survey program. ((This means an operator is allowed to conduct a self-survey for two years. On the third year the department of health will conduct an on-site verification survey to assure compliance with this chapter and determine if the temporary worker housing still meets the requirements of the self-survey program.))

(1) The cycle of the self-survey program is as follows:

(a) The operator may qualify to conduct self-surveys for up to two consecutive years.

(b) During the third year, the department of health will conduct an on-site inspection(s) to ensure compliance with this chapter.

(c) If the department of health determines the TWH site still meets the requirements of the self-survey program after the on-site inspection, the operator may be eligible for a new self-survey program cycle as described in this subsection.

(2) To be in the self-survey program the operator ((must)) shall:

(a) Meet the requirements of WAC 246-358-025;

(b) ((Not have had any valid complaints;

(c) Have had)) Be licensed for two consecutive years without any deficiencies ((or have had very minor deficiencies (for example one or two screens torn, missing a few small trash cans, etc.); and

(d) Be recommended by the health surveyor.

(2) For a licensed operator),

(3) To remain in the self-survey program the ((licensed)) operator ((must)) shall:

(a) Continue to comply with subsections (1) and (2) of this section;

(b) ((Continue to not have any deficiencies or very minor deficiencies)) Complete the department of health self-survey form and return the completed form to the department of health prior to temporary worker occupancy;

(c) Remain free from all deficiencies;

(d) Ensure modifications to any building or structure on the TWH made during the self-survey period meets the conditions of this chapter; and

~~((e))~~ (e) Not have a change in ownership.

~~((3))~~ (4) When a licensed ~~((temporary worker housing))~~ TWH changes ownership, the new ~~((licensed))~~ operator ~~((must))~~ shall comply with the requirements of subsection ~~((4))~~ (2) of this section before being eligible to be on the self-survey program.

(5) A TWH licensee who qualifies for the self-survey program shall pay a reduced fee as specified in WAC 246-358-990.

(6) The department of health or department of labor and industries are authorized to conduct inspections based on complaints or to verify compliance with this chapter.

#### NEW SECTION

**WAC 246-358-028 Enforcement.** Any violation of this section will be cause for the department of health to proceed with legal action, to assess a civil fine, or modify, suspend, or revoke the license.

(1) An operator shall comply with all applicable laws and regulations.

(2) When the department of health finds an operator out of compliance with any applicable law or regulation, the department of health will send the operator a notice of correction according to RCW 43.05.100 with an attestation of correction form. For purposes of this section, a "notice of correction" will include:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable law or rule;

(b) A brief statement of what is required to achieve compliance;

(c) The date by which the department of health requires compliance be achieved;

(d) Notice of the means to contact any technical assistance services provided by the department of health or other sources of technical assistance; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department of health.

(3) For purposes of this section, an "attestation of correction form" means a form developed by the department of health and completed, signed, and dated by the operator stating that the operator:

(a) Has or will correct each cited deficiency; and

(b) Will maintain correction of each cited deficiency.

(4) On each attestation of correction form, the operator shall give a date, approved by the department of health, showing when and how the cited deficiency has been or will be corrected.

(5) The operator shall sign and return the completed attestation of correction form to the department of health on or before the date required by the department of health.

(6) Upon request of the department of health the operator shall show proof that for each deficiency cited the operator has corrected or is correcting each deficiency.

(7) If the operator fails to correct the deficiencies by the required date, the department of health may proceed with legal action to assess a civil fine and to modify, suspend, or revoke the license.

(8) An operator may contest a department of health decision or action according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

(9) The operator shall fully cooperate with the department of health in, and shall in no way impede, its administration and enforcement of all applicable laws and regulations.

#### NEW SECTION

**WAC 246-358-0280 Operating without a license—Investigation of complaints—Penalties.** (1) The department of health shall investigate complaints concerning unlicensed operation of TWH when a valid operating license is required under RCW 43.70.335(1) and this chapter.

(2) The department of health may assess a civil fine for failure or refusal to obtain a license prior to occupancy of TWH. Proceedings to assess a civil fine shall be governed by the provisions of RCW 43.70.095, chapter 34.05 RCW, and chapter 246-10 WAC. Civil fines under this section shall not exceed twice the cost of the license plus the cost of the initial on-site inspection for the first violation of this section, and shall not exceed ten times the cost of the license plus the cost of the initial on-site inspection for second and subsequent violations within any five-year period.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-029 Maximum ~~((housing occupancy))~~ TWH capacity.** (1) ~~((The maximum occupancy for))~~ Operator-supplied ~~((housing))~~ dwelling unit capacity will be based on:

(a) The square footage of the ~~((housing facility))~~ floor space in habitable rooms provided for sleeping purposes as described in WAC 246-358-075 (10) and (11) and Table 1 of this section; and

(b) The number of bathing, food-handling, handwashing, laundry, and toilet facilities as described in WAC 246-358-090 through 246-358-125.

(2) ~~((The maximum occupancy for))~~ Worker-supplied housing capacity will be based on(=

~~((a))~~ the number of spaces designated by the operator for worker-supplied housing ~~((by the operator; and~~

~~((b) The number of bathing, food handling, handwashing, laundry, and toilet facilities in excess of those facilities required for operator supplied housing)).~~

((Note: Worker supplied housing includes recreational park trailers, recreational vehicles, OSHA compliant tents or other structures that meet the requirements of this chapter.))

(3) Operators may take into consideration the services provided by the worker-supplied housing to ensure all ratios for services required by this chapter are met for all occupants.

**Table 1**  
**TWH Maximum Capacity**

<b>Occupant capacity: Determine total square footage and total facility to occupant ratio</b>						
<b>Floor Space Requirements</b>	<b>Sleeping room only</b>			<b>Sleeping room with kitchen</b>		
	50 square feet per occupant			100 square feet per temporary worker		
<b>Facility requirements</b>	<b>Toilets</b>		<b>Handwash Sinks</b>		<b>Bathtubs or Showers</b>	
<b>Common Facilities</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
	2 minimum, 1 per 15 occupants	2 minimum, 1 per 15 occupants	1 per 6 occupants	1 per 6 occupants	1 per 10 occupants	1 per 10 occupants
<b>Each Family Shelter</b>	1, if provided		1		1, if provided	

**AMENDATORY SECTION** (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-040 Variance and procedure.** (1) Conditions may exist in operations that a state standard will not have practical use. The operator may request a variance. The director of the department of labor and industries may issue a variance from the requirements of the standard when another means of providing equal protection is provided.

The substitute means must provide equal protection in accordance with the requirements of chapters 49.17 RCW and ~~((chapter 296-350))~~ 296-900 WAC, ~~((variances))~~ administrative rules.

(2) Applications for variances will be reviewed and may be investigated by the department of labor and industries and the department of health. Variances granted will be limited to the specific case or cases covered in the application and may be revoked for cause. The variance ~~((shall))~~ must remain prominently posted on the premises while in effect.

(3) Requests for variances from safety and health standards shall be made in writing to the director or the assistant director, Department of Labor and Industries, P.O. Box 44625, Olympia, Washington 98504-4625.

(4) Variance application forms may be obtained upon request from the department of labor and industries~~((, P.O. Box 44625, Olympia, Washington 98504-4625))~~ or the department of health~~((, P.O. Box 47852, Olympia, Washington 98504-7852, upon request. Requests for variances from safety and health standards shall be made in writing to the director or the assistant director, Department of Labor and Industries, P.O. Box 44625, Olympia, Washington 98504-4625. (Reference RCW 49.17.080 and 49.17.090.))~~.

**AMENDATORY SECTION** (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-045 Temporary worker housing sites.**

The operator ~~((must))~~ shall:

(1) To prevent a health or safety hazard, locate and operate a TWH site~~((to prevent a health or safety hazard))~~ that is:

- (a) Adequately drained and any drainage from and through the ~~((housing))~~ TWH must not endanger any domestic or public water supply;

(b) Free from periodic flooding and depressions in which water may become a nuisance;

(c) At least two hundred feet from a swamp, pool, sink hole, or other surface collection of water unless there is a mosquito prevention program for those areas; and

(d) Large enough to prevent overcrowding of necessary structures.

(2) Ensure the principal ~~((housing))~~ TWH area for sleeping and for food preparation and eating ~~((must be))~~ are at least five hundred feet from where livestock are kept~~((; and~~ ~~((e) The))~~ or congregate.

(3) Ensure the TWH grounds and open areas surrounding the ~~((shelters must be))~~ buildings are kept in a clean and sanitary condition free from refuse.

~~((2))~~ Must develop and implement a temporary worker housing management plan and rules for operators with ten or more occupants, to assure that the housing is operated in a safe and secure manner and is kept within the approved capacity. Additionally, the licensed operator must:

(a) Inform occupants of the rules, in a language the occupant understands by providing individual copies of the rules to each occupant or posting the rules in the housing area;

~~((b))~~ (4) Ensure all worker-supplied housing is maintained in good working condition.

(5) Restrict the number of occupants in the ~~((temporary worker housing))~~ TWH to the capacity as determined by the department of health.

~~((3))~~ (6) When closing housing permanently or for the season~~((; complete the following))~~:

- (a) Dispose of all refuse to prevent nuisance~~((;~~
- (b) Fill all abandoned toilet pits with earth~~((; and~~
- ~~((e))~~ (b) Leave the grounds and buildings in a clean and sanitary condition.

**NEW SECTION**

**WAC 246-358-050 TWH management plan.** (1) An operator shall develop and implement a written TWH management plan that must include:

- (a) A safety plan that includes the following:
  - (i) Emergency information, including site name and address, emergency contact phone numbers, location of local



emergency services, and the department of health bilingual TWH complaint line;

(ii) Those designated actions operators and occupants must take to ensure occupant safety from fire and other emergencies, including the following:

(A) Emergency escape procedures and emergency escape route assignments;

(B) Procedures to account for all occupants after emergency evacuation has been completed;

(C) The preferred means of reporting fires and other emergencies; and

(D) Names or regular job titles of those who can be contacted for further information or explanation of duties under the plan.

(iii) A requirement to designate and train a sufficient number of people to assist in the safe and orderly emergency evacuation of occupants; and

(iv) A requirement to regularly and properly maintain, according to established procedures, equipment and systems installed on heat producing equipment to prevent accidental ignition of combustible materials.

(b) Residency rules that describe to the occupants expectations for maintaining a safe and orderly TWH.

(2) The operator shall make available:

(a) A TWH management plan, in English and the native language(s) of the occupants, to the department of health or the department of labor and industries upon request; and

(b) A written copy of the residency rules to occupants, in the occupant's native language(s) by:

(i) Posting it in a central location visible to the occupants; and

(ii) Providing individual copies to each occupant, if requested.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-055 Water supply.** The operator ~~((must))~~ shall:

(1) Provide a safe and reliable supply of drinking water from an approved Group A or Group B public water system ~~((that is:~~

~~(a) Approved as a Group A public water system in compliance with chapter 246-290 WAC if the water system supplies fifteen or more connections or twenty-five or more people at least sixty days per year or provide proof the camp receives water from an approved Group A public water system or provide proof the temporary worker housing receives water from an approved Group A public water system; or~~

~~(b) Approved as a Group B water system in compliance with chapter 246-291 WAC if the water system supplies less than fifteen connections and does not supply twenty-five or more people at least sixty days per year.~~

Note: A "same farm exemption" applies to a public water system with four or fewer connections all of which serve residences on the same farm. "Same farm" means a parcel of land or series of parcels that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a Group A water system.

	<del>Avg. daily population of less than 25 people</del>	<del>Avg. daily population of 25 or more people</del>
<del>At least 60 days or more</del>	<del>Group B</del>	<del>Group A TNC</del>
<del>59 days or less</del>	<del>Group B</del>	<del>Group B</del>

Note: If a system has fifteen or more connections, regardless of the population, it is a Group A water system.

~~(2) Provide an adequate and convenient hot and cold water supply for drinking, cooking, bathing, and laundry purposes.~~

Note: An "adequate water supply" means the storage capacity of the potable water system must meet the requirements of ASHRAE-1999 Applications Handbook, chapter 48, Water Systems.

~~(3))~~ meeting the requirements of:

(a) WAC 246-358-025 (2)(d) and chapter 246-290 WAC, or chapter 246-291 WAC; or

(b) Local board of health rules.

(2) Ensure that the distribution lines are able to maintain the working pressure of the water piping system at not less than ~~((fifteen))~~ twenty pounds per square inch after allowing for friction and other pressure losses.

~~((4))~~ (3) When water is not piped to each dwelling unit, provide cold, potable, running water under pressure within one hundred feet of each dwelling unit.

~~((5))~~ (4) When water sources are not available in each ~~((individual))~~ dwelling unit~~((:))~~:

(a) Provide one or more drinking fountains for each one hundred occupants or fraction thereof~~((:))~~; and

(b) Prohibit the use of common drinking cups or containers from which water is dipped or poured.

~~((6))~~ (5) Provide an adequate supply of hot and cold running water under pressure in bathing, food-handling, handwashing, and laundry facilities.

(6) Provide an automatically controlled hot water supply of 100 to 120 degrees Fahrenheit in bathing, food-handling, handwashing, and laundry facilities.

(7) When water located within 100 feet of a dwelling unit is unsafe for drinking purposes and accessible to occupants, post a sign by ~~((the))~~ each nonpotable water source ~~((reading))~~ that:

(a) Reads "DO NOT DRINK. DO NOT USE FOR WASHING. DO NOT USE FOR PREPARING FOOD."

(b) Is printed in English and in the native language(s) of the ~~((persons occupying the housing or))~~ occupants; and

(c) Is marked with ~~((easily-understood))~~ easily understood pictures or symbols.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-065 Sewage disposal.** The operator ~~((must))~~ shall:

(1) Provide sewage disposal systems in accordance with local health jurisdictions.

(2) Connect all drain, waste, and vent systems from buildings to:

(a) Public sewers, if available; or

(b) Approved on-site sewage disposal systems that are designed, constructed, and maintained as required in chapters ((246-272)) 246-272A and 173-240 WAC, and local ordinances.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-070 Electricity and lighting.** The operator ((~~must~~)) shall ensure that:

(1) Electricity is supplied to all dwelling units(~~(, kitchen facilities, shower/bathroom facilities, common areas, and laundry facilities))~~ and common facilities, except chemical toilets.

(2) All electrical wiring, fixtures, and electrical equipment must:

(a) Comply with the electrical standards of the department of labor and industries regulations, chapter 19.28 RCW, chapter 296-46B WAC, and local ordinances((;)); and

(b) Be maintained in a safe condition.

(3) Each habitable room must have at least:

(a) One ceiling-type light fixture; and

(b) At least one separate floor-type or wall-type convenience outlet.

(4) Laundry, ((~~shower/bathroom facilities,~~)) toilet ((rooms and rooms where people congregate)) facilities, and bathing facilities have at least one ceiling-type or wall-type light fixture.

(5) General lighting and task lighting within all facilities is adequate to carry on normal daily activities.

(6) Adequate lighting is provided for safe passage for occupants to handwashing sinks and toilets. Lighting requirements may be met by natural or artificial means.

(7) Lighting provided for tents is compliant with WAC 246-358-175.

((Note: Lighting requirements may be met by natural or artificial means.))

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-075 Building requirements and maintenance.** An operator ((~~must~~)) shall:

(1) ((~~Construct buildings to provide protection against the elements and comply with:~~)) Provide TWH dwelling units, including common facilities, which meet the following requirements:

(a) The State Building Code, chapter 19.27 RCW or the ((~~Temporary worker housing~~)) TWH construction standard, chapter 246-359 WAC; and

(b) State and local ordinances, codes, and regulations when applicable(~~;~~ and

~~(c) This chapter. Any shelter meeting these requirements is acceptable).~~

(2) Prevent condensation in dwelling units and common facilities to the degree that it does not contribute to a health risk or safety issue to occupants.

(3) Prevent mold in dwelling units and common facilities.

(4) Provide locking mechanisms on:

(a) Exterior doors;

(b) Bedroom doors;

(c) Bathroom doors; and

(d) Toilet and shower stall doors.

(5) Identify each dwelling unit and space used for shelter by posting a number at each site.

~~((3))~~ (6) Maintain buildings in good repair and sanitary condition.

~~((4))~~ (7) Prohibit the use of lead-based paint on any part of the TWH.

(8) Provide exits that are unobstructed and remain free of any material or matter where its presence would obstruct or render the exit hazardous.

~~((5))~~ (9) Provide ((a ceiling height of at least seven feet for each habitable room. If a building has a sloped ceiling, no portion of the room measuring less than seven feet from the finished floor to the finished ceiling will be included in any computation of the minimum floor space.

(6) Provide at least seventy square feet of floor space for the first occupant and at least fifty square feet of floor space for each additional occupant in each dwelling unit.

~~((7))~~ Provide)) habitable rooms with:

(a) Windows that equal at least one-tenth of the total floor space; and

(b) At least one-half of each window which can be opened to the outside for ventilation; or

(c) Mechanical ventilation in accordance with applicable standards from the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE).

(10) Ensure each room used for sleeping purposes ((with)) has:

(a) At least fifty square feet of floor space for each occupant ~~not including any floor space in any portion of a room less than seven feet from the finished floor to the finished ceiling; and~~

(b) Windows that equal at least one-tenth of the floor space within the surrounding walls of the sleeping room.

(11) Ensure each room in a family shelter used for sleeping and cooking purposes:

(a) Has at least one hundred square feet of floor space per temporary worker; and

(b) Meets the requirements of subsection (10)(b) of this section.

~~((8))~~ Provide floors in accordance with the State Building Code, chapter 19.27 RCW, or the Temporary worker housing construction standard, chapter 246-359 WAC, that are tightly constructed and in good repair.

~~((9))~~ (12) Ensure wooden floors are at least one foot above ground-level, or meet the requirements in the State Building Code, chapter 19.27 RCW or temporary worker housing construction standard, chapter 246-359 WAC.

~~((10))~~ Provide habitable rooms that have:

(a) Windows covering a total area equal to at least one-tenth of the total floor area and at least one-half of each window can be opened to the outside for ventilation; or

(b) Mechanical ventilation in accordance with applicable ASHRAE standards.

~~((11))~~ (13) Provide sixteen-mesh screening on all exterior openings ((and)).

(14) Provide and maintain on all exterior entrances with screen doors ~~((with))~~ that:

(a) Have self-closing devices; and

(b) Close without gaps that would allow entry of pests.

~~((12))~~ (15) Install all heating, cooking, and water heating equipment according to state and local ordinances, codes, and regulations and maintain in a safe condition.

~~((13))~~ (16) Provide ~~((adequate heating equipment if habitable rooms, including bathrooms, are used during cold weather))~~ every dwelling unit and common facility with equipment capable of maintaining a temperature of at least seventy degrees Fahrenheit during cold weather.

~~((14))~~ (17) Ensure that all recreational vehicles and park trailers meet the requirements ~~((of))~~ as defined in this chapter ~~((296-150P or 296-150R WAC)).~~

#### NEW SECTION

**WAC 246-358-077 Tent requirements and maintenance.** (1) Only cherry harvest camps may use tents as TWH.

(2) Each tent must be constructed to sleep no more than fifteen occupants.

(3) Tents must provide protection from the elements, insects, and animals.

(4) Structural stability and floors.

(a) Tents and their supporting framework must be adequately braced and anchored to prevent weather related collapse. The operator shall provide documentation of the structural stability to the department of health, if requested.

(b) Floors must be smooth, sloped from a raised center towards the lower outer edges. Floors must be without breaks or holes to provide a hard, stable walking surface. Nonridged flooring supported by grass, dirt, soil, gravel or other uneven surface is not acceptable. Floors that are constructed of wood or concrete must comply with the building code, chapter 19.27 RCW, and this chapter.

(c) Floor systems must be designed to prevent the entrance of snakes, rodents, and other nuisances.

(5) Flame-retardant treatments.

(a) The sidewalls, drops, and tops of tents shall be composed of flame-resistant material or treated with a flame retardant in an approved manner.

(b) Floor coverings, which are integral to the tent, and the bunting shall be composed of flame-resistant material or treated with a flame retardant in an approved manner and in accordance with Uniform Building Code, Standard 31.1.

(c) All tents must have a permanently affixed label bearing the following information:

(i) Identification of tent size and fabric or material type;

(ii) For flame-resistant materials, the necessary information to determine compliance with this section and National Fire Protection Association Standard 701, Standard Methods of Fire Tests for Flame Propagation of Textiles and Films;

(iii) For flame retardant materials, the date that the tent was last treated with an approved flame retardant;

(iv) The trade name and type of flame retardant used in the flame-retardant treatment; and

(v) The name of the person and firm that applied the flame retardant.

(6) Means of egress.

(a) Tents must have a primary entrance door. At least one door must lead to the outside of the tent. The door must not be obstructed in any manner and must remain free of any material or matter where its presence would obstruct or render the exit hazardous.

(b) If food-handling facilities are provided in tents, or the tent occupancy capacity is for ten or more occupants, a window allowing egress must be located opposite the door and must have a means to open the window or provide an easily openable space, for example, a zipper which opens downward to the floor, must be provided.

(7) Floor area. The operator must:

(a) If food-handling facilities are provided in the tent, provide an additional twenty square feet of floor space;

(b) Provide at least fifty square feet of floor space for each occupant in rooms used for sleeping purposes.

(8) Ceiling height.

(a) A ceiling height of at least seven feet is required in fifty percent of the total floor area.

(b) No portion of the tent measuring less than six feet from the flooring to the ceiling will be included in any computation of the floor area.

(9) Windows and ventilation.

(a) The operator shall provide a window area equal to one-tenth of the total floor area in each habitable room which opens at least halfway or more directly to the outside for cross-ventilation and has a minimum of sixteen-mesh screens on all exterior openings.

(b) The windows must have weather-resistant flaps, which will cover the window area and a means of fastening the flaps to provide protection from the elements and allow privacy for the occupants.

(10) Electrical and lighting. The operator shall ensure that:

(a) Electricity is supplied to all tents used as habitable room.

(b) All electrical wiring, fixtures and electrical equipment must comply with the electrical standards of the department of labor and industries regulations, chapter 19.28 RCW, and local ordinances, and be maintained in a safe condition.

(c) Each tent used as habitable room has at least one ceiling-type light fixture and at least one separate floor-type or wall-type convenience outlet.

(d) If cooking is provided in the tent, appropriate wiring and electrical equipment is provided.

#### NEW SECTION

**WAC 246-358-080 Carbon monoxide alarms, smoke detectors, and fire extinguishers.** (1) An operator shall provide and maintain working carbon monoxide alarms that are:

(a) Located in each dwelling unit with a sleeping area; and

(b) Installed in accordance with the manufacturer's recommendations and in compliance with the building code, WAC 51-51-0315.

(2) An operator shall provide and maintain working smoke detectors that:

(a) Are located in each sleeping area;

- (b) Are located on each level of dwelling units with a sleeping area;
  - (c) Are located in each cooking facility area;
  - (d) Emits a signal when the batteries are low;
  - (e) Are placed on the ceiling or wall, but not on the wall above any door; and
  - (f) Are in compliance with the manufacturer's recommendations and the building code, WAC 51-51-0314.
- (3) An operator shall provide properly working fire extinguishers that are:
- (a) A minimum 2A:10BC;
  - (b) Installed and maintained according to the manufacturer's instructions;
  - (c) Installed in accordance with local ordinances, codes, and regulations when applicable.

**AMENDATORY SECTION** (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-090 Laundry facilities.** An operator ~~((must)) shall:~~

- (1) Provide laundry facilities that include:
  - (a) One laundry tray or tub or one mechanical washing machine for every thirty ~~((persons~~
  - ~~(2) Provide)) occupants;~~
  - (b) Adequate facilities for drying clothes(~~(-~~
  - ~~(3) Provide)); and~~
  - (c) Sloped, coved floors of nonslip impervious materials with screened floor drains.
- ~~((4)) (2) Maintain laundry facilities in a clean and sanitary condition.~~

**NEW SECTION**

**WAC 246-358-093 Toilet facilities.** The operator shall:

- (1) Provide toilet facilities adequate for the maximum capacity of the TWH according to Table 1 of this section.
- (2) Not provide or allow the use of pit privies.
- (3) Fill all abandoned pit privies with earth.
- (4) Meet the following general requirements for all toilet facilities:
  - (a) Provide flush toilets unless chemical toilets are specifically approved by the department of health according to requirements in chapter 246-272 WAC;
  - (b) Flush toilets, chemical toilets, and urinals must not be located in any sleeping room, dining room, cooking or food-handling facility, or any tent;
  - (c) Toilet rooms must be provided with:
    - (i) Handwashing sinks located in or immediately adjacent to the toilet room;
    - (ii) Either a window of at least six square feet opening directly to the outside or adequate ventilation;
    - (iii) Sixteen-mesh screens on all outside openings;
    - (iv) Fixtures maintained in good working order, including toilet(s) and sink(s); and
    - (v) Drains maintained in good working order, including floor drains with screens.
  - (d) When chemical toilets are approved, they must be:
    - (i) Located at least fifty feet from any dwelling unit or food-handling facility;
    - (ii) Maintained by a licensed waste disposal company;

- (ii) Compliant with local ordinances; and
- (iv) Located immediately adjacent to a handwash sink(s).
- (e) When urinals are provided:
  - (i) There must be one urinal or two linear feet of urinal trough for each twenty-five men;
  - (ii) The floors and walls surrounding a urinal and extending out at least fifteen inches on all sides, must be constructed of materials which will not be adversely affected by moisture; and
  - (iii) The urinal must have an adequate water flush.
- (5) Meet the following requirements for common toilet facilities:
  - (a) Provide the number of toilets for each sex based on the maximum number of occupants of that sex which the TWH is designed to house at any one time in the ratio of one toilet for every fifteen occupants, with a minimum of two toilets according to Table 1 of this section;
  - (b) Locate toilet rooms so that:
    - (i) Toilets are within two hundred feet of the door of each sleeping room; and
    - (ii) No person has to pass through a sleeping room to reach a toilet room;
    - (c) Maintain toilets in a clean and sanitary condition, cleaned at least daily;
    - (d) Provide each toilet compartment with an adequate supply of toilet paper at all times;
    - (e) Separate toilets by partitions or walls. Partitions and walls must ensure privacy;
    - (f) Provide toilet room walls and partitions with smooth, cleanable, and nonabsorbent surfaces;
    - (g) Ensure the area surrounding common toilet facilities are adequately lighted; and
    - (h) When common facilities will be used for both men and women:
      - (i) Provide separate toilet rooms for each sex with a minimum of one toilet room for each sex and meet the required ratio as defined in (a) of this subsection;
      - (ii) Identify each room for "men" and "women" with signs printed in English and in the native language(s) of the persons occupying the TWH, or identified with easily understood pictures or symbols; and
      - (iii) Separate facilities by solid walls or partitions extending from the floor to the roof or ceiling when facilities for each sex are located in the same building.
  - (6) Meet the following requirements for family shelters if common toilet facilities are not provided:
    - (a) One toilet for each individual family shelter;
    - (b) Ensure toilet facilities are cleaned prior to occupancy; and
    - (c) Request occupants to maintain the facilities in a clean and sanitary condition.

**Table 1**  
**Minimum Number of Required Fixtures**

Facility Type	Toilets		Handwash Sinks	
	Male	Female	Male	Female
Common Facilities	2 minimum, 1 per 15 occupants	2 minimum, 1 per 15 occupants	2 minimum, 1 per 6 occupants	2 minimum, 1 per 6 occupants
Each Family Shelter	1, if provided		1	

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-095 Handwashing and bathing facilities.** An operator ~~((must))~~ shall:

(1) Provide ~~((one handwash sink for each family dwelling unit or for every six persons in centralized facilities. Handwash sinks must be adjacent to toilets))~~ handwashing and bathing facilities adequate for the maximum capacity of the TWH according to Table 1 of WAC 246-358-093.

(2) ~~((Provide))~~ Meet the following general requirements for all handwashing and bathing facilities:

(a) Provide cleanable, nonabsorbent waste containers;

(b) Provide all showers, baths, or shower rooms with screened floor drains, to remove wastewater;

(c) Maintain fixtures and drains in good working order;

(d) Shower room walls and partitions must be smooth and nonabsorbent; and

(e) All showers separated by partitions must ensure privacy.

(3) Meet the following requirements for common facilities:

(a) One handwash sink for every six occupants. Of these handwash sinks, locate one handwash sink adjacent to each toilet;

(b) Provide one showerhead ~~((for each family dwelling unit or))~~ for every ten ~~((persons in centralized facilities.~~

~~((3) Provide))~~ occupants;

(c) Provide one "service sink" in each building used for ~~((centralized))~~ common laundry, hand washing, or bathing~~((:~~

~~((4) Provide));~~

(d) Provide sloped, coved floors of nonslip impervious materials with floor drains~~((:~~

~~((5) Ensure shower room walls are smooth and nonabsorbent to the height of four feet. If used, partitions must be smooth and nonabsorbent to the height of four feet.~~

~~((6) Provide all showers, baths, or shower rooms with floor drains to remove wastewater.~~

~~((7) Provide cleanable, nonabsorbent waste containers.~~

~~((8));~~

(e) Shower and bathing facilities must provide privacy from the opposite sex and the public;

(f) Maintain ~~((centralized))~~ common bathing and handwashing facilities in a clean and sanitary condition, cleaned at least daily~~((:~~

~~((9));~~ and

(g) Bathing and shower facilities be available at all times during operation of the TWH.

(4) Meet the following requirements for family shelters:

(a) At least one handwash sink per family shelter. If an operator provides a family shelter with a toilet, the handwash

sink must be located in the toilet room or immediately adjacent to the toilet room; and

(b) Request occupants of family ~~((dwelling units))~~ shelters to maintain bathing and handwashing facilities in a clean and sanitary condition.

~~((10) Ensure shower facilities provide privacy from the opposite sex and the public.~~

~~((11) Make showers and bathing facilities available when needed.))~~

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-125 Cooking and food-handling facilities.** The operator ~~((must))~~ shall:

(1) Provide sanitary facilities for storing and preparing food.

(2) Provide all food-handling facilities with:

(a) Enclosed or screened cooking and food-handling facilities for all occupants~~((The operator must provide adequate tables and seating for occupants.~~

~~((1) If cooking facilities are located in dwelling units, the operator must provide:~~

~~((a) An operable cook stove or hot plate with at least one cooking surface for every two occupants));~~

~~((b) Enclosed or screened eating facilities with tables and seating for a minimum of seventy percent of the occupants;~~

~~((c) If provided, hotplates that are compliant with WAC 296-307-16140(2);~~

~~((d) A sink with hot and cold running potable water under pressure;~~

~~((e))~~ (e) At least two ~~((2))~~ cubic feet of dry food storage space per occupant;

~~((f))~~ (f) Nonabsorbent~~((:))~~ and easily cleanable food preparation ~~((counters))~~ surfaces situated off the floor;

~~((g))~~ (g) Mechanical refrigeration conveniently located and able to maintain a temperature of ~~((forty five))~~ forty degrees Fahrenheit or below, with at least two ~~((2))~~ cubic feet of storage space per occupant;

~~((h))~~ (h) Fire-resistant, nonabsorbent, nonasbestos, and easily cleanable wall coverings adjacent to cooking areas;

~~((i))~~ (i) Nonabsorbent, easily cleanable floors; ~~((and~~

~~((h))~~ (j) Adequate ventilation for cooking facilities; and

~~((k))~~ (k) Cooking facilities, including fixtures and drains, maintained in good working order.

~~((2))~~ (3) In common food-handling facilities, ~~((the operator must))~~ provide:

(a) A room ~~((or))~~, building, or space within a building, adequate in size, separate from any sleeping quarters, for occupants to prepare and cook their own food;

(b) No direct openings to living or sleeping areas from the common food-handling facility;

(c) An operable cook stove or electric hot plate with (at least one cooking surface for every four occupants, or four cooking surfaces for every two families;

~~(d) Sinks with hot and cold running potable water under pressure;~~

~~(e) At least two (2) cubic feet of dry food storage space per occupant;~~

~~(f) Nonabsorbent, easily cleanable food preparation counters situated off the floor;~~

~~(g) Mechanical refrigeration conveniently located and able to maintain a temperature of forty five degrees Fahrenheit or below, with at least two (2) cubic feet of storage space per occupant;~~

~~(h) Fire-resistant, nonabsorbent, nonasbestos, and easily cleanable wall coverings adjacent to cooking areas;~~

~~(i) Nonabsorbent, easily cleanable floors; and~~

~~(j) Adequate ventilation for cooking facilities.~~

(3) The operator must)) four cooking surfaces for every ten occupants through any combination of cooking surfaces, burners, or one foot in length of burner surface.

(4) In family shelter food-handling facilities, provide an operable cook stove or electric hotplate with four cooking surfaces through any combination of cooking surfaces, burners, or one foot in length of burner surface.

(5) Ensure that ((centralized)) common dining hall facilities comply with chapter 246-215 WAC, Food service.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-135 Cots, beds, bedding, and personal storage.** The operator ~~((must))~~ shall:

(1) Provide beds, cots, or bunks furnished with clean mattresses in good condition for the maximum occupancy approved by the department of health ~~((or health officer))~~ for operator-supplied housing, except that cots may only be used in tents for cherry harvest camps.

(2) Ensure cots are sturdy and stable and without:

(a) Mold;

(b) Rips or tears;

(c) Insect infestation;

(d) Stains from bodily fluids; or

(e) Rodents or rodent droppings.

(3) In TWH other than cherry harvest camps, provide beds and bunks with clean mattresses in good repair and without:

(a) Mold;

(b) Rips or tears;

(c) Insect infestation;

(d) Stains from bodily fluids; or

(e) Rodents or rodent droppings.

(4) Maintain bedding, if provided by the operator, in a clean and sanitary condition.

(5) Locate all beds and bedding at least thirty-six inches from cooking surfaces.

((3)) (6) Provide ((sufficient)) a minimum of twelve inches of clearance between each bed ((or)), bunk, or cot and

the floor ~~((or provide a commercially available cot, bed or bunk)).~~

~~((4)) (7) Allow space to separate beds or cots laterally and end to end by at least thirty-six inches when single beds or cots are used.~~

~~((5)) (8) Meet the following requirements when bunk beds are used:~~

~~(a) Allow space to separate beds laterally and end to end by at least forty-eight inches;~~

~~(b) Maintain a minimum space of twenty-seven inches between the upper and lower bunks;~~

~~(c) Provide safety railing on each exposed side of top bunks designed to prevent the occupant from falling out; and~~

~~((e)) (d) Prohibit triple bunks.~~

~~((6)) (9) Provide all occupants suitable storage space including personal storage ((facilities)) space for clothing and personal articles ((in each room used for sleeping)). Storage space must be located in the occupant's room used for sleeping. All or a portion of the storage space provided each temporary worker must be enclosed and lockable, such as a wall locker or floor locker.~~

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-145 First aid and safety.** The operator ~~((must))~~ shall:

(1) Comply with chapters 15.58 and 17.21 RCW, chapter 16-228 WAC, chapter 296-307 WAC, Parts I and J, and pesticide label instructions when using pesticides in and around the ~~((housing))~~ TWH.

(2) Prohibit, in the ~~((housing))~~ TWH area, the use, storage, ~~((and))~~ or mixing of flammable, volatile, or toxic substances other than those intended for household use.

(3) Provide readily accessible first-aid equipment.

(4) Ensure that a first aid ~~((qualified))~~ trained person is readily accessible to administer first aid at all times.

(5) ((Store or)) Provide a means of communication on the TWH site so occupants can contact the first-aid trained person or emergency services within a reasonable amount of time.

(6) Remove unused refrigerator units or other appliances to prevent access by children.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-155 Refuse disposal.** The operator ~~((must))~~ shall:

(1) Comply with local sanitation codes for removing and disposing of refuse from ~~((housing))~~ TWH areas.

(2) Protect against rodent harborage, insect breeding, and other health hazards while storing, collecting, transporting, and disposing of refuse.

(3) Store refuse in fly-tight, rodent-tight, impervious, and cleanable containers, or in single-use containers.

(4) Keep refuse containers clean.

(5) Provide ((a)) at least one container ((on a wooden, metal, or concrete stand)) for each dwelling unit that is:

(a) Located within one hundred feet of each dwelling unit;

(b) Placed on a solid, flat and level stand made of wood, metal, or concrete; and

(c) Secured to prevent falling over or spilling.

(6) Empty refuse containers at least twice each week, and when full.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-165 Insect and rodent control.** The operator ~~((must))~~ shall take effective measures to prevent and control insect and rodent infestation.

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-358-175 Disease prevention and control.** The operator ~~((must))~~ shall:

(1) Report immediately to the local health officer the name and address of any occupant known to have or suspected of having a communicable disease.

(2) Report immediately to the local health officer:

(a) Suspected food poisoning;

(b) Unusual prevalence of fever, diarrhea, sore throat, vomiting, or jaundice; ~~((or))~~

(c) Productive cough~~((;))~~ or

(d) When weight loss is a prominent symptom among occupants.

(3) Prohibit any individual with a communicable disease from preparing, cooking, serving, or handling food, food-stuffs, or materials in dining halls.

AMENDATORY SECTION (Amending WSR 14-12-049, filed 5/30/14, effective 7/1/14)

**WAC 246-358-990 Fees.** (1) **Licensing fee.** An operator shall submit to the department of health a licensing fee according to Table 1 of this section prior to the department of health issuing a ~~((temporary worker housing (c)))~~ TWH~~((c))~~ operating license. Except as provided in subsections (2) and (3) of this section, the licensing fee consists of two portions:

(a) An administrative portion according to Table 1 of this section; and

(b) A facility portion, based on the maximum occupancy of the TWH, according to Table 1 of this section. For purposes of this section, maximum occupancy is the greatest number of occupants that reside in the TWH during the calendar year.

(2) **Self-survey program.** If an operator is a participant of the self-survey program described in WAC 246-358-027, the operator may pay the administrative portion only of the licensing fee according to Table 1 of this section. The operator may pay this fee only during the years the operator is approved to conduct the self-survey.

(3) **Minimum licensing fee.** The minimum licensing fee is ninety dollars.

~~((3))~~ (4) **Late fees.** The department of health may charge a late fee according to Table 1 of this section in addition to the licensing fee when:

(a) For a new license, the application and licensing fee are not received by the department of health at least forty-five days prior to the new TWH opening operation date;

(b) For a previously licensed TWH, the application and licensing fee are not received by the department of health by February twenty-eighth of the year the operator intends to operate the TWH.

~~((4))~~ (5) **Occupancy increase adjustment.**

(a) If, at any time, the operator or the department of health determines there are more occupants than the maximum occupants identified on the application for an operating license according to WAC 246-358-025, the operator shall submit additional funds to the department of health in the amount of four dollars for each additional occupant.

(b) Funds must be submitted to the department of health within thirty calendar days of the operator being made aware of the discrepancy.

(c) Additional occupants accounted for in this subsection may not contribute to exceeding the maximum capacity of the TWH according to WAC 246-358-029.

(6) **Refunds.**

~~((The department of health will refund fees paid by the operator if:~~

~~((i)))~~ The operator shall submit~~((s))~~ a written request to the department of health for ~~((a))~~ any refund; and

~~((ii)))~~ (b) If the operator provides documentation to the department of health that the TWH was not occupied during the license period(-

~~((b)))~~, the department of health shall refund fees paid by the operator according to the following conditions:

(i) The department of health will refund ~~((two-thirds of))~~ the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no pre-occupancy inspection has been performed by the department of health(-

~~((e)))~~; or

(ii) The department of health will refund ~~((one-third))~~ two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a pre-occupancy inspection has been performed by the department of health.

~~((4))~~ (c) The department of health will not refund applicant licensing fees under ~~((the following conditions))~~ subsection (1)(b) of this section if:

(i) The department of health has performed more than one on-site inspection for any purpose; or

(ii) One year has elapsed since a license application was received by the department of health, but no license was issued because the applicant failed to complete requirements for licensure.

~~((5))~~ **Technical assistance fee.** ~~The department of health may charge an operator for each technical assistance visit conducted by the department of health when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990, Table 1.~~

~~((6))~~ (d) If the operator provides documentation to the department of health of fewer occupants than the maximum occupants identified on the application for an operating license according to WAC 246-358-025, the department of health shall refund fees paid by the operator according to following conditions:

(i) The department of health will refund the amount of four dollars for every occupant fewer than the maximum number of occupants identified on the application, if an application has been received and no preoccupancy inspection has been conducted;

(ii) The department of health will refund the amount of two dollars for every occupant fewer than the maximum number of occupants identified on the application, if an application has been received and a preoccupancy inspection has been conducted; or

(iii) The department of health will not refund any amount under subsection (1)(b) of this section if the department of health has performed more than one on-site inspection for any purpose.

(7) TWH civil fine. The department of health may assess an operator a civil fine according to RCW 43.70.335.

**Table 1  
Fees, Regular Temporary Worker Housing**

Fee Type	Administrative Portion	Facility Portion
Licensing	\$50	\$4 per occupant, at maximum annual occupancy
	(\$90 minimum total fee)	
<u>License Self-Survey Program</u>	<u>\$50</u>	<u>\$0</u>
Late	\$100 (Late fees are in addition to licensing fees)	

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 246-358-100 Toilet facilities.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-001 Purpose and scope.** (1) **Purpose.** The purpose of this chapter is to provide minimum requirements to safeguard the health and general welfare of occupants of temporary worker housing (TWH) by regulating and controlling the design, construction, materials, location and maintenance of all buildings and structures within the authority of chapter 246-358 WAC (the ~~((temporary worker housing))~~ TWH rules) and this chapter.

(2) **Scope.** This chapter implements the requirements established by RCW 70.114A.081 and 43.70.337 to provide minimum construction requirements for new, relocated, existing or altered buildings and structures or portions thereof intended for use as ~~((temporary worker housing))~~ TWH. Such buildings and structures must be licensed by the Washington state department of health under chapter 246-358 WAC and designated as "temporary worker housing ~~((occupancies))~~." Buildings and structures which are not licensed, inspected

and approved by the department of health must meet the provisions of the state building code under the local authority having jurisdiction and local ordinances.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-005 Applicability.** (1) This chapter applies only to temporary worker housing as ~~((=~~ ~~(a))~~ defined in RCW 43.70.334 through 43.70.340 and chapter 70.114A RCW ~~((=and~~

~~(b) Licensed under chapter 246-358 WAC (temporary worker housing rules) according to RCW 43.70.340 (Farm worker housing inspection fund fee on labor camp operating license))~~.

(2) TWH meeting the requirements of subsection (1) of this section must:

(a) Be located on a rural worksite; and

(b) Comply with:

(i) Chapter 246-358 WAC (TWH rules); and

(ii) The electrical code, chapter 296-46B WAC.

(3) Existing structures built as nonresidential buildings, according to the state building code, may be licensed as ~~((temporary worker housing))~~ TWH by complying with the specific requirements of WAC 246-359-600, alternate construction, and approved under the authority of this chapter.

~~((=))~~ (4) Alterations to residential housing constructed according to the state building code and approved by the authority having jurisdiction must ~~((apply to))~~ comply with:

(a) The authority having jurisdiction for issuing building permits; ~~((or))~~ and

(b) ~~((The department in compliance with))~~ This chapter.

~~((4))~~ Temporary worker housing meeting the requirements of subsection (1) of this section must:

(a) Be located on a rural worksite; and

(b) Comply with:

(i) WISHA labor camp provisions;

(ii) Chapter 246-358 WAC (temporary worker housing rules); and

(iii) The electrical code, chapter 296-46 WAC.)

(5) ~~((temporary worker housing))~~ TWH built in compliance with this chapter is exempt from state building code accessibility laws, RCW 19.27.031(5).

(6) Temporary worker housing built in compliance with this chapter which is subsequently converted to another use becomes subject to all local requirements for such use as enforced by the authority having jurisdiction.

(7) This chapter does not apply to:

(a) Housing built for use by the general public which is governed by chapter 59.18 RCW (Residential Landlord-Tenant Act) or chapter 59.20 RCW (Mobile Home Landlord-Tenant Act);

(b) Factory assembled structures as defined in this chapter, except for the requirements in subsection (8) of this section; and

(c) The construction of structures governed by the state building code and enforced by the authority having jurisdiction.



(8) This chapter is limited to issuing a construction permit for factory assembled structures to meet the following requirements:

- (a) On-site installation; and
- (b) Inspection of the site, foundation, and hook-ups, including, but not limited to: Potable water, sewage disposal systems, or gas connections.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-010 Definitions.** ~~((For the purposes of this chapter,))~~ The following ((words and phrases will have the following meanings)) definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Alter" or "alteration" means any change, major repair, addition or modification in construction.

(2) "Architect" means an individual licensed by chapter 18.08 RCW to practice in the state of Washington.

(3) "Cherry harvest camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers or TWH operators for their use while employed for the harvest of cherries in the state of Washington.

(4) "Common" means a shared facility provided by the operator for all occupants of the TWH.

(5) "Construction permit" means a permit issued by the department of health which allows the applicant to construct structures according to this chapter.

~~((4))~~ (6) "Construction standard" means temporary worker housing construction code as defined in RCW 70.114A.081.

~~((5))~~ "Department" means the Washington state department of health.

(6) ~~"Dormitory" means a building or portion of a building, designed to provide group sleeping accommodations for temporary workers.)~~

(7) "Dining hall" means a cafeteria-type eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, by occupants.

(8) "DOSH" means division of occupational safety and health, chapter 49.17 RCW administered by the department of labor and industries.

(9) "Dwelling unit" means a shelter, tent, building, or portion of a building, ~~((for a family that))~~ which may include cooking~~(;)~~ and eating~~(, sleeping and sanitation))~~ facilities ~~((and))~~ that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other ((nonsleeping)) sleeping areas and ((common-use)) common areas. As used in this subsection, "physically separated" means a physical wall separating rooms.

~~((8))~~ (10) "Engineer" means an individual licensed by chapter 18.43 RCW to practice in the state of Washington.

~~((9))~~ (11) "Factory assembled structures" or "FAS" means those structures under the authority of chapter 43.22 RCW and chapters 296-150F through 296-150T WAC including:

- (a) Mobile and manufactured homes;
- (b) ~~((Commercial coaches;~~
- ~~(e)))~~ Recreational vehicles;
- ~~((d))~~ (c) Recreational park trailers; and
- ~~((e))~~ (d) Factory-built housing which is any structure designed for human occupancy other than a manufactured or mobile home, where the structure or any room of which is either entirely or substantially prefabricated or assembled at a place other than a building site.

~~((10))~~ "Family" means two or more persons related by blood or marriage or a group of persons living together in a dwelling unit.

~~((11))~~ (12) "Family shelter" means a dwelling unit with sleeping facilities for up to fifteen occupants that may include toilet or cooking facilities. If services such as bathing, food-handling, or toilet facilities are provided in the family shelter, they are for the sole use of the occupants of the family shelter.

(13) "Floor area" is the area included within the surrounding exterior walls of a building or portion thereof with a minimum of seven foot ceilings.

~~((12))~~ (14) "Food-handling facility" means an enclosed area provided by the operator for occupants to prepare their own food, and may be within a family shelter or common facility.

(15) "Habitable room" or "habitable space" is a room or space in a structure ~~((with a minimum seven foot ceiling))~~ used for living, sleeping, eating, or cooking. ~~((Bathrooms, toilet compartments))~~ Bathing facilities, toilet facilities, closets, halls, storage or utility space, and similar areas, are not considered habitable ((space)) rooms.

~~((13))~~ (16) "Jurisdiction having authority" means, a local county or city building or health or zoning or public works department or state department of health or ecology or labor and industries, etc.

~~((14))~~ "Labor camp" means the temporary labor camp requirements of WAC 296-307-160 of the Washington Industrial Safety and Health Act of 1993, chapter 49.17 RCW as amended September 10, 1994.

~~((15))~~ (17) "Livestock" means horses, cows, pigs, sheep, goats, poultry, etc.

(18) "Occupant" means a temporary worker or a person who resides with a temporary worker at ~~((a housing site))~~ the TWH.

~~((16))~~ "State building code" means the building code, plumbing code, mechanical code, and fire code as referenced under RCW 19.27.031.

(17) "Special inspector" means a person paid at the applicant's expense to conduct special inspections when the department determines the required inspections are not sufficient.

~~((18))~~ (19) "Operator" means a person holding legal title to the land on which the TWH is located. If the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the TWH.

(20) "Recreational park trailers" means a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use, that meets the following criteria:

- (a) Built on a single chassis, mounted on wheels;

(b) Having a gross trailer area not exceeding four hundred square feet (37.15 square meters) in the set-up mode;

(c) Certified by the manufacturer as complying with American National Standards Institute (ANSI) standard A119.5; and

(d) Compliant with chapter 296-150P WAC.

(21) "Recreational vehicle" means a vehicular type unit that is compliant with chapter 296-150R WAC and primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive of power or is mounted on, or towed by, another vehicle. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers, but do not include pickup trucks with camper shells, canopies, or other similar coverings.

(22) "Special inspector" means a person paid at the applicant's expense to conduct special inspections when the department determines the required inspections are not sufficient.

(23) "State building code" means the building code, plumbing code, mechanical code, and residential and fire code as referenced under RCW 19.27.031.

(24) "Temporary worker" means a person employed intermittently and not residing year-round at the same site.

~~((19))~~ (25) "Temporary worker housing (TWH)" or "(FTH) housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy (~~and includes "labor camps" under RCW 70.54.110.~~)

(20) "Temporary worker housing (FTH) occupancies" means buildings, structures or portions thereof used for occupancy by temporary workers.

(21) "WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the state of Washington department of labor and industries. Temporary labor camp requirements of WAC 296.307.16001 are in force for temporary labor camps).

(26) "Tent" means an enclosure or shelter used at a cherry harvest camp and constructed of fabric or pliable material composed of rigid framework to support a tensioned membrane that provides a weather barrier.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-020 Powers and duties of the department of health.** The department of health:

(1) Is authorized and directed to enforce all the provisions of this chapter, according to the laws as enacted by the Washington state legislature.

(2) Has the power to issue written interpretations of this chapter as long as the interpretations are in conformance with the intent and purpose of this chapter and the regulated community is informed of these interpretations.

(3) May adopt and enforce rules and supplemental regulations to clarify the application of the provisions of this chapter consistent with the intent and purpose of this chapter.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-030 Cooperation with the department of health—Right of entry.** (1) **Department of health authority.** The department has authority to enter any building or area used for ~~((temporary worker housing))~~ TWH, at reasonable times to:

(a) Inspect the site for compliance with this chapter and related standards; and

(b) Determine, based on reasonable cause, if a building or condition on the premises is unsafe, dangerous or hazardous.

(2) **Refusal of entry.** When the ~~((owner or person having lawful control or supervision authority))~~ operator refuses entry or has required a warrant, the department of health will seek remedies provided by law to secure entry to the ~~((temporary worker housing))~~ TWH site.

(3) **Occupied ~~((temporary worker housing))~~ TWH.** The department of health must present credentials to the occupant and request the right to enter a ~~((dormitory or))~~ dwelling unit when ~~((temporary workers))~~ occupants are in residence.

(4) **Unoccupied ~~((temporary worker housing))~~ TWH.** When a ~~((dormitory or))~~ dwelling unit does not have ~~((temporary workers))~~ occupants in residence, the department of health must make a reasonable effort to locate the ~~((owner or person having lawful control or supervision))~~ operator of the ~~((temporary worker housing))~~ TWH to request entry.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-040 Appeals.** (1) The department of health may deny, suspend, modify, or revoke a permit in any case in which it finds that there has been a failure or refusal to comply with the requirements of chapter 70.114A RCW or this chapter.

(2) The ~~((department's))~~ department of health's notice of a denial, suspension, modification, or revocation of a license will be consistent with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest a decision.

(3) An applicant ~~((who contests a))~~ may request a hearing to contest the department of health permit decision ~~((must, within twenty-eight days of receipt of the decision:~~

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Administrative Hearings Unit, Department of Health, PO Box 47879, Olympia, WA 98504-7879; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

~~((iii) A copy of the contested department decision)).~~ The request must meet the following requirements:

(a) Be in writing;

(b) State the basis for contesting the permit decision;

(c) Include a copy of the department of health's notice of denial;

(d) Be served on and received by the department within twenty-eight days of the applicant or operator receiving the denial; and

(e) Be served in a manner which shows proof of receipt at the following address:

Adjudicative Clerk Office  
310 Israel Rd. S.E.  
Olympia, WA 98504-7879.

(4) The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If a provision in this chapter conflicts with chapter 246-08 or 246-10 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-050 Minor variances to the (~~temporary worker housing~~) TWH construction standard.** An applicant may apply for a minor variance from the requirements of this chapter by filing a written request with the department. As used in this section, a minor variance means an alternative method of construction or design that must achieve the same result as the requirements of this chapter and protects the health and safety of the occupants.

(1) **Responsibilities of applicant.** If requesting a minor variance, an applicant must:

(a) Submit the following information in writing:

(i) The specific requirement or requirements from which the variance is requested;

(ii) Adequate justification that the variance is needed to obtain a beneficial use of the housing or to prevent a practical difficulty; and

(iii) How the variance will achieve the same result as the requirement and any specific alternative measures to be taken to protect the health and safety of the occupants(;).

(b) Pay a fee set by the department of health according to WAC 246-359-990, Table I; and

(c) Follow the process stated in WAC 246-359-060, alternate construction, when applicable.

(2) **Department of health response.** The department of health will provide a written response to the applicant within forty-five days of receipt of the minor variance request. The written response will state the acceptance or denial of the variance, including the reasons for the (~~department's~~) department of health's decision. At a minimum the department of health will make its decision based on:

(a) The applicant's request as described in subsection (1) of this section;

(b) Research into the variance request; and

(c) Expert advice.

(3) **Applicant's response to denials.** According to chapter 34.05 RCW the applicant has twenty-one days after receiving the (~~department's~~) department of health's written denial, of the variance request, to contest the decision.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-060 Architect or engineer of record and plan submittal responsibilities.** (1) The department of health will require construction documents to be prepared by an architect or engineer for any construction described under:

(a) WAC 246-359-600, alternate construction;

(b) WAC 246-359-710, installation requirements for factory assembled structures;

(c) WAC 246-359-720, installation requirements for manufactured homes.

(2) The applicant must provide the name of the architect or engineer of record on the construction permit application.

(3) The applicant is responsible to notify the department of health, in writing, when the architect or engineer of record changes or is no longer able to review and coordinate all the necessary submittal documents for compatibility with the design of the building.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-070 Application and construction documents required for plan review.** (1) To have construction documents reviewed the applicant must submit to the department of health:

(a) A completed and signed application, on a form provided by the department of health, for each structure (individual building);

(b) The required plan review fee, according to WAC 246-359-990;

(c) Two sets of construction documents, on substantial paper, including:

(i) Plans and diagrams drawn to scale;

(ii) Specifications;

(iii) Computations; and

(iv) Other documents needed to determine if the provisions of this chapter and related state rules are being met, for example solid waste disposal management plan or soil testing;

(d) When applicable, manufacturer's installation instructions as required for factory assembled structures, WAC 246-359-710, and manufactured homes, WAC 246-359-720;

(e) Proof of an adequate approved potable water supply to meet the intended use of the (~~temporary worker housing~~) TWH and which meets the requirements of chapters 246-290 and 246-291 WAC (water rules) and (~~WISHA~~) WAC 296-307-16130;

(f) Copy of the on-site sewage system permit from the jurisdiction having authority;

(g) Proof of a water right permit from the department of ecology, when required;

(h) Proof of current approval from labor and industries, when required, for factory assembled structures; and

(i) Proof the project meets zoning requirements as established for height, setback and road access under the authority having jurisdiction.

(2) The plans and specifications must clearly identify in detail the location, nature and extent of the work proposed.

(3) The department of health will only begin plan review when:

(a) All the documents required in this section are submitted; and

(b) The plan review fee is received.

(4) The department of health can refund up to eighty percent of the plan review fee if the applicant submits a written request to stop the project before the plan review process is complete. Refunds are based on the plan review fee paid as required by Table I in WAC 246-359-990 and the amount of plan review completed as determined by the department.

(5) The department of health will charge an additional plan review fee according to Table I in WAC 246-359-990, when:

(a) Site inspections determine the project has not been built according to the approved construction documents and an additional plan review is required; or

(b) Revised construction documents are submitted after approval of the initial construction documents.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-080 Plan review approval and expiration of plan approval.** (1) The department of health will notify the applicant in writing:

(a) With a "plan review approval letter" when the construction documents meet the requirements of this chapter; or

(b) With a "not approved letter" when the construction documents do not meet the requirements of this chapter and a resubmission of plans or documents is required by the department of health for approval.

(2) The applicant has a period of one year from the date of the plan review approval letter to submit the construction permit fee or the plan review approval will expire.

(3) The department of health will destroy all construction documents related to the project when the plan review approval expires.

(4) To renew action on an expired plan review the applicant must resubmit the construction documents and pay a new plan review fee to the department of health as required in WAC 246-359-990.

(5) Construction documents modified after the department of health issues approval must be resubmitted for approval with an additional fee as specified in WAC 246-359-070.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-090 Issuing and maintaining a construction permit.** (1) The department of health will issue a construction permit when:

(a) Construction documents are approved according to WAC 246-359-080; and

(b) Permit and inspection fees are paid according to WAC 246-359-990.

(2) Construction can begin after the applicant is issued a construction permit by the department of health;

(3) The following conditions, at a minimum, must be met during construction:

(a) The "inspection record card" must be posted in a visible location at the worksite and be readily accessible to the inspector at the worksite; and

(b) The approved plans must be readily available to the inspector during all scheduled inspections.

(4) The department of health will void the permit and the applicant's right to continue construction when:

(a) The plans are changed, modified or altered without prior approval by the department of health as specified in WAC 246-359-080;

(b) Any deviation in construction or design is made from the approved plans; and

(c) The inspection record card and the approved plans are not readily and easily available to the inspector.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-100 Expiration and extension of construction permits.** (1) **Permit expiration.** The permit will be considered null and void one year from the date the permit was issued if the applicant:

(a) Has not initiated the work authorized by the permit;

(b) Suspends or abandons the authorized work at any time after the work has begun by not calling for the next required inspection within one year after a required inspection;

(c) Has not applied for a time extension according to the requirements in subsection (2) of this section.

(2) **Permit extension.** The applicant can apply for a one time only extension when the request is made in writing to the department of health:

(a) Before the permit expires;

(b) Stating reasons satisfactory to the department of health;

(c) The original plans and specifications will be used and no changes have been made or are planned to be made; and

(d) The applicable standards have not changed.

(3) Any applicant who does not apply for an extension according to the requirements in this section cannot resume work unless the applicant:

(a) Resubmits plans according to WAC 246-359-070; and

(b) Pays full plan review and permit fee according to WAC 246-359-990.

(4) The department of health can refund up to eighty percent of the construction permit fee if the applicant submits a written request before construction starts. The refund will be determined by the department of health based on the permit fee paid as required by Table I in WAC 246-359-990.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-110 Construction without a permit.** (1) Construction of ~~((temporary worker housing))~~ TWH allowed by this chapter can only begin after a construction permit has been issued by the department of health as described in WAC 246-359-090.

(2) A person who begins any work without a construction permit will be subject to an investigation and an investi-

gation fee as described in WAC 246-359-990 whether or not a permit is then or subsequently issued. An investigation and investigation fee will be in addition to any other "additional" inspections or fees described in WAC 246-359-990.

(3) The department of health will determine if the person initiating building or work without a required construction permit is:

(a) Under the authority of this chapter and must follow the construction permit process defined in this chapter; or

(b) Found to be outside the authority of this chapter and must be reported to the jurisdiction having authority and the prosecuting attorney of that jurisdiction.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-120 Required inspections.** The department of health or its designee, when notified by the applicant in writing has authority to conduct all of the inspections described in this section.

(1) **Site/foundation inspection.** To be made after excavations for footings are complete, and after any required forms and reinforcing steel are in place, **but** before any concrete has been placed.

(2) **Concrete slab or under-floor inspection.** To be made after all in-slab or under-floor building service equipment, conduit, piping accessories and other ancillary equipment items are in place, **but** before any concrete is placed or floor sheathing installed, including the subfloor.

(3) **Framing/rough-in inspection.** To be made after the roof, all framing, wall, and roof members are in place including fire blocking and bracing, heating, and rough electrical and plumbing has been installed.

(4) **Final inspection.** To be made after finish grading and the building is completed and ready for occupancy.

(5) **Additional inspections.** To be made after the applicant has received notification that an additional inspection or inspections are necessary. The department of health will conduct the following additional inspections to:

(a) Assure the requirements of this chapter are being met, specifically to verify:

(i) Stop work orders, WAC 246-359-130, are adhered to;

(ii) Approved plans, according to WAC 246-359-080, have not been altered without prior department of health approval; and

(iii) A construction permit has been issued according to WAC 246-359-090;

(b) Determine compliance with other required laws or ordinances necessary to enforce this chapter; and

(c) Determine if an approved variance is being followed, when verification cannot be determined through the inspections described in subsections (1) through (4) of this section.

(6) **Special inspections.** To be made by a special inspector when the applicant is building to the alternate construction standards and the inspections required in subsections (1) through (5) of this section are not sufficient to determine compliance with the alternate construction methods.

(7) **Reinspections.** Reinspections will be conducted and a reinspection fee charged for each reinspection conducted for the following reasons:

(a) Work for which an inspection is requested and is not complete;

(b) Required corrections called for have not been made;

(c) The inspection record card is not posted or readily available at the worksite;

(d) The approved plans are not readily available to the inspector; and

(e) The inspector's request for equipment or information was not provided at the site preventing the inspector from conducting the scheduled inspection.

**(8) FAS inspections.**

(a) Inspections of FAS site foundations will be conducted at the following events, where applicable:

(i) After excavation for footings or after foundation stem walls are completed;

(ii) After required forms and reinforcing steel are in place for footings and foundation stem walls;

(iii) Before concrete has been poured; and

(iv) At the following stages during concrete slab or under-floor inspection:

(A) After all slab, runner, or under-floor building service material, such as conduit, piping, accessories and other ancillary equipment items are in place; and

(B) Before any concrete has been cured or floor sheathing installed, including the subfloor.

(b) Inspections of unit settings, anchoring and hook-ups include, but are not limited to, potable water, sewage disposal systems, or gas connections. Inspections will be conducted:

(i) After the FAS unit(s) has been delivered; and

(ii) Include bracing, anchoring, any below floor ducting installation, and rough electrical and plumbing.

(c) Final inspections will be conducted after finish grading and the building is completed and ready for occupancy. Final inspections will determine if required ventilation, water, septic, electrical, and, if installed, gas systems are installed, connected, and operable.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-130 Stop work orders.** (1) The department of health, upon notifying the applicant in writing, will order work to be stopped when the work being done is found to be contrary to:

(a) The approved plans;

(b) The requirements of this chapter; or

(c) Other laws or ordinances required and necessary to enforce this chapter at a minimum as stated in WAC 246-359-005(4), applicability.

(2) If the department of health finds work being done contrary to subsection (1) of this section the department of health, in addition to notifying the applicant in writing, will post a "stop work order" on the construction site.

(3) The applicant is prohibited from continuing any work or causing any work to be performed until solutions to rectify the conditions causing the stop work order have been approved by the department of health.

(4) The department of health will document removal of the stop work order by:

(a) Providing the applicant written authorization to proceed with the work; and

(b) Removing or causing the "stop work order" to be removed.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-140 Certificate of completion.** (1) The department of health will issue a "certificate of completion" when:

(a) The inspector determines the project is completed in compliance with the approved construction documents;

(b) The department of health determines the project is in compliance with this chapter and related rules including:

(i) Proof the potable water supply is approved and adequate to meet the requirements of chapters 246-290 and 246-291 WAC (water rules) and ~~((WISHA))~~ DOSH;

(ii) Proof the sewage disposal system has been approved by the jurisdiction having authority, for example, city or county health or public works department, state department of health or state department of ecology; and

(iii) Proof the electrical system has been approved by the jurisdiction having authority, for example, Washington state department of labor and industries or the city building or planning departments.

(2) ~~((Approved to apply))~~ **Applying for a license.** The applicant ~~((can))~~ may apply for a ~~((temporary worker housing))~~ TWH license according to chapter 246-358 WAC at any time after receiving a certificate of completion from the department of health. The applicant must receive a TWH operating license prior to operating the TWH site.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-150 Site requirements.** (1) The site used for ~~((temporary worker housing))~~ TWH must be:

(a) Adequately drained and not subject to periodic flooding;

(b) Located a distance of at least two hundred feet from all surface water;

(c) Located so the drainage from and through the ~~((temporary worker housing))~~ TWH will not endanger any domestic or public water supply;

(d) Graded, ditched, and made free from depressions which allow water to become a nuisance;

(e) Adequate in size to prevent overcrowding of necessary structures; and

(f) Located on a slope which is not more than one unit (inches, feet, etc.) vertical per twenty units horizontal.

(2) Any structure used for sleeping or preparing and serving food must be located at least five hundred feet from any area in which livestock is kept.

(3) All ~~((temporary worker housing))~~ TWH structures must be located a minimum of ten feet from any other structure or building.

(4) The TWH must have adequate lighting to provide safe passage for occupants to travel between TWH facilities.

(5) Common toilet facilities must meet the following:

(a) When a toilet is in a separate building from the sleeping room, the toilet room must be at least one hundred feet but not more than two hundred feet from the door of each dormitory unit;

(b) No person has to pass through a sleeping room to reach common toilet facilities;

(c) Comply with the toilet ratios identified in WAC 246-359-560;

(d) If the TWH will provide for occupancy by both sexes, there must be separate toilet rooms for each sex that meet the required ratio as defined in Table 1 of WAC 246-358-093 and separate facilities by solid walls or partitions extending from the floor to the roof or ceiling when facilities for each sex are located in the same building; and

(e) Common toilet facilities used for both men and women must:

(i) Have separate and distinct entrances on separate walls;

(ii) Must be separated by at least twenty feet; and

(iii) Locate the women's entrance to be visible from and oriented toward the majority of the TWH dwelling units.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-160 ~~((Temporary worker housing))~~ TWH minimum floor area and ceiling height.** (1) Rooms used only for sleeping purposes ~~((only))~~ must have a minimum of fifty square feet of floor space for each occupant.

(2) Rooms used for cooking, living, and sleeping must have a minimum of ~~((seventy))~~ one hundred square feet ~~((for the first occupant and fifty square feet for each additional occupant))~~ per temporary worker. Sanitary facilities shall be provided for storing and preparing food.

(3) All habitable rooms and spaces including halls ~~((, bathrooms))~~ and toilet ~~((compartments))~~ rooms must have at least a seven foot clear height from the floor to the ceiling or exposed ceiling framing.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-180 Concrete footings and foundations for wood framed construction.** (1) Concrete used for footings and foundations must have a minimum compressive strength of two thousand pounds per square inch (psi). Concrete must be mixed and delivered in accordance with the requirements of ASTM C94 (Ready-Mix Concrete), or may be field mixed. Field mixed concrete will be subject to independent compressive strength testing and special inspection.

(2) Concrete footings must be placed on firm, undisturbed soil.

(3) Concrete footings must be continuous, be a minimum of twelve inches wide by six inches thick, be reinforced with a minimum of two No. 4 continuous rebar, and be at least eighteen inches below finished grade measured from the bottom of the footing.

(4) Concrete foundations must be a minimum of six inches thick, be reinforced with a minimum of ~~((two))~~ one continuous horizontal No. 4 ~~((rebar))~~ rebar within twelve inches from the top, and one continuous horizontal No. 4 rebar near

mid-height, be reinforced vertically with No. 4 at (~~twenty-four~~) forty-eight inches on center, extend at least six inches above the finished grade, and have a total height of not greater than forty-eight inches.

(5) Concrete foundation(~~s~~) stem walls that are formed by a thickened concrete slab edge as part of a slab on grade floor must be reinforced with (~~two~~) one piece(~~s~~) of No. 4 rebar in the upper part and (~~two~~) one piece(~~s~~) of No. 4 rebar in the lower part of the foundation. The concrete floor will be reinforced according to WAC 246-359-430. The thickened concrete slab edge must extend at least eighteen inches below finished grade, be at least twelve inches in width, and provide a slab height of at least six inches above finished grade.

(6) Where the walls are of wood construction, the treated foundation plates or sills must be bolted to the foundation or foundation wall with not less than one-half inch nominal diameter steel bolts embedded at least seven inches into the concrete and spaced not more than seventy-two inches apart. There must be a minimum of two bolts per piece with one bolt located within twelve inches of each end of each piece. A properly sized nut and washer must be tightened on each bolt to secure the place.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-250 Roof framing for wood framed construction and concrete masonry units (CMU).** (1) Roof framing must have a minimum slope of three units vertical to twelve units horizontal, and must be framed with one of the following methods:

(a) Factory built trusses. Installed per manufacturer's directions and spaced not more than twenty-four inches on center. Roof trusses must be supported laterally at points of bearing by solid blocking to prevent rotation and lateral displacement;

(b) Rafter spans. Allowable rafter spans for Hem-Fir #2 or better must be in accordance with the spans and load conditions listed in Tables 250-A, 250-B or 250-C;

(c) Rafters. Rafters must be framed directly opposite each other at the ridge. There must be a ridge board at least one inch nominal thickness at all ridges and not less in depth than the cut end of the rafter;

(d) Notching at the ends of rafters cannot exceed one fourth the depth. Notches in the top or bottom must not exceed one sixth the depth and must not be located in the middle one third of the span;

(e) Holes bored in rafters must not be within two inches of the top or bottom and their diameter must not exceed one third the depth of the rafter; and

(f) Rafters must be supported laterally at points of bearing by solid blocking of the same material to prevent rotation and lateral displacement.

Table 250-A Western Wood Products Table for Hem-Fir #2 Rafter (L/240 Deflection Limit) 30# Snow Load and 10# Dead Load		
Rafter Size	Spacing— inches on center	Span— feet- inches
2 x 6	12	12-7
2 x 6	16	11-5
2 x 6	24	9-7
2 x 8	12	16-7
2 x 8	16	14-11
2 x 8	24	12-2
2 x 10	12	21-0
2 x 10	16	18-2
2 x 10	24	14-10
2 x 12	12	24-4
2 x 12	16	21-1
2 x 12	24	17-3

Table 250-B Western Wood Products Table for Hem-Fir #2 Rafter (L/240 Deflection Limit) 40# Snow Load and 10# Dead Load		
Rafter Size	Spacing— inches on center	Span— feet- inches
2 x 6	12	11-5
2 x 6	16	10-5
2 x 6	24	8-7
2 x 8	12	15-1
2 x 8	16	13-4
2 x 8	24	10-10
2 x 10	12	18-9
2 x 10	16	16-3
2 x 10	24	13-3
2 x 12	12	21-9
2 x 12	16	18-10
2 x 12	24	15-5

Table 250-C Western Wood Products Table for Hem-Fir #2 Rafter (L/240 Deflection Limit) 60# Snow Load and 10# Dead Load		
Ceiling Joist Size	Spacing— inches on center	Span— feet- inches
2 x 8	12	13-0
2 x 8	16	11-3
2 x 8	24	9-2

Table 250-C Western Wood Products Table for Hem-Fir #2 Rafter (L/240 Deflection Limit) 60# Snow Load and 10# Dead Load		
Ceiling Joist Size	Spacing—inches on center	Span—feet- inches
2 x 10	12	15-10
2 x 10	16	13-9
2 x 10	24	11-3
2 x 12	12	18-5
2 x 12	16	15-11
2 x 12	24	13-0
2 x 14	12	20-7
2 x 14	16	17-10
2 x 14	24	14-6

(2) The department of health will allow site built trusses accompanied by structural calculations prepared by a structural engineer or architect.

(3) Trimmer and header rafters must be doubled when the span of the header exceeds four feet. The ends of the header rafters more than six feet long must be supported by framing anchors or rafter hangers unless bearing on a beam, partition, or wall.

(4) Rafters must be nailed to adjacent ceiling joists to form a continuous tie between exterior walls when such joists are parallel to the rafters. Where not parallel, rafters must be nailed to minimum one-by-four cross ties.

(5) Rafter cross ties must be spaced not more than four feet on center, located immediately above the ceiling joists.

(6) Rafter and truss ties must be installed per ((~~manufae-~~ manufacturer's)) manufacturer's instructions.

(7) Roof assembly must have rafter and truss ties to the wall below and spaced not more than four feet on center.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-300 Ceiling framing for wood framed construction and concrete masonry units (CMU).** (1) Notching at the ends of ceiling joists must not exceed one fourth the depth. Notches in the top or bottom must not exceed one sixth the depth and must not be located in the middle one third of the span.

(2) Holes bored in ceiling joists must not be within two inches of the top or bottom and their diameter must not exceed one third the depth of the rafter.

(3) Ceiling joists must be supported laterally at points of bearing by solid blocking to prevent rotation and lateral displacement.

(4) Allowable ceiling joist spans for Hem-Fir #2 or better must be in accordance with the spans and load conditions listed in Table 300-A.

(5) The department of health will allow spans using other wood species or grade or other load conditions when accompanied by structural calculations prepared by a structural engineer or architect.

Table 300-A Western Wood Products Table for Hem-Fir #2 <b>Ceiling Joists 10# Dead Load</b>		
Ceiling Joist Size	Spacing—inches on center	Span—feet- inches
2 x 6	12	14-5
2 x 6	16	12-8
2 x 6	24	10-4
2 x 8	12	18-6
2 x 8	16	16-0
2 x 8	24	13-1
2 x 10	12	22-7
2 x 10	16	19-7
2 x 10	24	16-0
2 x 12	12	26-3
2 x 12	16	22-8
2 x 12	24	18-6

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-350 Roof connections for concrete masonry units (CMU).** (1) Framing members must bear on a two-inch nominal thickness pressure treated plate anchored to the CMU wall with one-half inch diameter bolts. The anchor bolts must be spaced at maximum of six feet on center and a minimum of twelve inches from end of each plate member, and must be embedded into the top of the wall bond beam a minimum of four inches.

(2) Each roof framing member must be secured to the treated plate by installation of a metal tie as approved by the department of health.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-510 Door requirements.** ((~~Temporary worker housing~~)) TWH habitable structures:

(1) Must have a primary entrance, which is at a minimum, three foot-by-six foot eight-inch exit door made of solid core wood or other material designed for use as an exterior door.

(2) Must have at least two exit doors when accommodating ten or more occupants. When two exit doors are required, the doors must be placed a distance apart equal to at least one-half of the length of the maximum overall diagonal dimension of the building area used.

(3) Provide locking mechanisms on:

(a) Exterior doors;

(b) Bedroom doors;

(c) Bathroom doors; and

(d) Toilet and shower stall doors.

(4) Must have all exterior door openings screened with sixteen-mesh material self-closing screen doors, including toilet facilities.



~~((4))~~ (5) With a calculated occupant load of fifty occupants or more must have a screen door which swings in the direction of exiting.

~~((5))~~ (6) With latched screen doors must have a roller type latch.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-530 Interior finishes.** (1) Floors must be finished to provide an easily cleanable surface. Acceptable finishes are paint, sheet vinyl, tile, or other materials designed for use as a finished floor surface. All materials must be installed per manufacturer's instructions.

(2) Walls and ceilings must be finished to prevent any injury to an occupant, for example, no protruding nails or other fasteners or any wires.

(3) In toileting and kitchen areas, walls must be finished to provide an easily cleanable surface impervious to moisture.

(4) If material to provide a finished surface for the walls is to be installed, then material such as one-half inch minimum thickness gypsum board (GB) must be secured to the wall structural members by fasteners approved for such attachment such as glue, nails, or screws. If GB is installed, then the joints must be fire taped and the wall surface sealed with paint or covered with another wall finish material.

(5) If materials are installed to provide a finished surface for the ceiling, then material such as five-eighths inch minimum thickness GB must be secured to the ceiling structural members by fasteners approved for such attachment such as nails or screws. If GB is installed, then the joints must be fire taped and the ceiling surface sealed with paint.

(6) Do not use lead-based paint on any part of a TWH building or within the TWH site.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-540 Lighting and electrical.** (1) The installation of electrical systems and wiring must comply with the state electrical code, chapter 246-46 WAC, as administered by the department of labor and industries and according to the number of outlets or light fixtures required in subsection (2) of this section.

(2) Outlets and light fixtures provided in ~~((temporary worker housing))~~ TWH must comply with the requirements of subsection (1) of this section and WISHA requirements, including:

(a) Each habitable room must have:

(i) One ceiling light fixture. Additional ceiling light fixtures will be required to comply with the foot candle requirements of chapter 246-358 WAC; and

(ii) One separate floor or wall outlet. Additional outlets will be required as determined by the department of health to prevent safety hazards when the housing is occupied;

(b) Laundry and toilet rooms, and rooms where people congregate must have at least one ceiling or wall light fixture. Additional ceiling or wall light fixtures will be required:

(i) ~~((To comply))~~ With ~~((the))~~ at least twenty foot candles ~~((requirements of chapter 246-358 WAC))~~ thirty inches from the floor; and

(ii) As determined by the department of health to prevent safety hazards when the housing is occupied.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-550 Smoke detectors and carbon monoxide detectors.** (1) ~~((Temporary worker housing))~~ TWH must be provided with approved smoke detectors installed according to the manufacturer's instructions.

(2) Smoke detectors must:

(a) Be installed in each sleeping room;

(b) Be installed at a central point in a corridor or area which gives access to each separate sleeping room; and

(c) Emit a signal when the batteries are low.

(3) In new construction, required smoke detectors must:

(a) Receive their primary power from the building wiring, when the wiring is served from a commercial source; and

(b) Be equipped with a battery backup.

(4) Smoke detector wiring must be permanent and without a disconnecting switch except as required for overcurrent protection.

(5) Battery operated smoke detectors will be accepted:

(a) In existing buildings;

(b) In buildings without commercial power; or

(c) During when alteration, repairs or additions are being conducted to a building.

(6) An approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units or one on each level of the dwelling. The approved carbon monoxide alarms must be installed in accordance with the manufacturer's recommendations in compliance with the building code, WAC 51-51-0315 and 246-358-080.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-560 Plumbing.** (1) The installation of plumbing systems, fixtures, and fittings must comply with the ~~((Uniform))~~ Plumbing Code ~~((and Uniform Plumbing Code Standards))~~ as adopted by the state building code council, chapters 51-46 and 51-47 WAC, except for the following parts of the plumbing code which do not apply:

(a) The provisions for "water conservation performance standards";

(b) The minimum plumbing facilities and requirements for minimum numbers of fixtures ~~((, instead the following ratios will apply:))~~

Minimum Number of Required Plumbing Fixtures					
	Water Closets		Lavatory Sinks		Bathtubs or Showers
Dwelling Units	1		1		1
	Male	Female	Male	Female	
Shared Facilities, not in individual dwelling units.	1 per 15 or fraction thereof, with a minimum of 2. (See Note)	1 per 15 or fraction thereof, with a minimum of 2.	1 per 6 or fraction thereof.	1 per 6 or fraction thereof.	1 showerhead for every 10 persons or fraction thereof, for both male and female showers.

Note: Where urinals are provided in addition to water closets, the urinals must be provided in a 1:25 ratio.

(2) The applicant must comply with the following WISHA requirements:

(a) When a toilet is in a separate building from the sleeping room, the toilet room must be at least one hundred feet but not more than two hundred feet from the door of each dormitory unit;

(b) Laundry sinks must be provided on a ratio of one to thirty;

(c) When handwashing sinks and bathing facilities are not provided in individual dwelling units the following ratios apply:

(i) Handwashing sinks must be provided on a ratio of one to every six; and

(ii) Bathing facilities must be provided on a ratio of one to every ten).

(2) The following minimum number of plumbing fixtures must be installed in the TWH:

(a) Toilet facilities. Provide toilet facilities adequate for the maximum capacity of the TWH, according to the following requirements:

(i) Provide toilet facilities adequate for the maximum capacity of the TWH, according to Table 1 of this section. Where common toilet facilities and family shelter toilets are provided, the family shelter toilets do not count towards the total number of toilets for the TWH camp;

(ii) Where common toilet facilities are provided, the number of toilets for each sex shall be based on the maximum number of people of that sex which the camp is designed to house at any one time, in the ratio of one such toilet to each fifteen people, with a minimum of two toilets;

(iii) Where common toilet facilities and family shelter toilets are provided, the family shelter toilets do not count towards the total number of toilets for the TWH camp; and

(iv) When urinals are provided there must be one urinal or two linear feet of urinal trough for each twenty-five men.

(b) Handwashing sinks. Provide handwashing sinks adequate for the maximum capacity of the TWH, according to the following requirements:

(i) Handwash sinks must operate with a single faucet;

(ii) One handwash sink for every six occupants within the TWH site;

(iii) Of these handwash sinks, locate at least one handwash sink for every toilet in common toilet facilities adjacent to toilet(s); and

(iv) If a toilet is installed in a family shelter, locate at least one handwashing sink for every eight people in the family shelter adjacent to the toilet.

(c) Bathing facilities. Provide bathing facilities adequate for the maximum capacity of the TWH, with one showerhead for every ten occupants.

(d) One "service sink" in each common building used for laundry or bathing.

(e) Laundry facilities. Laundry facilities must be plumbed for one laundry tray or tubs or mechanical washing machine for every twenty-five occupants.

(f) Provide single faucets for all handwashing and food-handling sinks.

(g) All common food-handling facilities must provide one sink per eight burners.

(3) Water and septic systems must be approved by the jurisdiction having authority, including installation or modification.

(4) All TWH potable water systems must be sufficient to meet the requirements of WAC 246-358-055. Ensure that the distribution lines are able to maintain the working pressure of the water piping system at not less than thirty pounds per square inch after allowing for friction and other pressure losses.

**Table 1**  
**Minimum Required Plumbing Fixtures**

Common Facility	Water Closets		Handwash Sinks		Bathtubs or Showers	
	Male	Female	Male	Female	Male	Female
	2 minimum 1 per 15 occupants	2 minimum 1 per 15 occupants	2 minimum 1 per 15 occupants	2 minimum 1 per 15 occupants	1 per 10 occupants	1 per 10 occupants
Each Family Shelter	1 per 8 occupants, if provided		1 per 8 occupants, if toilet provided		1 per 10 occupants, if provided	

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-565 (~~Cooking~~) Food-handling facilities.** (1) (~~Individual dwelling units. Cooking~~) All food-handling facilities (~~in individual dwelling units~~) must (~~be sufficient to~~) meet the requirements of WAC 246-358-125(~~; temporary worker housing cooking and foodhandling facilities~~);).

(2) **Common (~~use cooking~~) food-handling facilities.** (~~Cooking facilities separate from sleeping units and used by multiple individuals or families must:~~

(a) ~~Meet the requirements of WAC 246-358-125, temporary worker housing cooking and foodhandling facilities;~~

(b) ~~Comply with WAC 296-307-160, WISHA;~~

(c) ~~Be located within one hundred feet of the dormitory structure; and~~

(d) ~~Have~~) Common food-handling facilities must:

(a) Be enclosed, except cherry harvest camps which may provide enclosed or screened food-handling facilities;

(b) Provide mechanical ventilation in all enclosed food-handling facilities installed with a one hundred cubic feet per minute (CFM) intermittent fan or a twenty-five CFM continual fan, vented to the outside for each cooking unit. Fan intakes must be located directly above or behind each cooking unit; and

(c) Provide one sink per eight burners.

(3) **Dining halls (~~with cooking facilities~~).** (~~Cooking~~) Food-handling facilities which are to be provided by the licensed operator for temporary workers residing in the (~~temporary worker housing~~) TWH must comply with:

(a) WAC 246-358-125(3), dining hall rules for (~~temporary worker housing~~) TWH; and

(b) (~~WAC 296-307-160; and~~

(e)) Chapter 246-215 WAC, food service sanitation rules.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-570 Mechanical installations.** The installation of heating, ventilating, cooling, refrigeration systems, and other miscellaneous heat producing equipment must meet the requirements of the (~~uniform~~) mechanical code as adopted by the state building code council, chapter (~~(51-42)~~) 51-52 WAC, except as exempted in WAC 246-359-575.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-575 Energy and ventilation and indoor air quality requirement exemptions.** (~~Temporary worker housing~~) TWH as defined in this chapter are exempt from all versions of the Washington state energy code and the ventilation and indoor air quality code.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-580 Heating (~~and~~), insulation, and air conditioning.** (~~(1) When the temporary worker housing is occupied from October 1st through May 1st:~~

(a) ~~Department approved heat producing equipment must:~~

(i) ~~Be available or installed; and~~

(ii) ~~Comply with WISHA and chapter 246-358 WAC.~~

(b) ~~A minimum of R-11 insulating material must be used to insulate ceilings and exterior walls.~~

(2) ~~When insulation is used it must be covered with material which is safe and sturdy and sufficient to protect the building occupants from the insulating material.)~~ (1) When the dwelling unit temperature will fall below seventy degrees Fahrenheit during occupancy, the TWH dwelling unit must provide adequate heating systems to maintain a temperature at or above seventy degrees Fahrenheit during occupancy. Heating systems must be permanent, installed, and comply with DOSH and chapter 246-358 WAC.

(2) Insulation must be installed with a minimum of R-15 insulating material to insulate ceilings and exterior walls. When insulation is used, it must be covered with material which is safe and sturdy and sufficient to protect the building occupants from the insulating material. When insulation is installed in the ceiling, provide a minimum of one inch air space between insulation and roof sheathing and baffle.

(3) When the TWH dwelling unit temperature can rise above ninety degrees Fahrenheit during occupancy, the TWH dwelling unit must provide a coolant system to maintain a temperature at or below ninety degrees Fahrenheit.

(4) TWH buildings containing dwelling units must be provided with a one hundred cubic feet per minute (CFM) building ventilation fan capable of operating intermittently. Where an intermittent fan is installed in dwelling units with food-handling facilities, an additional building ventilation fan is not required.

(5) This section does not apply to cherry harvest camps.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-590 Liquid petroleum gas (LP-gas) storage tanks.** Installed LP-gas, such as propane, propylene, butane, normal butane or isobutane, and butylenes, must comply with (~~uniform~~) the state fire code (article 82 and uniform fire code standard 82-1) and fuel gas code, as adopted by the state building code council.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-600 Alternate construction.** (1) The department of health will allow alternate construction to the requirements stated in WAC (~~(246-359-200)~~) 246-359-180 through 246-359-440 of this chapter when the plans are designed and stamped by an engineer or architect licensed to practice in the state of Washington, and meet applicable sections of the state building code as adopted by the state build-

ing code council or other code as approved by the department of health.

(2) Any changes in the structural design must be stamped by an engineer including:

(a) Fixed construction, which cannot be dismantled and stored. Such fixed construction must comply with the structural requirements of the state building code, for example, wind forces, seismic forces, snow load, live load, and dead load.

(b) Nonfixed construction which can be dismantled and stored for use when ice or snow exceed the snow loads stated in this chapter. Such nonfixed construction must comply with the structural requirements of the state building code, for example, wind forces, seismic forces, live load, and dead load with the exception of snow loads.

(3) To determine compliance with this section the department may require a special inspector to conduct special inspections.

#### NEW SECTION

**WAC 246-359-650 Tents.** (1) Each tent must be constructed to sleep no more than fifteen occupants.

(2) Tents must provide protection from the elements, insects, and animals.

(3) Structural stability and floors.

(a) Tents and their supporting framework must be adequately braced and anchored to prevent weather related collapse. The operator shall provide documentation of the structural stability to the department of health, if requested.

(b) Floors must be smooth, sloped from a raised center towards the lower outer edges. Floors must be without breaks or holes to provide a hard, stable walking surface. Nonridged flooring supported by grass, dirt, soil, gravel or other uneven surface is not acceptable. Floors that are constructed of wood or concrete must comply with the building code, chapter 19.27 RCW and this chapter.

(c) Floor systems must be designed to prevent the entrance of snakes, rodents, and other nuisances.

(4) Flame-retardant treatments.

(a) The sidewalls, drops, and tops of tents shall be composed of flame-resistant material or treated with a flame retardant in an approved manner.

(b) Floor coverings, which are integral to the tent, and the bunting shall be composed of flame-resistant material or treated with a flame retardant in an approved manner and in accordance with Uniform Building Code, Standard 31.1.

(c) All tents must have a permanently affixed label bearing the following information:

(i) Identification of tent size and fabric or material type;

(ii) For flame-resistant materials, the necessary information to determine compliance with this section and National Fire Protection Association Standard 701, Standard Methods of Fire Tests for Flame-resistant Textiles and Films;

(iii) For flame-retardant materials, the date that the tent was last treated with an approved flame-retardant;

(iv) The trade name and type of flame-retardant used in the flame-retardant treatment; and

(v) The name of the person and firm that applied the flame-retardant.

(5) Means of egress.

(a) Tents must have a primary entrance door. At least one door must lead to the outside of the tent. The door must not be obstructed in any manner and must remain free of any material or matter where its presence would obstruct or render the exit hazardous.

(b) If food-handling facilities are provided in tents, or the tent occupancy capacity is for ten or more occupants, a window allowing egress must be located opposite the door and must have a means to open the window or provide an easily openable space, for example, a zipper which opens downward to the floor, must be provided.

(6) Floor area. The operator must:

(a) If food-handling facilities are provided in the tent, provide an additional twenty square feet of floor space;

(b) Provide at least fifty square feet of floor space for each occupant in rooms used for sleeping purposes.

(7) Ceiling height.

(a) A ceiling height of at least seven feet is required in fifty percent of the total floor area.

(b) No portion of the tent measuring less than six feet from the flooring to the ceiling will be included in any computation of the floor area.

(8) Windows and ventilation.

(a) The operator shall provide a window area equal to one-tenth of the total floor area in each habitable room which opens at least halfway or more directly to the outside for cross-ventilation and has a minimum of sixteen-mesh screens on all exterior openings.

(b) The windows must have weather-resistant flaps, which will cover the window area and a means of fastening the flaps to provide protection from the elements and allow privacy for the occupants.

(9) Electrical and lighting. The operator shall ensure that:

(a) Electricity is supplied to all tents used as habitable room.

(b) All electrical wiring, fixtures, and electrical equipment must comply with the electrical standards of the department of labor and industries regulations, chapter 19.28 RCW, and local ordinances, and be maintained in a safe condition.

(c) Each tent used as habitable room has at least one ceiling-type light fixture and at least one separate floor-type or wall-type convenience outlet.

(d) If cooking is provided in the tent, appropriate wiring and electrical equipment is provided.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-710 Installation of factory assembled structures (FAS)—Except for manufactured homes.** The department of health will approve the installation of all FAS except for manufactured homes (see WAC 246-359-720) when the following requirements are met:

(1) New and relocated FAS must be installed according to the manufacturer's written instructions;

(2) If the manufacturer's written instructions are unavailable or insufficient to address safe installation the department

of health will require installation instructions for FAS to be submitted by an engineer or architect;

(3) The department of health will inspect FAS installation to determine if the site is properly prepared and the FAS is anchored according to the:

- (a) Manufacturer's installation instructions; or
- (b) Design of either an engineer or an architect.

(4) The requirements stated in WAC 246-359-720 (5) through (8) apply to FAS installation.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-720 Installation requirements for manufactured homes.** The department of health will use the following criteria for approving the installation of manufactured homes:

(1) New and relocated manufactured homes must be installed according to the manufacturer's written installation instructions;

(2) If the manufacturer's installation instructions are unavailable for manufactured homes, the department of health will accept the following:

(a) American National Standards Institute (ANSI) A225.1, 1994 edition, section 3; or

(b) The installation instructions of an engineer or architect licensed in Washington.

(3) The department of health will inspect the installation to determine if the manufactured home is placed on a properly prepared site and anchored according to the:

- (a) Manufacturer's installation instructions;
- (b) ANSI A225.1, 1994 edition, section 3; or

(c) Design of an engineer or architect licensed in Washington.

(4) The department of health will require, at a minimum, specific instructions be obtained from a licensed engineer or architect when a manufactured home is to be installed on a site where the specific soil bearing capacity is not addressed in the manufacturer's instructions.

(5) The department of health may review, at a minimum, the following installation requirements:

(a) Heat duct crossovers, except that heat duct crossovers supported above the ground by strapping or blocking to avoid standing water and to prevent compression and sharp bends to minimize stress at the connections are also accepted;

(b) Dryer vents exhausted to the exterior side of the wall or skirting, when installed; and

(c) Hot water tank pressure relief lines. These lines must be exhausted to the exterior side of the exterior wall or skirting and downward.

(6) Water lines, waste lines, gas lines and electrical systems must be installed according to the requirements of this chapter.

(7) When skirting is used the skirting must:

(a) Be made of a material suitable for ground contact including all metal fasteners which must be made of galvanized, stainless steel or other corrosion resistant material;

(b) Be recessed behind the siding or trim and attached in such a manner to prevent water from being trapped between the skirting and siding or trim; and

(c) Have vent openings located close to corners which:

(i) Provide cross-ventilation on at least two opposite sides;

(ii) Are designed to prevent the entrance of rodents by covering the vent openings with corrosion-resistant wire mesh with mesh opening of one-fourth inch in dimension; and

(iii) Have a net area of not less than one square foot for each one hundred fifty square feet of under floor area.

(8) Provide access to the under floor area of the manufactured home so that all areas under the home are available for inspection. The opening must not be less than eighteen inches by twenty-four inches. The cover must be of metal, pressure treated wood or vinyl.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-740 Drain connector to factory assembled structures (FAS).** (1) A FAS containing plumbing fixtures must be connected to the drain inlet by a drain connector:

(a) Approved by the department of health;

(b) Consisting of pipe not less than Schedule 40 with appropriate fittings and connectors; and

(c) Not less in size than the FAS outlet.

(2) The fitting connected to the drain inlet must be a directional fitting to discharge the flow into the drain inlet.

(3) A drain connector must be:

(a) Installed and maintained with a grade not less than one-fourth inch per foot;

(b) Gas-tight and no longer than necessary to make the direct connection between the mobile home outlet and drain inlet at the site.

(4) Each drain inlet must be maintained gas-tight when not in use.

**AMENDATORY SECTION** (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-760 Gas connections to factory assembled structures (FAS).** (1) A FAS, when using gas for heating or cooking purposes, must be connected to the gas outlet by an approved mobile or manufactured home connector. Gas connectors must be of adequate size to supply the total demand of the connected FAS and have a maximum length of six feet.

(2) A shutoff valve controlling the flow of gas to the entire gas piping system must be:

(a) Installed for each FAS;

(b) Readily accessible;

(c) Identified as the "shutoff valve"; and

(d) Installed near the point of connection to the service piping or supply connection of the liquified petroleum gas (LP-gas) tank.

(3) The installation and size of each section of LP-gas piping is determined by the (~~uniform~~) mechanical code as adopted by the state building code council.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-800 ((WISHA)) DOSH requirements affecting building ((temporary worker housing)) TWH.**

(1) A separate sleeping area must be provided for the husband and wife in all family units in which one or more children over six years of age are housed.

(2) If a camp is used during cold weather, adequate heating equipment must be provided.

(Note: ~~All heating, cooking, and water heating equipment must be installed according to state and local ordinances and codes regulating installations.~~)

(3) All heating, cooking and water heating equipment must be installed according to state and local ordinances and codes regulating installations.

AMENDATORY SECTION (Amending WSR 99-03-065, filed 1/18/99, effective 2/18/99)

**WAC 246-359-990 Fees. (1) General fee information.**

(a) The plan review fee and permit or inspection fees for:

(i) Wood framed construction and concrete masonry units will be charged based on square footage and the time required to complete the work, according to Table I, Parts A through C;

(ii) The installation of factory assembled structures will be based on Table I, Part D(~~(-and)~~).

(b) Each fee must be received before the department of health will:

- (i) Conduct plan review of construction or installation documents;
- (ii) Issue a construction permit; or
- (iii) Conduct any on-site inspection.

(2) **Plan review fee for construction and installation documents.** The plan review fee is:

(a) A separate and additional fee from the construction permit fees or inspection fees(~~(:)~~).

(b) Based on the initial plan review and assumes all documents required by WAC 246-359-070, application process

and WAC 246-359-080, required documents for plan review, have been submitted.

(c) An additional plan review fee will be charged as stated in Table I, Part E when:

- (i) The documents submitted are incomplete;
- (ii) Plans previously reviewed and approved have been changed;

(iii) The department of health has determined, by inspection, that the approved plans were not followed during construction.

(3) **Variance requests.** Written variance requests must be accompanied by a fee as stated in Table I, Part E.

(4) **Construction permit fee, includes required inspections.** The construction permit fee:

- (a) Is a separate and additional fee from the plan review fee;
- (b) Includes the required inspections as stated in WAC 246-359-120 (1) through (4);

(c) Is based on the time required to conduct an inspection and assumes all of the requirements for application and plan review as required by subsection (2) of this section have been met and the plans are approved.

(5) **Additional inspections.** When the department of health determines additional inspections are necessary to determine compliance with this chapter the additional inspection fee will be charged according to Table I, Part F.

(6) **Investigation inspections.** If the department of health finds a person has initiated building or work without a permit, a fee will be charged according to Table I, Part F for the time taken to investigate.

(7) **Special inspections.** When an applicant is building to alternate construction standards and the required inspections in this chapter are not deemed sufficient by the department of health to determine compliance with this chapter, special inspections may be required including the cost of the health inspector. The applicant must pay the full cost of the special inspections. The department of health will notify the applicant what is required and the reasons for requiring a special inspection.

(8) The department of health will provide on-site technical assistance at the applicant's request. A fee will be charged according to Table I, Part G.

Table I, Fee Table

Square footage of project review		Construction plan review fee	Construction permit or inspection fee
Part A.	Up to 1000 square feet	\$330	\$550
Part B.	For each additional 100 square feet or fraction thereof	\$ 15	\$ 30
Part C.	Preapproved plans	\$ 66	\$550
	For each additional 100 square feet or fraction thereof	\$ 3	\$ 30
Part D.	Factory Assembled Structures, for example, manufactured homes, park trailers, modular buildings	\$ 66	\$550
		\$ 3	\$ 30

Square footage of project review		Construction plan review fee	Construction permit or inspection fee
Part E.	Additional plan reviews, conducted after initial approval; and Variance requests		\$47 per hour (two hour minimum)
Part F.	Additional and investigation inspections		\$47 per hour (two hour minimum)
Part G.	On-site technical assistance visits		\$47 per hour (two hour minimum)

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 246-361-001 Cherry harvest camps—Purpose and applicability.
- WAC 246-361-010 Definitions.
- WAC 246-361-020 Technical assistance.
- WAC 246-361-025 Operating license.
- WAC 246-361-030 Maximum camp occupancy.
- WAC 246-361-035 Variance and procedure.
- WAC 246-361-045 Cherry harvest camp sites.
- WAC 246-361-055 Water supply.
- WAC 246-361-065 Sewage disposal.
- WAC 246-361-070 Electricity and lighting.
- WAC 246-361-075 Tents.
- WAC 246-361-080 Recreation vehicles.
- WAC 246-361-090 Laundry facilities.
- WAC 246-361-095 Handwashing and bathing facilities.
- WAC 246-361-100 Toilet facilities.
- WAC 246-361-125 Cooking and food-handling facilities.
- WAC 246-361-135 Cots, beds, bedding, and personal storage.
- WAC 246-361-145 First aid and safety.
- WAC 246-361-155 Refuse disposal.
- WAC 246-361-165 Insect and rodent control.
- WAC 246-361-175 Disease prevention and control.
- WAC 246-361-990 Fees for cherry harvest camps.

**WSR 14-24-108**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed December 2, 2014, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-089.

Title of Rule and Other Identifying Information: Chapter 296-307 WAC, Safety standards for agriculture, Part L, Temporary worker housing and Part L-1, Cherry harvest camps and chapter 296-833 WAC, Temporary housing for workers.

Hearing Location(s): Department of Labor and Industries Headquarters, Rooms S117 and S118, 7273 Linderson Way S.W., Tumwater, WA 98501, on January 6, 2015, at 9:00 a.m.; and at the Department of Labor and Industries, 15 West Yakima Avenue Suite 100, Yakima, WA 98902, on January 8, 2015, at 9:00 a.m.

Date of Intended Adoption: February 24, 2015.

Submit Written Comments to: Tari Enos, 7273 Linderson Way S.W., Tumwater, WA 98501, e-mail tari.enos@lni.wa.gov, fax (360) 902-5619, by January 15, 2015.

Assistance for Persons with Disabilities: Contact Tari Enos by December 23, 2014, TTY (360) 902-5541 or (360) 972-4650.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to rewrite and clarify existing requirements relating to temporary worker housing (TWH) and cherry harvest camps. The department of labor and industries (L&I) and the department of health (DOH) have joint rules for licensing, operation and inspection of temporary worker and cherry harvest housing as required by RCW 70.114A.065 and 49.17.-310 to enforce these rules. L&I is also proposing consolidating the cherry harvest camp requirements in with [the] TWH [rules] for cohesive purposes.

**New sections** WAC 296-307-16104 Technical assistance—Notice of violation, 296-307-16127 TWH management plan, 296-307-16147 Tents and 296-307-16149 Carbon monoxide alarms, smoke detectors and fire extinguishers; **amending** WAC 296-307-161 Temporary worker housing, 296-307-16101 Purpose and applicability, 296-307-16103 Definitions, 296-307-16115 Maximum housing occupancy, 296-307-16120 Variance and procedure, 296-307-16125 Temporary worker housing sites, 296-307-16130 Water supply, 296-307-16135 Sewage disposal, 296-307-16140 Electricity and lighting, 296-307-16145 Building requirements and maintenance, 296-307-16150 Laundry facilities, 296-307-16155 Handwashing and bathing facilities, 296-307-16160 Toilet facilities, 296-307-16165 Cooking and food-handling facilities, 296-307-16170 Cots, beds, bedding and personal storage, 296-307-16175 First aid and safety, 296-307-16180 Refuse disposal, 296-307-16190 Disease preven-

tion and control and 296-833-100 Scope; and **repealing** WAC 296-307-16105 Operating license, 296-307-16110 Requirements for self-survey program, 296-307-163 Cherry harvest camps, 296-307-16301 Purpose and applicability, 296-307-16303 Definitions, 296-307-16305 Technical assistance, 296-307-16310 Operating license, 296-307-16315 Maximum camp occupancy, 296-307-16320 Variance and procedure, 296-307-16325 Cherry harvest campsites, 296-307-16330 Water supply, 296-307-16335 Sewage disposal, 296-307-16340 Electricity and lighting, 296-307-16345 Tents, 296-307-16350 Recreational vehicles, 296-307-16355 Laundry facilities, 296-307-16360 Handwashing and bathing facilities, 296-307-16365 Toilet facilities, 296-307-16370 Cooking and food-handling facilities, 296-307-16375 Cots, beds, bedding and personal storage, 296-307-16380 First aid and safety, 296-307-16385 Refuse disposal, 296-307-16390 Insect and rodent control, and 296-307-16395 Disease prevention and control.

Reasons Supporting Proposal: The reasons supporting the proposal of updating TWH rules is so L&I and DOH will be able to enforce the joint rules consistently and not confuse employers by having different regulations.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.300, and 49.17.310.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Lena Wang, Tumwater, Washington, (360) 902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

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

Small Business Economic Impact Statement

**Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.** L&I is updating its rules for opera-

tion of TWH provided by agricultural employers and other licensed operators for seasonal use by migrant farm workers.

The proposal includes amended and new sections in chapter 296-307 WAC, Part L, Temporary worker housing, and the entire chapter 296-307 WAC, Part L-1, Cherry harvest camps, is proposed for repeal, and its content moved to appropriate sections of chapter 296-307 WAC, Part L. Repealing the cherry harvest camp rules and moving their content to the remaining chapters eliminates duplication and is intended to make the rules clearer.

**Clearly state in detail the general goals and specific objectives of the statute that the rule implements.** The 1999 Washington state legislature passed ESSB 5599 that requires DOH and L&I to adopt joint rules for the licensing, operation and inspection of TWH, and the enforcement of those rules. DOH and L&I are required to establish and maintain a formal agreement identifying the roles of each agency with respect to enforcement of TWH rules. Statutory authority is granted under chapters 70.114A, 49.17, 43.70 RCW, and 29 Code of Federal Regulations (C.F.R.) 1910.142, 20 C.F.R. 653 and 655 Subpart B.

**Explain how the department (L&I) determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rule making and the consequences of not adopting the rule.** RCW 49.17.300 through 49.17.320 set the broad framework for regulating TWH on-site operations. Rules are needed to establish TWH standards with adequate specificity for compliance and enforcement.

The proposed revisions help L&I meet the intent of the underlying statutes by providing clearer rules and a streamlined process for operators of seasonal migrant farm worker housing. L&I has also determined that TWH rules must be revised to be consistent with federal migrant farm worker housing standards in 29 C.F.R. 1910.142.

Not revising the TWH rules would be inconsistent with underlying state and federal statutes, inconsistent with current administration of the program, and leave operators and migrant farm worker occupants with unclear and inconsistent standards for TWH facilities. Without amending the rules, the department may not be able to effectively implement the TWH program, and could face difficulties in enforcing rules that are unclear or are inconsistent with current state statutes or federal regulations.

**Table A: Selected agricultural businesses required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and minor cost thresholds under RCW 19.85.020.**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of businesses in WA (2013) <sup>1*</sup>	Minor Cost Threshold = 1% of Average Annual Payroll 2012 <sup>2</sup>	Minor Cost Threshold = 0.3% of Average Annual Receipts 2013 <sup>1</sup>
11121	Vegetable and melon farming	109	\$3,766	\$2,728
111331	Apple orchards	56	\$5,862	\$3,064
111332	Grape vineyards (without wine making)	25	\$2,681	\$295
111333	Strawberry farming	6	\$1,599	\$514
111334	Berry farming, except strawberries	55	\$9,499	\$8,578
111336	Fruit and tree nut farming	9	\$5,942	\$809



NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of businesses in WA (2013) <sup>1*</sup>	Minor Cost Threshold = 1% of Average Annual Payroll 2012 <sup>2</sup>	Minor Cost Threshold = 0.3% of Average Annual Receipts 2013 <sup>1</sup>
111339	Other non-citrus fruit farming	50	\$2,386	\$388
111998	General combination crop farming	123	\$5,322	\$554
312130	Grape farming and making wine	673	\$2,679.87	\$1,827

\* Note: There are significant differences in how businesses provided data to the state departments of revenue and employment security. For example: 56 businesses reported 2013 income data to department or [of] revenue as "apple orchards" under NAICS number 111331, while 917 businesses reported 2012 payroll data to department or [of] employment security as "apple orchards" under NAICS number 111331. These differences impact the calculation of payroll and income thresholds to determine if a small business economic impact statement (SBEIS) is required for the proposed rules. DOH is unable to reconcile these differences to present a single number of businesses in each NAICS category with available data.

<sup>1</sup> Washington State Department of Revenue, 2013 data. Percent of revenue is based on the total 2013 reported gross business income by NAICS category, divided by number of businesses reporting, and multiplied by .003. See the note after Table A.

<sup>2</sup> Washington State Department of Employment Security, 2012 average wage data, the latest full-year data available. Percent of payroll is based on the total 2012 reported wages paid by NAICS category, divided by the number of firms reporting, and multiplied by .01. See the note after Table A.

**Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.** Due to the wide variety of configurations of licensed TWH, and because many existing TWH facilities may already meet some of the proposed requirements, it is not practical to estimate the aggregate costs of these proposed rules on individual TWH licensees or to all TWH licensees. This analysis in most cases represents per-unit costs to comply with proposed rules.

The following proposed WAC sections may be likely to result in costs (or in some cases reduce costs) of compliance for TWH businesses that must comply:

**A. Chapter 296-307 WAC, Part L, Temporary worker housing.**

**1. WAC 296-307-16115 Maximum housing occupancy.** The proposed rule changes the minimum square footage in TWH rooms used for both sleeping and kitchen purposes from fifty square feet *per occupant* (plus twenty square feet for the first occupant), to one hundred square feet *per temporary worker* consistent with 29 C.F.R. 1910.142.<sup>3</sup>

<sup>3</sup> This proposed amendment may be considered exempt from analysis under RCW 34.05.310(4) because it would adopt a requirement from a federal rule, 29 C.F.R. 1910, without material change. However, the department has elected to analyze the cost of compliance with the proposed rule in this SBEIS.

The proposed amendment typically applies to space in a family shelter unit that houses up to fifteen individuals (TWH workers and other family members who are nonworkers who may be (or be caring for) children and elderly occupants), and would not apply to common TWH dormitories or bunkhouses where a sleeping area cannot open directly into a kitchen area. The current rule bases square footage on all occupants in a family shelter unit. The proposed rule would count only workers in calculating required minimum square footage, and

requires fifty square foot [feet] per worker if sleeping and kitchen areas are separated, but one hundred square feet per worker if sleeping and kitchen area[s] are not separate (such as open-concept rooms).

The current rule requires a maximum of seven hundred seventy square feet for family shelter units regardless of unit configuration. The proposed rule may require up to one thousand five hundred square feet if all individuals in the family shelter unit are workers, but only if sleeping and kitchen space is not separated. Options for complying with the proposed amendment include:

i. Providing a separator between the kitchen and sleeping areas. A ceiling-mounted fire-retardant screen is available for about \$25, or installing a 8x12 foot partition wall may cost about \$230 including lumber, drywall, supplies and labor.

ii. Increasing the total square footage of family shelter units from the current maximum of seven hundred seventy square feet up to a maximum one thousand five hundred square feet, or as much as required to meet the projected number of workers the unit would house, at an estimated cost of \$35 per square foot.

iii. Moving some workers to other TWH common facilities to match existing family shelter unit square footage to the number of workers projected to be housed in each unit. However, this may cause the operator to need to provide additional sleeping space or other facilities.

Costs of equipment, engineering services, or permit costs may apply if the TWH operator chooses to increase square footage to comply with the proposed amendments. This analysis assumes that the best method to comply would be to erect a partition wall to separate the sleeping area from kitchen area in family shelter units. This would reduce the required sleeping area to fifty square feet per worker.

**2. WAC 296-307-16127 TWH management plan (new).** The proposed rule provides greater detail on what must be included in a TWH management plan than the standard in current WAC 246-358-045(2), and requires that the operator provide the plan to occupants in their native language. Estimated costs to provide a two thousand word, four-page plan include sixteen cents per word for professional translation of the plan (\$320), and ten cents per page to provide the plan to up to two hundred fifty occupants (\$100). There would be no expected costs of equipment, labor, or supplies.

**3. WAC 296-307-16130 Water supply.** The current rules require hot and cold water be supplied for drinking, cooking, bathing and laundry. The proposed rule adds that hot water must also be supplied to hand wash sinks. Hand washing with soap and warm water is the most effective method for killing germs and reducing the spread of germs, particularly after a person uses the toilet or handles raw foods in food preparation areas. Some TWH facilities already sup-

ply hot water to hand wash sinks, and in these cases the amendment would not apply. TWH facilities that do not supply hot water to hand wash sinks may comply with the proposed rule by:

i. Installing individual "instant" hot water systems at each sink, at an estimated cost of up to \$200 for a 1.5 gallon/minute electric unit, including \$160 for the unit, and up to \$40 for water connections that may be installed without special tools or training. A 110/120 volt power outlet would be needed for each unit, or

ii. Installing a small hot water tank and service lines to serve multiple sinks. Estimated costs include \$248 for a six gallon capacity tank, copper pipe and connections at about \$15 per sink, and \$60 to \$75 per hour for labor. Each unit requires 120 volt power, or

iii. Installing additional connections to sinks from existing hot water storage. Estimated costs include copper piping and connections at \$5 per lineal foot, and \$60 to \$75 per hour for labor.

The smallest common facilities may have two or three hand wash sinks total (one sink for every six occupants), while the largest may have about thirty-five hand wash sinks. For most TWH operations, this analysis assumes the least expensive method of complying with the proposed rule may be to install a six gallon hot water tank for every six hand wash sinks, and provide short water supply lines to the sink(s).

The proposed rule would require setting hot water tank temperature between 110 and 120 degrees Fahrenheit (F). Hot water at 120 degrees F. is considered low enough to reduce the risk of second- or third-degree scalding burns, especially by young children staying in family shelter units. The Centers for Disease Control and Prevention and Consumer Product Safety Commission recommend water heaters be set to a maximum of 120 degrees F.<sup>4</sup> This analysis assumes that many operators may currently maintain hot water at higher than 120 degrees. Lowering water temperature to 120 degrees may result in modest water heating cost savings.

<sup>4</sup> <http://www.cdc.gov/safechild/Burns/>; [www.cpsc.gov/PageFiles/121522/5098.pdf](http://www.cpsc.gov/PageFiles/121522/5098.pdf).

Compliance with this proposed rule should not require costs for professional fees or increase in administrative costs.

#### **4. WAC 296-307-16145 Building requirements and maintenance.**

The proposed rule amendments include the following changes that require TWH operators to:

- Prevent condensation and mold in dwelling units to the degree that it does not cause a health or safety risk to occupants.
- Provide locking door handles/knobs on entrance doors, bedroom and bathroom doors.
- Provide doors to toilet or shower rooms, and locking mechanisms on toilet and shower stalls that have doors.
- Not use lead-based paint.

Excess condensation can build up inside ceilings and walls when there is either insufficient insulation or insufficient ventilation in a structure. This condensation can contribute to water damage to occupants' food, clothing and other

belongings, or may increase the risk of mold growth. Mold on surfaces is an indicator of moisture buildup from exterior leaks, from plumbing leaks, or from other moisture sources that does not dry adequately. Mold can contribute to breathing issues for individuals with asthma or allergies. Where excess condensation or mold exist, the operator will need to take steps necessary to reduce the condensation or mold. Depending on the TWH facility, these steps could include improving the effectiveness of existing ventilation or heating, increased ventilation, additional insulation or ceiling batting, fixing water leaks, repairing walls or flooring, or other actions. Condensation or mold often has a site-specific cause requiring a site-specific solution. Due to wide variety of conditions creating condensation or mold, and variety of possible remediation methods, it is not possible to estimate the typical costs of reducing condensation or mold.

Providing exterior, bedroom and bathroom door handles/knobs that lock from the inside, and locking mechanisms (as simple as a hook and eye) for toilet and shower stalls is intended to increase occupant security and privacy in their sleeping quarters or while they use toilet or shower facilities. Many TWH operators may already provide locking exterior doors on dwelling units. Bedroom and interior bathroom door handles are available that lock from the inside but can be opened from the outside in an emergency by inserting a small rod or screwdriver into the door knob to unlock it. Lockable exterior door handles are available for about \$8 each, and interior doors that lock from one side are available for about \$9 each. The number of locking door handles/knobs needed by a TWH operator to comply with the rule may vary widely. Many family shelter units may need one exterior locking door handle, and one or two interior locking door knobs for toilet and sleeping rooms, or only one door handle if the sleeping area is not a separate room. Common TWH facilities may need more than one exterior door, and one or more bedroom or toilet facilities, or may have sleeping facilities (such as bunkhouses) with no internal doors. Common toilet facilities that have nonlocking stall doors may have a hook-eye latch mechanism installed to comply with the proposed rule, for about \$1 per stall door.

Exposure to lead is a known health hazard, especially to brain development in young children. The Centers for Disease Control and Prevention say that there is no safe level of lead exposure for children.<sup>5</sup> Lead-based building paint is not available for purchase, so there should be no additional cost for TWH operators to comply with this standard.

<sup>5</sup> [http://www.cdc.gov/nceh/lead/ACCLPP/blood\\_lead\\_levels.htm](http://www.cdc.gov/nceh/lead/ACCLPP/blood_lead_levels.htm).

Compliance with the proposed rule should not result in costs of professional services or an increase in administrative costs.

**5. WAC 296-307-16149 Carbon monoxide alarms, smoke detectors and fire extinguishers (new).** The proposed rules requires [require] operators to have carbon monoxide alarms and smoke detectors in TWH facilities, as well as a working fire extinguisher in each family shelter and in common sleeping or kitchen facilities. Fuel burning heating and cooking devices can emit carbon monoxide (CO) (a colorless, odorless gas) even if no smoke is present. These devices also present possible fire dangers. CO and smoke

detectors can help save lives by detecting CO or smoke before it can reach unsafe or deadly levels, and alerting occupants to evacuate or ventilate the room. The number of CO/smoke detectors [detector] monitors needed would depend on numbers of family dwelling units and common facilities at each TWH facility. Combination battery powered CO/smoke monitors cost about \$40 each and \$2 per year for batteries, and can be installed without special tools.

During a fire, a working fire extinguisher is important to help occupants clear a safe path to a fire exit; but it should not be used to fight the fire. Fire extinguishers are available in single-use units that must be replaced after use, or in reusable units that must be checked by a qualified inspector and recharged regularly. Single-use fire extinguishers would cost about \$40 per unit. The number needed would depend on the number and distribution of family shelter units and common facilities at a TWH site. The smallest TWH facilities may need two combination CO/smoke detectors, and two single-use fire extinguishers. The largest facilities may need fifteen to twenty CO/smoke detectors and fifteen to twenty single-use fire extinguishers, depending on the mix and configuration of family shelter units and common facilities.

Compliance with the proposed rule should not result in costs of labor or an increase in administrative costs, and would require professional services only if the TWH operator chose to install permanent fire extinguishers that need annual inspection and recharging.

**6. WAC 296-307-16155 Handwashing and bathing facilities.** The proposed rule would also require installation of privacy partitions between showers "stalls" or curtain partitions in common shower facilities. Providing shower curtains or stalls helps provide privacy for TWH occupants. Simple ceiling-mounted shower rods and curtains would cost an estimated \$15 per shower stall. Common TWH facilities must have one shower for every ten occupants. The smallest TWH common facilities may need one shower curtain to separate two showers at a cost of \$15 while the largest may need up to twenty-five showers curtains costing up to \$375 depending on the ratio of common facilities to family shelter units with showers.

Compliance with the proposed rule should not result in costs of equipment, professional services or an increase in administrative costs.

**7. WAC 296-307-16160 Toilet facilities.** Proposed amendments would require a minimum of two toilets in common facilities, as required by 29 C.F.R. 1910.142. The rule would not impact family shelter units. While larger TWH sites would likely be in compliance, some smaller TWH facilities with fewer than fifteen occupants in common facilities may need to add toilet capacity to comply with the proposed rule. TWH operators may meet the two-toilet requirement by providing a chemical toilet (sani-can) until permanent toilets are added, at a cost of \$167 per month, including and [an] interior sink and weekly maintenance, during the months the TWH is occupied.

The proposed new rule would require privacy partitions or walls between toilets in common facilities, and that partitions or walls have a smooth, cleanable and nonabsorbent surface. Installing wood frame toilet stalls with water-resistant painted plywood or "OSB" board walls and doors would

be the least expensive method to comply with the rule. Estimated cost of compliance with proposed amendments would be \$65 per stall for lumber, paint, hardware and supplies, and up to \$60 per hour for labor if outside labor is used. The smallest TWH common facilities may need partitions for two stalls, while the largest facilities may need ten to eighteen stalls depending on the ratio of common facilities to family shelter unit with toilets.

Compliance with the proposed rule should not result in costs of equipment, professional services or an increase in administrative costs.

**8. WAC 296-307-16165 Cooking and food-handling facilities.** The proposed amendments require TWH operators to have a minimum one stove burner or electric hotplate for every 2.5 workers (or one four-burner stove for every ten workers) in common TWH facilities, consistent with federal [rule] 29 C.F.R. 1910.<sup>6</sup> This is nearly double the current requirement in TWH rules. The requirement for one stove (with four burners) in family shelter units is unchanged. Some operators may need to add electric hotplates in common food handling facilities to comply with the rule, at a cost of \$18 for single burner units or \$30 for double burner.

<sup>6</sup> This proposed amendment could be considered exempt from analysis under RCW 34.05.310(4) because it would adopt a requirement from a federal rule, 29 C.F.R. 1910, without material change. However, the department has elected to analyze the cost of compliance with the proposed rule in this SBEIS.

Compliance with the proposed rule should not result in costs of supplies, professional services or an increase in administrative costs.

**9. WAC 296-307-16170 Cots, beds, bedding and personal storage.** The proposed rules set new requirements for bunk beds, requiring that the bottom bunk be at least twelve inches above the floor. Top bunks must also have rails to prevent individuals from falling. Cost of compliance would be about \$1 per bunk unit for height extenders, and about \$5.25 per bunk unit to add two 2x4 8-foot rails on top bunks. The number of bunks per TWH facility cannot be estimated. Compliance with the proposed rule should not result in costs of equipment, professional services or an increase in administrative costs.

The rules also require the operator to provide one lockable personal locker or space for each farm worker in the licensed TWH. This would not apply to nonworker occupants. The worker must provide his/her own lock. Foot lockers are available for about \$22 each. The smallest TWH sites may need fewer than ten lockers (\$220 or less), while the largest sites may need up to 250 lockers (costing up to \$5,500). Compliance with the proposed rule would not result in costs of equipment, labor, professional services or an increase in administrative costs.

**10. WAC 296-307-16175 First aid and safety.** The proposed amendments require TWH operators to provide a means of communication for occupants to contact emergency services or the operator's designated first aid-certified staff person. Some TWH facilities may not have landline phones or cell phone reception, especially in more remote areas of eastern Washington. Operators may comply with the rule by providing a walkie-talkie or intercom device centrally located at the TWH site so that occupants may contact a designated

staff person who can provide first aid or contact emergency services, at a cost of about \$30 for a set of two "track phone" type battery operated two-way radios.

Compliance with the proposed rule should not result in costs of supplies, labor, professional services or an increase in administrative costs.

**Analyze whether compliance with the proposed rule will cause businesses to lose sales or revenue.** Compliance with the proposed rules is not likely to cause affected businesses to lose sales or revenue. Compliance could cause affected TWH operators to temporarily shift payment from other expenses to the cost of rule compliance. Generally, costs to comply would be a one-time expense. Compliance may improve the quality and livability of some licensed TWH facilities, which may allow operators of those facilities to attract more highly skilled workers, which could lead to higher productivity for the farm operation.

**Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.** Available agricultural employer revenue and labor statistics do not distinguish between employers who do or do not provide temporary migrant worker housing. The proposed rules are anticipated to impose more than minor costs on agricultural employers with licenses to provide TWH compared to other agricultural employers. This SBEIS analyzes these costs.

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.** This analysis assumes that the proposed rules may have a disproportionate impact on TWH licensees who employ fifty of [or] fewer employees, compared to ten percent of largest businesses[es] that are licensed TWH operator businesses.

**Describe how small businesses were involved in the development of the proposed rule.** DOH held four stakeholder meetings in 2012 and four rule development meetings in 2014 to evaluate the current TWH rules, and they were attended by small TWH operators, organizations representing agricultural employers and advocates representing farm workers. Stakeholders also had opportunities to provide written input and suggestions on the current rules during the 2012 rule evaluation and on a working draft of the proposed rules in May 2014. Input from small TWH operators and other stakeholders was considered at each stage of rule development and many of their suggestions were [were] incorporated into the proposed rules where feasible. L&I held two stakeholder meetings in October 2014 to present the proposed draft that was written during multiple joint meetings with DOH throughout 2014. L&I will also be holding two joint public hearings with DOH in January 2015 for stakeholders to testify with their input on the proposed rules.

**Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.** The proposed rules are not likely to cause workers to lose jobs. Some very short-term jobs may be created if TWH operators hire workers to install fixtures necessary to comply with the proposed rules.

**Identify efforts to reduce (mitigate) costs imposed by the rule on small businesses, where legal and feasible in**

**meeting the stated objectives of the underlying statutes. The analysis must consider all of the following:**

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

- o **WAC 296-307-16115.** Proposed minimum square footage requirements for family shelter unit[s] are modified to count only temporary workers, consistent with 29 C.F.R. 1910, rather than counting all occupants in the unit under the current rule. As a result, operators may use smaller family shelter units than currently allowed if the unit houses fewer than eight workers, even if the unit houses additional occupants who are not workers (children or adults who do not work), if the sleeping area in the unit is separate from the kitchen area.
- o **WAC 296-307-16160.** Small TWH operators who must increase the number of toilets to meet the proposed two toilet minimum (in 29 C.F.R. 1910.142(5)) may use chemical toilets until permanent facilities can be built. Larger TWH facilities will likely meet the minimum requirement.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

The proposed rule does not decrease recordkeeping or reporting requirements applicable to all TWH operators.

(c) Delaying compliance timetables;

The department plans to delay until January 1, 2016, compliance with proposed rules that require TWH operators to install additional fixtures, appliances, partitions, or equipment, or to translate materials required to be distributed to TWH occupants.

A copy of the statement may be obtained by contacting Tari Enos, 7273 Linderson Way S.W., Tumwater, WA 98501, phone (360) 902-5541, fax (360) 902-5619, e-mail tari.enos@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Tari Enos, 7273 Linderson Way S.W., Tumwater, WA 98501, phone (360) 902-5541, fax (360) 902-5619, e-mail tari.enos@lni.wa.gov.

December 2, 2014

Joel Sacks

Director

**AMENDATORY SECTION** (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-161 Temporary worker housing and cherry harvest camps.**

**AMENDATORY SECTION** (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16101 Purpose and applicability.** (1) Purpose. This part is adopted by the Washington state department of labor and industries to implement the provisions of chapter 49.17 RCW and establish minimum health and safety

requirements for temporary worker housing and cherry harvest camps.

(2) Applicability.

This part applies to:

(a) ~~((This part applies only to operators of))~~ Temporary worker housing ~~((Operators using tents within the cherry harvest season must refer to WAC 296-307-163, Part L-1, or chapter 246-361 WAC.))~~, including cherry harvest camps, provided by agricultural employers or operators in the state of Washington; and

(b) Operators ~~((with ten or more occupants are required to be licensed under this part. Operators with nine or less employees are not required to be licensed, but must comply with these standards))~~ of temporary worker housing shall be licensed under this chapter if the housing meets the criteria identified in WAC 296-307-161.

~~((e) For department of health licensing, on-site survey, water test fees, etc., see WAC 246-358-990.))~~ For licensing requirements, see WAC 246-358-025, Licensure. For self-survey requirements, see WAC 246-358-027, Requirements for self-survey program. For enforcement requirements, see WAC 246-358-028, Enforcement.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16103 Definitions.** ~~((For the purposes of this part,))~~ The following ~~((words and phrases will have the following meanings))~~ definitions apply throughout this chapter unless the context clearly indicates otherwise:

~~(( ))~~**Agricultural employee**~~(( " means ))~~. Any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

~~(( ))~~**Agricultural employer**~~(( " means ))~~. Any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes, but is not limited to, the planting, transplanting, tubing, pre-commercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

**Bathing facility.** An enclosed area provided by the operator for workers to bathe or shower, and may be located within a family shelter or a common facility.

~~(( ))~~**Building**~~(( " means ))~~. Any structure used or intended by the operator to be used by workers for ~~((supporting or sheltering any use or occupancy that may include))~~ cooking, eating, sleeping, ~~((and))~~ sanitation, or other facilities.

~~(( ))~~**Common food handling facility** means an area designated by the operator for occupants to store, prepare, cook, and eat their own food supplies).

**Cherry harvest camp.** A place where housing and related facilities are provided to agricultural employees by agricultural employers or TWH operators for their use while employed for the harvest of cherries in the state of Washington. Cherry harvest camps are the only TWH site allowing tents.

**Common.** A shared facility provided by the operator for all workers of the TWH.

**Common areas.** Housing areas shared or used by one or more families or unrelated individuals.

~~(( ))~~**Current certificate (first aid)**~~(( " means ))~~. A first-aid training certificate that has not expired.

~~(( ))~~**Department** means the Washington state department of health and/or the department of labor and industries.

~~(( ))~~**Dining hall**~~(( " means ))~~. A cafeteria-type eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, by ~~((occupants))~~ workers.

~~(( ))~~**Drinking fountain**~~(( " means ))~~. A fixture equal to a nationally recognized standard or a designed-to-drain faucet, which provides potable drinking water under pressure. "Drinking fountain" does not mean a bubble-type water dispenser.

~~(( ))~~**Dwelling unit**~~(( " means ))~~. A shelter, building, or portion of a building, ~~((that))~~ which may include cooking and eating facilities, ~~((which is))~~ that are:

(\*) (a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(\*) (b) Physically separated from other sleeping and ~~((common use))~~ common areas. "Physically separated" means a physical wall separating rooms.

**Family shelter.** A dwelling unit with sleeping facilities for up to fifteen workers that may include toilet or cooking facilities. If services such as bathing, food-handling, or toilet facilities are provided in the family shelter, they are for the sole use of the occupants of the family shelter.

~~(( ))~~**First-aid** ~~(( " qualified " means that))~~ **trained.** The person holds a current certificate of first-aid training ~~((from the American Red Cross or another course with equivalent content or hours))~~.

**Floor space.** The area within a dwelling unit with a minimum ceiling height of seven feet.

~~(( ))~~**Food-handling facility**~~(( " means a designated ))~~. An enclosed area ~~((for preparation of food))~~ provided by the operator for workers to prepare their own food, and may be within a family shelter or common facility.

~~(( ))~~**Group A public water system**~~(( " means ))~~. A public water system ~~((and includes community and noncommunity water systems))~~.

(a) A community water system means any Group A water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents.

(b) A noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:

(i) Nontransient (NTNC) water system that provides service opportunity to twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year.

(ii) Transient (TNC) water system that serves:

• Twenty-five or more of the same people each day for sixty or more days within a calendar year;

~~Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or~~

~~One thousand or more people for two or more consecutive days within a calendar year)) as defined and referenced under WAC 246-290-020.~~

~~(~~u~~) **Group B public water system**(~~"means~~)). A public water system(~~(=~~~~

~~(a) Constructed to serve less than fifteen residential services regardless of the number of people; or~~

~~(b) Constructed to serve an average nonresidential population of less than twenty-five per day for sixty or more days within a calendar year; or~~

~~(c) Any number of people for less than sixty days within a calendar year)) that is not a Group A public water system, and is defined and referenced under WAC 246-291-050.~~

~~(~~u~~) **Habitable room**(~~"means~~)). A room or space in a structure (~~(with a minimum seven-foot ceiling)~~) used for living, sleeping, eating, or cooking. (~~(Bathrooms)~~) Bathing facilities, toilet (~~(compartments)~~) facilities, closets, halls, storage or utility space, and similar areas are not considered habitable (~~(space)~~) rooms.~~

~~(~~u~~) **Health officer**(~~"means~~)). The individual appointed as such for a local health department under chapter 70.05 RCW or appointed as the director of public health of a combined city-county health department under chapter 70.08 RCW.~~

~~(~~u~~) **Livestock**(~~"means~~)). Horses, cows, pigs, sheep, goats, poultry, etc.~~

~~(~~u~~) **Livestock operation**(~~"means~~)). Any place, establishment, or facility consisting of pens or other enclosures in which livestock is kept for purposes including, but not limited to, feeding, milking, slaughter, watering, weighing, sorting, receiving, and shipping. Livestock operations include, among other things, dairy farms, corrals, slaughterhouses, feedlots, and stockyards. Operations where livestock can roam on a pasture over a distance may be treated as outside the definition.~~

~~(~~u~~) **MSPA**(~~"means~~)). The Migrant and Seasonal Agricultural Worker Protection Act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.).~~

~~(~~u~~) **Occupant**(~~"means~~)). A temporary (~~(worker)~~) employee or a person who resides with a temporary worker at the (~~(housing site)~~) TWH or camp.~~

~~(~~u~~) **Operating license**(~~"means~~) or license. A document issued annually by the department of health (~~(or contracted health officer authorizing the use of temporary worker housing)~~).~~

~~(~~u~~) **Operator**(~~"means~~)). A person holding legal title to the land on which (~~(temporary worker housing)~~) the TWH or camp is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the (~~(temporary worker housing)~~) TWH.~~

~~(~~u~~) **Recreational park trailers**(~~"means~~)). A trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use, that meets the following criteria:~~

~~(\*) (a) Built on a single chassis, mounted on wheels;~~

~~(\*) (b) Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode; (~~and~~~~

~~(\*) (c) Certified by the manufacturer as complying with ANSI A119.5; and~~

~~(\*) (d) Chapter 296-150P WAC.~~

~~(~~u~~) **Recreational vehicle**(~~"means~~)). A vehicular-type unit that is compliant with chapter 296-150R WAC and primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive of power or is mounted on, or towed by, another vehicle. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers, but does not include pickup trucks with camper shells, canopies, or other similar coverings.~~

~~(~~u~~) **Refuse**(~~"means~~)). Solid wastes, rubbish, or garbage.~~

~~(~~u~~) **Temporary worker**(~~"means~~) or worker. An agricultural employee employed intermittently and not residing year-round at the same TWH site.~~

~~(~~u~~) **TWH, temporary worker housing**(~~"~~) or (~~u~~) **housing**(~~"means~~)). A place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees for temporary, seasonal occupancy. TWH includes cherry harvest camps and tents.~~

~~Tent. An enclosure or shelter constructed of fabric or pliable material composed of rigid framework to support tensioned membrane that provides the weather barrier.~~

~~(~~u~~) **WISHA**(~~"means~~)). The Washington Industrial Safety and Health Act, chapter 49.17 RCW, administered by the Washington state department of labor and industries.~~

~~Worker-supplied housing. Housing owned by the worker and made available to the same worker on the operator's TWH site. Worker-supplied housing includes recreational park trailers, recreational vehicles, tents, or other structures that meet the requirements of this chapter.~~

#### NEW SECTION

**WAC 296-307-16104 Technical assistance—Notice of violation.** (1) The department of health or the department of labor and industries may provide technical assistance to assist in compliance with this chapter if requested by an operator.

(2) The department of labor and industries will only provide technical assistance to cherry harvest camps if requested by an operator.

(3) During a consultative technical assistance visit, or within a reasonable time thereafter, the department shall inform the owner or operator of the TWH on any violations of law or agency rules as follows:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the agency requires compliance to be achieved;

(d) Notice of the means to contact any technical assistance services provided by the agency or others; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the agency.

**AMENDATORY SECTION** (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16115 Maximum (~~housing occupancy~~) capacity for TWH occupants.** (1) (~~The maximum occupancy for~~) Operator-supplied (~~housing~~) dwelling unit capacity will be based on:

(a) The square footage of the (~~housing facility~~) floor space in habitable rooms provided for sleeping purposes as described in WAC 296-307-16145 (10) and (11) and Table 1 of this section; and

(b) The number of bathing, food handling, handwashing, laundry, and toilet facilities as described in WAC 296-307-16150 through 296-307-16165.

(2) (~~The maximum occupancy for~~) Worker-supplied housing will be based on(=

~~(a))~~ the number of spaces designated by the operator for worker-supplied housing (~~by the operator; and~~

~~(b) The number of~~).

(3) Operators may take into consideration the services provided by the worker-supplied housing to ensure all ratios for services required by this chapter are met for all occupants. If the ratios for services are not met, then the operator must provide common facility capacity for bathing, food handling, handwashing, laundry, and toilet facilities (~~in excess of those facilities required for operator-supplied housing~~)).

(Note: Worker-supplied housing includes recreational park trailers, recreation vehicles, OSHA compliant tents, or other structures that meet the requirements of this part.)

Table 1  
TWH Maximum Capacity

<b>Occupant capacity: Determine total square footage and total facility to occupant ratio</b>						
<b>Floor space requirements</b>	<b>Sleeping room only</b>			<b>Sleeping room with kitchen</b>		
	50 square feet per occupant			100 square feet per temporary worker		
<b>Facility requirements</b>	<b>Toilets</b>		<b>Handwash sinks</b>		<b>Bathtubs or showers</b>	
<b>Common facilities</b>	Male	Female	Male	Female	Male	Female
		2 minimum 1 per 15 occupants	2 minimum 1 per 15 occupants	1 per 6 occupants	1 per 6 occupants	1 per 10 occupants
<b>Each family shelter</b>	1, if provided		1		1, if provided	

**AMENDATORY SECTION** (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16120 Variance and procedure.** Conditions may exist in operations that a state standard will not have practical use. The director of the department of labor and industries may issue a variance from the requirements of the standard when another means of providing equal protection is provided. The substitute means must provide equal protection in accordance with the requirements of chapter 49.17 RCW and chapter (~~296-350 WAC, variances~~) 296-901 WAC, Administrative rules.

Applications for variances will be reviewed and may be investigated by the department of labor and industries and the department of health. Variances granted will be limited to the specific case or cases covered in the application and may be revoked for cause. The variance (~~shall~~) must remain prominently posted on the premises while in effect.

Variance application forms may be obtained from the Department of Labor and Industries, P.O. Box (~~44625~~) 44650, Olympia, Washington (~~98504-4625~~) 98504-4650 or the Department of Health, P.O. Box 47852, Olympia, Washington 98504-7852, upon request. Requests for variances from safety and health standards shall be made in writing to the director or the assistant director, Department of Labor and Industries, P.O. Box (~~44625~~) 44650, Olympia, Washington

(~~98504-4625~~) 98504-4650. (Reference RCW 49.17.080 and 49.17.090.)

**AMENDATORY SECTION** (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16125 Temporary worker housing sites and cherry harvest campsites.** The operator must:

(1) Locate and operate a TWH site to prevent a health or safety hazard that is:

(a) Adequately drained and any drainage from and through the (~~housing~~) TWH must not endanger any domestic or public water supply;

(b) Free from periodic flooding and depressions in which water may become a nuisance;

(c) At least two hundred feet from a swamp, pool, sink hole, or other surface collection of water unless there is a mosquito prevention program for those areas;

(d) Large enough to prevent overcrowding of necessary structures. The principal housing area for sleeping and for food preparation and eating must be at least five hundred feet from where livestock are kept; and

(e) The grounds and open areas surrounding the shelters must be in a clean and sanitary condition.

(2) (~~Must develop and implement a temporary worker housing management plan and rules for operators with ten or~~

more occupants, to assure that the housing is operated in a safe and secure manner and is kept within the approved capacity. Additionally, the licensed operator must:

(a) Inform occupants of the rules, in a language the occupant understands by providing individual copies of the rules to each occupant or posting the rules in the housing area;

(b)) Ensure the principal TWH area for sleeping and for food preparation and eating are at least five hundred feet from where livestock are kept or congregate.

(3) Ensure the TWH grounds and open areas surrounding the buildings are kept in a clean and sanitary condition free from refuse.

(4) Ensure all worker-supplied housing is maintained in good working condition.

(5) Restrict the number of occupants in the ((temporary worker housing)) TWH to the capacity as determined by the department of health.

~~((3))~~ (6) When closing housing permanently or for the season((, complete the following)):

(a) Dispose of all refuse to prevent nuisance((;

(b) Fill all abandoned toilet pits with earth)); and

~~((e))~~ (b) Leave the grounds and buildings in a clean and sanitary condition.

NEW SECTION

**WAC 296-307-16127 TWH management plan.** (1)

The operator licensed under this chapter must develop and implement a written TWH management plan that must include:

(a) A safety plan that includes the following:

(i) Emergency information, including site name and address, emergency contact phone numbers, location of local emergency services, and the department of health bilingual TWH complaint line;

(ii) Those designated actions operators and employees must take to ensure employee safety from fire and other emergencies, including the following:

(A) Emergency escape procedures and emergency escape route assignments;

(B) Procedures to account for all employees after emergency evacuation has been completed;

(C) The preferred means of reporting fires and other emergencies; and

(D) Names or regular job titles of those who can be contacted for further information or explanation of duties under the plan.

(iii) Training. Designate and train a sufficient number of employees to assist in the safe and orderly emergency evacuation of employees; and

(iv) Maintenance. Regularly and properly maintain, according to established procedures, equipment and systems installed on heat producing equipment to prevent accidental ignition of combustible materials.

(b) Camp residency rules that describe to the employees expectations for maintaining a safe and orderly TWH.

(2) The operator shall make available:

(a) A proposed TWH management plan, in English and the native language of the employees, to the department of

health or the department of labor and industries upon request; and

(b) A written copy of the rules for review to employees, in the employee's native language, by:

(i) Posting it in a central location accessible to the employees; or

(ii) Providing individual copies to each employee if requested.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16130 Water supply.** The operator must:

(1) Provide a safe and reliable supply of drinking water from an approved Group A or Group B public water system ((that is)) meeting the requirements of:

(a) ~~((Approved as a Group A public water system in compliance with chapter 246-290 WAC if the water system supplies fifteen or more connections or twenty-five or more people at least sixty days per year or provide proof the temporary worker housing receives water from an approved Group A public water system; or~~

~~((b) Approved as a Group B water system in compliance with chapter 246-291 WAC if the water system supplies less than fifteen connections and does not supply twenty-five or more people at least sixty days per year.~~

~~Note: A "same farm exemption" applies to a public water system with four or fewer connections all of which serve residences on the same farm. "Same farm" means a parcel of land or series of parcels that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a Group A water system.~~

	<del>Avg. of less than 25 people</del>	<del>Avg. of 25 or more people</del>
<del>At least 60 days or more</del>	<del>Group B</del>	<del>Group A TNC</del>
<del>59 days or less</del>	<del>Group B</del>	<del>Group B</del>

~~Note: If a system has fifteen or more connections, regardless of the population, it is a Group A water system.~~

~~(2) Provide an adequate and convenient hot and cold water supply for drinking, cooking, bathing, and laundry purposes.~~

~~Note: An "adequate water supply" means the storage capacity of the potable water system must meet the requirements of ASHRAE 1999 Applications Handbook, chapter 48, Water Systems.~~

~~((3))~~ WAC 246-358-025 (2)(d), chapter 246-290 WAC and chapter 246-291 WAC; or

(b) Local board of health rules.

(2) Ensure that the distribution lines are able to maintain the working pressure of the water piping system at not less than ((fifteen)) twenty pounds per square inch after allowing for friction and other pressure losses.

~~((4))~~ (3) When water is not piped to each dwelling unit, provide cold, potable, running water under pressure within one hundred feet of each dwelling unit.



~~((5))~~ (4) When water sources are not available in each individual dwelling unit or tent, provide one or more drinking fountains for each one hundred occupants or fraction thereof. ~~(Prohibit)~~ The use of common drinking cups or containers from which water is dipped or poured is prohibited.

(5) Provide an adequate supply of hot and cold running water under pressure in bathing, food-handling, handwashing, and laundry facilities.

(6) Provide an automatically controlled hot water supply of one hundred to one hundred twenty degrees Fahrenheit in bathing, food-handling, handwashing, and laundry facilities.

~~((6))~~ (7) When water within one hundred feet of a dwelling unit is unsafe for drinking purposes and accessible to ~~((occupants))~~ workers, post a sign by ~~((the source reading))~~ each nonpotable water source that:

(a) Reads "Do not drink. Do not use for washing. Do not use for preparing food,";

(b) Is printed in English and in the native language of the ~~((persons occupying the housing, or))~~ workers;

(c) Is printed on material colored to indicate unsafe; and

(d) Is marked with easily understood pictures or symbols.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16135 Sewage disposal.** The operator must:

(1) Provide sewage disposal systems in accordance with local health jurisdictions.

(2) Connect all drain, waste, and vent systems from buildings to:

(a) Public sewers, if available; or

(b) Approved on-site sewage disposal systems that are designed, constructed, and maintained as required in chapters ~~((246-272))~~ 246-272A and 173-240 WAC, and local ordinances.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16140 Electricity and lighting.** The operator must ensure that:

(1) Electricity is supplied to all dwelling units, ~~((kitchen facilities, shower/bathroom facilities, common areas, and laundry facilities))~~ family shelters, and common facilities, except chemical toilets;

(2) All electrical wiring, fixtures, and electrical equipment must:

(a) Comply with the electric standards of the department of labor and industries regulations, chapter 19.28 RCW, chapter 296-46B WAC, and local ordinances~~((;))~~; and

(b) Be maintained in a safe condition~~((;))~~;

(3) Each habitable room must have at least:

(a) One ceiling-type light fixture; and

(b) At least one separate floor-type or wall-type convenience outlet~~((;))~~;

(4) Laundry, toilet ~~((rooms, shower/bathroom))~~ facilities, and bathing facilities~~((; and rooms where people congregate))~~ have at least one ceiling-type or wall-type light fixture;

(5) General lighting and task lighting within all facilities is adequate to carry on normal daily activities;

(6) Adequate lighting is provided for safe passage for ~~((occupants))~~ workers to handwashing sinks and toilets. ~~((Note: Lighting requirements may be met by natural or artificial means.))~~ Lighting requirements may be met by natural or artificial means;

(7) For lighting requirements in tents, please see WAC 296-307-16147.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16145 Building requirements and maintenance.** An operator must:

(1) Construct ~~((buildings to provide protection against the elements and comply with)),~~ if provided TWH dwelling units, including common facilities, which must meet the following requirements:

(a) The State Building Code, chapter 19.27 RCW, or ~~((Temporary worker housing))~~ TWH construction standard, chapter 246-359 WAC; and

(b) State and local ordinances, codes, and regulations~~((; and~~

~~((e) This part. Any shelter meeting these requirements is acceptable)).~~

(2) Prevent condensation in dwelling units and common facilities to the degree that it does not contribute to a health risk or safety issue to employees.

(3) Prevent mold in dwelling units and common facilities.

(4) Provide locking mechanisms on:

(a) Exterior doors;

(b) Bedroom doors;

(c) Bathroom doors; and

(d) Toilet and shower stalls that have doors.

(5) Identify each dwelling unit and space used for shelter by posting a number at each site.

~~((3))~~ (6) Maintain buildings in good repair and sanitary condition.

~~((4))~~ (7) Prohibit use of lead based paint on any part of the TWH.

(8) Provide exits that are unobstructed and remain free of any material or matter where its presence would obstruct or render the exit hazardous.

~~((5))~~ (9) Provide ~~((a ceiling height of at least seven feet for each habitable room. If a building has a sloped ceiling, no portion of the room measuring less than seven feet from the finished floor to the finished ceiling will be included in any computation of the minimum floor space.~~

(6) Provide at least seventy square feet of floor space for the first occupant and at least fifty square feet of floor space for each additional occupant in each dwelling unit.

(7)) habitable rooms with:

(a) Windows covering a total area equal to at least one-tenth of the total floor space; and

(b) At least one-half of each window can be opened to the outside for ventilation; or

(c) Mechanical ventilation in accordance with applicable standards from the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE).

(10) Provide each room used for sleeping purposes with:

(a) At least fifty square feet of floor space for each occupant:

~~(8) Provide floors in accordance with the State Building Code, chapter 19.27 RCW, or Temporary worker housing construction standard, chapter 246-359 WAC, that are tightly constructed and in good repair:~~

~~(9)) worker, not including any floor space in any portion of a room less than seven feet from the finished floor to the finished ceiling; and~~

(b) Windows covering a total area equal to at least one-tenth of the floor space within the surrounding walls of the sleep room.

(11) Provide each room used for sleeping and cooking purposes:

(a) At least one hundred square feet of floor space per temporary worker:

(b) Meet the requirements of subsection (10) of this section.

(12) Ensure wooden floors are at least one foot above ground level or meet the requirements in the State Building Code, chapter 19.27 RCW or Temporary worker housing construction standard, chapter 246-359 WAC.

~~((10) Provide habitable rooms that have:~~

~~(a) Windows covering a total area equal to at least one-tenth of the total floor area and at least one-half of each window can be opened to the outside for ventilation; or~~

~~(b) Mechanical ventilation in accordance with applicable ASHRAE standards.~~

~~(11)) (13) Provide sixteen-mesh screening on all exterior openings and screen doors with self-closing devices.~~

~~((12)) (14) Provide and maintain on all exterior entrances with screen doors that:~~

~~(a) Have self-closing devices; and~~

~~(b) Close without gaps that would allow entry of pests.~~

(15) Install all heating, cooking, and water heating equipment according to state and local ordinances, codes, and regulations and maintain in a safe condition.

~~((13)) (16) Provide ((adequate heating equipment if habitable rooms, including bathrooms, are used)) the ability to maintain inside dwelling unit temperature of at least seventy degrees Fahrenheit during cold weather.~~

~~((14)) (17) Ensure that all recreational vehicles and park trailers meet the requirements ((of) as defined in this chapter((s 296-150P and 296-150R WAC)).~~

## NEW SECTION

**WAC 296-307-16147 Tents.** (1) Each tent must be constructed to sleep no more than fifteen workers.

(2) Tents must provide protection from the elements, insects, and animals.

(3) Structural stability and floors.

(a) Tents and their supporting framework must be adequately braced and anchored to prevent weather related collapse. Documentation of the structural stability must be furnished to the department of health.

(b) Floors must be smooth, sloped from a raised center towards the lower outer edges. Floors must be without breaks or holes to provide a hard, stable walking surface. Nonridged flooring supported by grass, dirt, soil, gravel, or other uneven surfaces is not acceptable. Floors that are constructed of wood or concrete must comply with the building code, chapter 19.27 RCW and this chapter.

(c) Floor systems must be designed to prevent the entrance of snakes, rodents, and other nuisances.

(4) Flame-retardant treatments.

(a) The sidewalls, drops, and tops of tents shall be composed of flame-resistant material or treated with a flame-retardant in an approved manner.

(b) Floor coverings, which are integral to the tent, and the bunting, shall be composed of flame-resistant material or treated with a flame retardant in an approved manner and in accordance with Uniform Building Code, Standard 31.1.

(c) All tents must have a permanently affixed label bearing the following information:

(i) Identification of tent size and fabric or material type;

(ii) For flame-resistant materials, the necessary information to determine compliance with this section and National Fire Protection Association Standard 701, Standard Methods of Fire Tests for Flame-resistant Textiles and Films;

(iii) For flame-retardant materials, the date that the tent was last treated with an approved flame-retardant;

(iv) The trade name and type of flame-retardant used in the flame-retardant treatment; and

(v) The name of the person and firm that applied the flame-retardant.

(5) Means of egress.

(a) Tents must have a primary entrance door. At least one door must lead to the outside of the tent. The door must not be obstructed in any manner and must remain free of any material or matter where its presence would obstruct or render the exit hazardous.

(b) The area designated for refuge must be accessible and remain clear of storage materials or hazards.

(c) If food-handling facilities are provided in tents, or the tent occupancy capacity is for ten or more workers, a window must be located opposite the door and must have a means to open the window or provide an easily opened space, for example, a zipper which opens downward to the floor, must be provided.

(6) Floor area. The operator must:

(a) If food-handling facilities are provided in the tent, provide an additional twenty square feet of floor space;

(b) Provide at least fifty square feet of floor space for each worker in rooms used for sleeping purposes.

(7) Ceiling height.

(a) A ceiling height of at least seven feet is required in fifty percent of the total floor area.

(b) No portion of the tent measuring less than six feet from the flooring to the ceiling will be included in any computation of the floor area.

(8) Windows and ventilation.

(a) Provide a window area equal to one-tenth of the total floor area in each habitable room which opens at least half-way or more directly to the outside for cross-ventilation and

has a minimum of sixteen-mesh screens on all exterior openings.

(b) The windows must have weather-resistant flaps, which will cover the window area and a means of fastening the flaps to provide protection from the elements and allow privacy for the workers.

(9) Electrical and lighting.

The operator must ensure that:

(a) Electricity is supplied to all tents used as habitable room.

(b) All electrical wiring, fixtures and electrical equipment must comply with the electrical standards of the department of labor and industries regulations, chapter 19.28 RCW, and local ordinances, and be maintained in a safe condition.

(c) Each tent used as a habitable room has at least one ceiling-type light fixture and at least one separate floor-type or wall-type convenience outlet.

(d) If cooking is provided in the tent, appropriate wiring and electrical equipment is provided.

#### NEW SECTION

**WAC 296-307-16149 Carbon monoxide alarms, smoke detectors, and fire extinguishers.** (1) An operator must provide and maintain working carbon monoxide alarms that are:

(a) Located in each dwelling unit with a sleeping area; and

(b) Installed in accordance with the manufacturer's recommendations in compliance with the building code, chapter 51-51-0315 WAC.

(2) An operator must provide and maintain working smoke detectors that:

(a) Are located in each sleeping area;

(b) Are located on each level of dwelling units with a sleeping area;

(c) Are located in each cooking facility area;

(d) Emits a signal when the batteries are low;

(e) Are placed on the ceiling or wall, but not on the wall above any door; and

(f) Are in compliance with the building code, chapter 51-51-0314 WAC.

(3) An operator must provide properly working fire extinguishers that are:

(a) A minimum 2A:10BC;

(b) Installed and maintained according to the manufacturer's instructions; and

(c) Installed in accordance with local ordinances, codes and regulations when applicable.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16150 Laundry facilities.** An operator must:

(1) Provide laundry facilities that include:

(a) One laundry tray or tub or one mechanical washing machine for every thirty ((persons)) occupants;

((2) Provide) (b) Adequate facilities for drying clothes; and

((3) Provide) (c) Sloped, coved floors of nonslip impervious materials with screened floor drains((; (4))).

(2) Maintain laundry facilities in a clean and sanitary condition.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16155 Handwashing and bathing facilities.** An operator must:

(1) Provide ((one handwash sink for each family dwelling unit or for every six persons in centralized facilities: Handwash sinks must be adjacent to toilets;

(2) Provide) handwashing and bathing facilities adequate for the maximum capacity of the TWH according to Table 1 of WAC 296-307-16160.

(2) Meet the following general requirements for all handwashing and bathing facilities:

(a) Provide cleanable, nonabsorbent waste containers;

(b) Provide all showers, baths, or shower rooms with screened floor drains to remove waste water;

(c) Maintain fixtures and drains in good working order;

(d) Shower room walls and partitions must be smooth and nonabsorbent; and

(e) All showers separated by partitions must ensure privacy.

(3) Meet the following requirements for common facilities:

(a) One handwash sink for every six occupants. Of these handwash sinks, locate adjacent to toilets at least one handwash sink for every fifteen occupants;

(b) One showerhead for ((each family dwelling unit or for)) every ten ((persons in centralized facilities)) occupants;

((3) Provide) (c) One "service sink" in each building used for ((centralized)) common laundry, handwashing, or bathing;

((4) Provide) (d) Sloped, coved floors of nonslip impervious materials with floor drains;

((5) Ensure shower room walls are smooth and nonabsorbent to the height of four feet. If used, partitions must be smooth and nonabsorbent to the height of four feet;

(6) Provide all showers, baths, or shower rooms with floor drains to remove wastewater;

(7) Provide cleanable, nonabsorbent waste containers) (e) Shower and bathing facilities must provide privacy from the opposite sex and the public;

((8)) (f) Maintain ((centralized)) common bathing and handwashing facilities in a clean and sanitary condition, cleaned at least daily; ((9)) and

(g) Bathing and shower facilities must be available at all times during operation of the TWH.

(4) Meet the following requirements for family shelters:

(a) At least one handwash sink per family shelter. If an operator provides a family shelter with toilet facilities, at least one handwash sink located in the toilet room or immediately adjacent to the toilet room; and

(b) Request occupants ((of)) in family ((dwelling units)) shelters to maintain bathing and handwashing facilities in a clean and sanitary condition((;

~~(10) Ensure shower facilities provide privacy from the opposite sex and the public; and~~

~~(11) Make showers and bathing facilities available when needed).~~

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16160 Toilet facilities.** The operator must:

(1) Provide toilet facilities adequate for the maximum capacity of the TWH according to Table 1 of this section.

(2) Not provide or allow the use of pit privies.

(3) Fill abandoned pit privies with earth.

(4) Meet the following general (~~toilet~~) requirements( ~~Operators must~~) for all toilet facilities:

(a) Provide flush toilets unless chemical toilets (~~or pit privies~~) are specifically approved by the department of health (~~or health officer~~) according to requirements in chapter 246-272 WAC (~~and ensure the following:~~

~~(a))~~;

(b) Flush toilets, chemical toilets, and urinals must not be located in any sleeping room, dining room, cooking or food-handling facility(

~~(b))~~ or in any tent;

(c) Toilet rooms must be provided with:

(i) Handwashing sinks located in or immediately adjacent to the toilet room;

(ii) Either a window of at least six square feet opening directly to the outside or adequate ventilation;

(iii) Sixteen-mesh screens on all outside openings;

(iv) Fixtures maintained in good working order, including toilet(s) and sink(s); and

(v) Drains maintained in good working order, including floor drains with screens.

(d) When chemical toilets are approved, they must be:

(i) Located at least fifty feet from any dwelling unit or food-handling facility;

(ii) Maintained by a licensed waste disposal company; (~~and~~)

(iii) Comply with local ordinances; (~~(e)) and~~

(iv) Located immediately adjacent to a handwash sink(s); and

(e) When urinals are provided:

(i) There must be one urinal or two linear feet of urinal trough for each twenty-five men;

(ii) The floors and the walls surrounding a urinal and extending out at least fifteen inches on all sides must be constructed of materials which will not be adversely affected by moisture; and

(iii) The urinal must have an adequate water flush (~~where water under pressure is available; and~~

(iv) Urinal troughs are prohibited in pit privies.

(d) When pit privies are approved they must be:

(i) At least one hundred feet away from any sleeping room, dining room, cooking, or food handling facilities; and

(ii) Constructed to exclude insects and rodents from the pit).

~~((2) Centralized)) (5) Meet the following requirements for common toilet facilities(~~The operator must meet the following requirements when centralized~~);~~

~~(a) Where common toilet facilities are provided(~~

~~(a) Provide toilet rooms with:~~

~~(i) One toilet for every fifteen persons;~~

~~(ii) One handwashing sink for every six persons;~~

~~(iii) Either a window of at least six square feet opening directly to the outside, or be satisfactorily ventilated; and~~

~~(iv) All outside openings screened with sixteen-mesh material); the number of toilets for each sex must be based on the maximum number of occupants of that sex which the camp is designed to house at any one time, in the ratio of one~~

~~such toilet for every fifteen occupants, with a minimum of two toilets according to Table 1 of this section;~~

~~(b) Locate toilet rooms so that:~~

~~(i) Toilets are within two hundred feet of the door of each sleeping room; and~~

~~(ii) No person has to pass through a sleeping room to reach a toilet room.~~

~~(c) Maintain toilets in a clean and sanitary condition, cleaned at least daily;~~

~~(d) Provide each toilet compartment with an adequate supply of toilet paper at all times;~~

~~(e) (~~When shared facilities will be used for both men and women:~~) Separate toilets by partitions or walls. Partitions and walls must ensure privacy;~~

~~(f) Provide toilet room walls and partitions with smooth, cleanable, and nonabsorbent surfaces;~~

~~(g) Ensure the area surrounding common toilet facilities are adequately lighted; and~~

~~(h) When common facilities will be used for both men and women:~~

~~(i) Provide separate toilet rooms for each sex with a minimum of one toilet room for each sex and meet the required ratio as defined in (a) of this subsection;~~

~~(ii) Identify each room for "men" and "women" with signs printed in English and in the native language of the persons occupying the camp, or identified with easily understood pictures or symbols; and~~

~~(iii) Separate facilities by solid walls or partitions extending from the floor to the roof or ceiling when facilities for each sex are located in the same building.~~

~~((3) Individual family/unit dwelling toilet requirements. If providing flush toilets in individual cabins, apartments, or houses, the operator must)) (6) Meet the following requirements for family shelters if common toilet facilities are not provided:~~

~~(a) (~~Provide~~) One toilet for each individual family (~~dwelling unit or fifteen persons~~) shelter;~~

~~(b) (~~Provide one handwashing sink for each six persons. The sink must be located in the toilet room or immediately adjacent;~~~~

~~(c) Provide a window of at least six square feet opening directly to the outside, or be satisfactorily ventilated;~~

~~(d) Ensure all outside openings screened with sixteen-mesh material;~~

~~(e)) Ensure toilet facilities are cleaned prior to occupancy; and~~

(c) Request (~~occupants~~) employees to maintain the facilities in a clean and sanitary condition.

Table 1  
Minimum Number of Required Fixtures

<u>Facility Type</u>	<u>Toilets</u>		<u>Handwash Sinks</u>	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
<u>Common Facilities</u>	<u>2 minimum, 1 per 15 occupants</u>	<u>2 minimum, 1 per 15 occupants</u>	<u>2 minimum, 1 per 6 occupants</u>	<u>2 minimum, 1 per 6 occupants</u>
<u>Each Family Shelter</u>	<u>1, if provided</u>		<u>1</u>	

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16165 Cooking and food-handling facilities.** The operator must:

(1) Provide sanitary facilities for storing and preparing food;

(2) Provided all food-handling facilities with:

(a) Enclosed or screened cooking and food-handling facilities for all occupants (~~The operator must provide adequate tables and seating for occupants~~);

(1) If cooking facilities are located in dwelling units, the operator must provide:

(a) An operable cook stove or hot plate with at least one cooking surface for every two occupants;

~~(b))~~;

(b) Enclosed or screened eating facilities with tables and seating for a minimum of seventy percent of the occupants;

(c) If provided, hotplates that meet WAC 296-307-16140(2);

(d) A sink with hot and cold running potable water under pressure;

~~((e))~~ (e) At least two (~~((2))~~) cubic feet of dry food storage space per occupant;

~~((f))~~ (f) Nonabsorbent, and easily cleanable food preparation (~~(counters)~~) surfaces situated off the floor;

~~((g))~~ (g) Mechanical refrigeration conveniently located and able to maintain a temperature of (~~(forty-five))~~ forty degrees Fahrenheit or below, with at least two (~~((2))~~) cubic feet of storage space per occupant;

~~((h))~~ (h) Fire-resistant, nonabsorbent, nonasbestos, and easily cleanable wall coverings adjacent to cooking areas;

~~((i))~~ (i) Nonabsorbent, easily cleanable floors; (~~and~~

~~(h))~~ (j) Adequate ventilation for cooking facilities; and

(k) Cooking facilities, including fixtures and drains, maintained in good working order.

~~((2))~~ (3) In common food-handling facilities, the operator must provide:

(a) A room (~~((or))~~), building, or space within a building adequate in size, separate from any sleeping quarters or tent for workers to prepare and cook their own food;

(b) No direct openings to living or sleeping areas from the common food-handling facility;

(c) An operable cook stove or (~~hot plate with at least one cooking surface for every four occupants, or four cooking surfaces for every two families~~);

(d) Sinks with hot and cold running potable water under pressure;

(e) At least two (2) cubic feet of dry food storage space per occupant;

(f) Nonabsorbent, easily cleanable food preparation counters situated off the floor;

(g) Mechanical refrigeration conveniently located and able to maintain a temperature of forty-five degrees Fahrenheit or below, with at least two (2) cubic feet of storage space per occupant;

(h) Fire-resistant, nonabsorbent, nonasbestos, and easily cleanable wall coverings adjacent to cooking areas;

(i) Nonabsorbent, easily cleanable floors; and

(j) Adequate ventilation for cooking facilities.

~~(3))~~ electric hotplate with four cooking surfaces for every ten workers through any combination of cooking surfaces, burners, or one foot in length of burner surface.

(4) In family shelter food-handling facilities, the operator shall provide an operable cook stove or electric hotplate with four cooking surfaces for every ten workers through any combination of cooking surfaces, burners, or one foot in length of burner surface.

(5) The operator must ensure that (~~(centralized))~~ common dining hall facilities comply with chapter 246-215 WAC, Food service.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16170 Cots, beds, bedding, and personal storage.** The operator must:

(1) Provide beds, cots, or bunks (~~(furnished with clean mattresses))~~ in good condition for the maximum occupancy approved by the department of health (~~(or health officer))~~ for operator-supplied housing. Cots may only be used in tents for cherry harvest camps;

(2) Allow the use of cots in tents for cherry harvest camps only. Cots must be sturdy and stable and without:

(a) Visible mold;

(b) Rips or tears;

(c) Insect infestation;

(d) Stains from bodily fluids; and

(e) Rodents or rodent droppings.

(3) Maintain bedding, if provided by the operator, in a clean and sanitary condition;

~~((3))~~ (4) Locate all beds, cots, and bedding at least thirty-six inches from cooking surfaces;

(5) Provide (~~(sufficient))~~ a minimum of twelve inches of clearance between each cot, bed or bunk and the floor (~~(or a commercially available cot, bed, or bunk))~~);

~~((4))~~ (6) Allow space to separate beds or cots laterally and end-to-end by at least thirty-six inches when single beds or cots are used;

~~((5))~~ (7) Meet the following requirements when bunk beds are used:

(a) Allow space to separate beds laterally and end-to-end by at least forty-eight inches;

(b) Maintain a minimum space of twenty-seven inches between the upper and lower bunks; (~~and~~)

(c) Provide safety railing on each exposed side of top bunks that prevents the occupants from falling out; and

(d) Prohibit triple bunks~~((; and (6)))~~.

(8) Provide all occupants suitable storage space for clothing and personal articles. Storage ~~((facilities for clothing and personal articles in each room used for sleeping))~~ space must be located in the occupant's room used for sleeping. All or a portion of the storage space provided each temporary worker must be enclosed and lockable, such as a wall locker or floor locker.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16175 First aid and safety.** The operator must:

(1) Comply with chapters 15.58 and 17.21 RCW and chapters 16-228 and 296-307 WAC, Parts I and J, and pesticide label instructions when using pesticides in and around the ~~((housing))~~ TWH;

(2) Prohibit, in the ~~((housing))~~ TWH area, the use, storage, ~~((and))~~ or mixing of flammable, volatile, or toxic substances other than those intended for household use;

(3) Provide readily accessible first-aid equipment;

(4) Ensure that a first-aid ~~((qualified))~~ trained person is readily accessible to administer first aid at all times;

(5) ~~((Store or))~~ Provide a means of communication on the TWH site so workers can contact the first-aid trained person or emergency services within a reasonable amount of time; and

(6) Remove unused refrigerator units or other appliances to prevent access by children.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16180 Refuse disposal.** The operator must:

(1) Comply with local sanitation codes for removing and disposing of refuse from ~~((housing))~~ TWH areas;

(2) Protect against rodent harborage, insect breeding, and other health hazards while storing, collecting, transporting, and disposing of refuse;

(3) Store refuse in fly-tight, rodent-tight, impervious, and cleanable or reusable containers or in single-use containers;

(4) Keep refuse containers clean;

(5) Provide ~~((a))~~ at least one reusable container ~~((on a wooden, metal, or concrete stand))~~ for each dwelling unit that is:

(a) Located within one hundred feet of each dwelling unit;

(b) Placed on a solid, flat, and level stand made of wood, metal, or concrete; and

(c) Secured to prevent falling over or spilling.

(6) Empty refuse containers at least twice each week, and when full.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

**WAC 296-307-16190 Disease prevention and control.**

The operator must:

(1) Report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease;

(2) Report immediately to the local health officer:

(a) Suspected food poisoning;

(b) An unusual prevalence of fever, diarrhea, sore throat, vomiting, or jaundice; ~~((or))~~

(c) Productive cough~~((;))~~;

(d) When weight loss is a prominent symptom among ~~((occupants;))~~ workers.

(3) Prohibit any individual with a communicable disease from preparing, cooking, serving, or handling food, food-stuffs, or materials in dining halls.

~~((Part L-1~~

~~Cherry Harvest Camps))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-307-16105 Operating license.

WAC 296-307-16110 Requirements for self-survey program.

WAC 296-307-163 Cherry harvest camps.

WAC 296-307-16301 Purpose and applicability.

WAC 296-307-16303 Definitions.

WAC 296-307-16305 Technical assistance.

WAC 296-307-16310 Operating license.

WAC 296-307-16315 Maximum camp occupancy.

WAC 296-307-16320 Variance and procedure.

WAC 296-307-16325 Cherry harvest campsites.

WAC 296-307-16330 Water supply.

WAC 296-307-16335 Sewage disposal.

WAC 296-307-16340 Electricity and lighting.

WAC 296-307-16345 Tents.

WAC 296-307-16350 Recreational vehicles.

WAC 296-307-16355 Laundry facilities.

WAC 296-307-16360 Handwashing and bathing facilities.

WAC 296-307-16365 Toilet facilities.

WAC 296-307-16370 Cooking and food-handling facilities.

WAC 296-307-16375 Cots, beds, bedding, and personal storage.

WAC 296-307-16380 First aid and safety.

WAC 296-307-16385 Refuse disposal.

WAC 296-307-16390 Insect and rodent control.

WAC 296-307-16395 Disease prevention and control.

**AMENDATORY SECTION** (Amending WSR 02-23-073, filed 11/19/02, effective 1/1/03)

**WAC 296-833-100 Scope.** This chapter applies to all employers who provide or require their employees to live in temporary housing.

**Exemption:**

This rule does not apply to the agriculture industry.

For agriculture employers, see WAC 296-307-161, Temporary worker housing((;)) and ((~~WAC 296-307-163~~)) cherry harvest camps.

**WSR 14-24-112**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed December 3, 2014, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-116 on August 20, 2014.

Title of Rule and Other Identifying Information: Amending existing WACs to designate additional catch areas on the Columbia River: WAC 220-22-010 Columbia River salmon management and catch reporting areas and 220-32-050 Indian fishery—Area and qualification.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504, on January 9-10, 2015, at 8:30 a.m.

Date of Intended Adoption: On or after February 6, 2015.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by December 31, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by December 31, 2014, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Addition of new catch area designations and inclusion of new catch areas in existing WACs will aid in management of existing and emergent commercial fishing opportunities in the Columbia River. Additional housekeeping changes are proposed to reduce the number of WACs referred to in the setting of some commercial fishing seasons through the Columbia River compact process.

Reasons Supporting Proposal: Additions of new catch area designations are needed to manage evolving and emergent commercial fisheries, some of which are in response to the Columbia River Basin Salmon Management Policy C-3620. Developing fisheries require[s] managing subsections of existing catch areas and/or designation of new catch areas. Additionally, some housekeeping changes have been

included which will simplify the process for adopting commercial fishing seasons set under the Columbia River compact.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Harlan, 2108 Grand Boulevard, Vancouver, WA 98661, (360) 906-6711; Implementation: Lisa Harlan/Ron Roler, 2108 Grand Boulevard, Vancouver, WA 98661, (360) 696-6211; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

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

Small Business Economic Impact Statement

**Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:**

This proposed rule change will add additional catch area designations for Columbia River commercial fishing, amending WAC 220-22-010 to include two new catch areas. In addition, a catch area description contained in WAC 220-33-030 Shad, is being added into WAC 220-22-010 Columbia River salmon management and catch reporting areas, as it is applicable under both WACs. As a housekeeping measure, WAC 220-32-050 Indian fishery, is being amended to include a reference to one of the new catch areas.

As with all the existing catch area designations, commercial fish tickets will need to be filled out correctly reflecting the catch area in which the fish they are selling have been caught.

**Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:** There are no professional service requirements for a small business to comply with the requirements.

**Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** The costs of compliance with the provisions within the proposal will be negligible as the requirement to fill out fish tickets with the proper catch area has not changed.

**Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?** No. Compliance with the changes to department requirements in this rule making will not cause businesses to lose sales or revenue because the changes do not involve any marked increase to preexisting requirements already imposed on affected businesses.

**Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:**

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The costs of complying with the proposed changes to the rules in this project will be negligible as the changes do not involve any marked increase to preexisting requirements.

**Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** Costs are negligible; the requirements in the rules already apply to affected small businesses.

**A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** WDFW posts proposed rule changes on the department web site allowing for a public comment period and notifies individuals who have expressed a desire to be notified of such rule changes. No additional measures will be taken to involve small business in the development of this rule as it is essentially an internal housekeeping proposal.

**A List of Industries That Will Be Required to Comply with the Rule:** Columbia River commercial fishers and Columbia River commercial buyers.

A copy of the statement may be obtained by contacting Joanna Eide, Rules Coordinator, WDFW, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2403, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

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

December 3, 2014  
Joanna M. Eide  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-055, filed 4/12/07, effective 5/13/07)

**WAC 220-22-010 Columbia River Salmon Management and Catch Reporting Areas.** (1) **Area 1A** (~~(shall)~~) includes those waters of the Columbia River easterly of a line projected from the inshore end of the north jetty in the state of Washington to the knuckle of the south jetty in the state of Oregon, and westerly of a line projected from Grays Point in Washington to Tongue Point in Oregon.

(2) **Area 1B** (~~(shall)~~) includes those waters of the Columbia River easterly of a line projected from Grays Point in the state of Washington to the flashing 4-second lighted red buoy #44 off the easterly tip of Tongue Point in the state of Oregon, and westerly of a line projected from the 4-second flashing green lighted marker #81 on the Washington bank to a boundary marker on the easterly end of the Beaver Terminal Pier in Oregon, including all waters of Grays Bay, those waters of Deep River downstream of the Highway 4 Bridge, all waters of Seal Slough, those waters of Grays River downstream of a line projected between fishing boundary markers on both banks at the Leo Reisticka farm, and those waters of Elokomin Slough and Elokomin River downstream of the Highway 4 Bridge.

(3) **Area 1C** (~~(shall)~~) includes those waters of the Columbia River easterly of a line projected from the 4-second flashing green lighted marker #81 on the Washington bank to a boundary marker on the easterly end of the Beaver Terminal Pier in Oregon, and westerly of a line projected true west from the east or upstream bank of the Lewis River mouth in Washington.

(4) **Area 1D** (~~(shall)~~) includes those waters of the Columbia River upstream of a line projected true west from the east or upstream bank of the Lewis River mouth in Wash-

ington state and westerly of a line projected true north from Rooster Rock in Oregon, and those waters of Camas Slough downstream of the westernmost powerline crossing at the James River mill.

(5) **Area 1E** (~~(shall)~~) includes those waters of the Columbia River easterly of a line projected true north from Rooster Rock in the state of Oregon, and westerly of a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse #1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock.

(6) **Area 2S** includes those waters of the Columbia River from a true north/south line through the Washougal flashing red light "50" near the Oregon bank upstream to a straight line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse #1) through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock.

(7) **Area 1E1** includes those waters of the Columbia River easterly of a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse #1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, and easterly to Bonneville Dam.

(8) **Area 1F** (Bonneville Pool) (~~(shall)~~) includes those waters of the Columbia River upstream from the Bridge of the Gods, located approximately 2.3 miles above Bonneville Dam, and downstream of a line projected from the west end of the Port of The Dalles Dock across the Columbia River to a Washington department of fish and wildlife boundary marker on the Washington shore.

~~((7))~~ (9) **Area 1G** (The Dalles Pool) (~~(shall)~~) includes those waters of the Columbia River upstream from a line projected from an Oregon department of fish and wildlife deadline marker on the Oregon shore to the 5-mile-lock light (6 seconds red) on an island near the Oregon shore, to an island near the Washington shore to a Washington department of fish and wildlife fishing boundary marker on the Washington shore at the southwest corner of Horsethief Lake, SP&S Railroad fill and downstream of a line projected across the thread of the Columbia River at the grain elevator at Rufus, Oregon, to a deadline marker on the Washington shore.

~~((8))~~ (10) **Area 1H** (John Day Pool) (~~(shall)~~) includes those waters of the Columbia River upstream from a line projected across the thread of the Columbia River from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, to a fishing boundary marker on the Washington shore and downstream of a line projected across the thread of the Columbia River from the upstream bank of the Umatilla River.

~~((9))~~ (11) **Select areas:**

(a) **Blind Slough Select Area.** Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough.

(b) **Knappa Slough Select Area.** Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on



Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) **Tongue Point Select Area.** Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northernmost) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(d) **South Channel Select Area.** South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(e) **Deep River Select Area.** Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(f) **Cathlamet Channel Select Area.** Cathlamet Channel catch area includes waters easterly from a line drawn from the westerly tip of Puget Island through green buoy #41 north to light #39 to a line drawn from the eastern tip of Puget Island through flashing green #4s buoy then to the southern tip of Cape Horn.

AMENDATORY SECTION (Amending Order 77-14, filed 4/15/77)

**WAC 220-32-050 Indian fishery—Area and qualification.** It (~~shall be~~) is unlawful to take, fish for or possess food fish for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, (~~and~~) 1H, and 1E1 except that it (~~shall be lawful~~) is permissible for individuals possessing treaty fishing rights pursuant to the Yakima Treaty (12 Stat. 951), the Warm Springs Treaty (12 Stat. 963), the Umatilla Treaty (12 Stat. 945), and the Nez Perce Treaty (12 Stat. 957), while having on (~~their~~) his or her person (~~their~~) his or her Federal Tribal Identification Card to take, fish for and possess food fish for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, (~~and~~) 1H, and 1E1 in accordance with the (~~following regulations~~) rules in this chapter.

## WSR 14-24-119

### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed December 3, 2014, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-20-119.

Title of Rule and Other Identifying Information: WAC 458-30-200 Definitions and 458-30-210 Classification of land under chapter 84.34 RCW, which are part of the Open Space Taxation Act rules, chapter 458-30 WAC.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on January 13, 2014 [2015], at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: January 20, 2014 [2015].

Submit Written Comments to: Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail LeslieMu@dor.wa.gov, fax (360) 534-1606, by January 13, 2014 [2015].

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-30-200 and 458-30-210 provide definitions used in the administration of chapter 458-30 WAC. Amending WAC 458-30-200 will clarify and update definitions the department and county assessor offices use when administering the current use program under chapter 84.34 RCW. Additionally, the department believes that the definitions found in WAC 458-30-210 can be incorporated into the definitions in WAC 458-30-200 to improve the entire chapter. WAC 458-30-210 can then be repealed.

Reasons Supporting Proposal: Incorporating the definitions from WAC 458-30-210 into 458-30-200 and amending the new and/or existing definitions in WAC 458-30-200 will provide clarity for county assessor offices when administering the current use program under chapter 84.34 RCW.

Statutory Authority for Adoption: RCW 84.34.141.

Statute Being Implemented: RCW 84.34.020, 84.34.037, 84.34.041.

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

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

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1589; Implementation and Enforcement: Kathy Beith, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1403.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not create reporting, recordkeeping, and other compliance requirements that would economically impact a small business or fiscally impact a school district.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

December 3, 2014

Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-07-059, filed 3/19/12, effective 4/19/12)

**WAC 458-30-200 Definitions.** (1) **Introduction.** This ~~(section)~~ rule provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The terms listed in this ~~(section)~~ rule are intended to act in concert with each other as appropriate.

(2) **Definitions.** For purposes of land classified under chapter 84.34 RCW, the following definitions apply:

(a) "Additional tax" means the additional property taxes that will be collected when classification is withdrawn or removed from land classified under chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC. The affidavit will be prescribed by the department and furnished to county treasurers. This form is used by landowners to report sales or transfers of classified land. The owner or transferor and the purchaser or transferee, or agents of each, must sign the affidavit under penalty of perjury.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification or reclassification of land as either open space or timber land under chapter 84.34 RCW.

(d) "Agricultural product" means livestock and plants that are produced for commercial purposes and includes any agricultural, horticultural, or aquacultural produce or crop; the raising of livestock, poultry, bees, or fur-bearing animals; or the production of milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. When used in relation to livestock or fur-bearing animals used for food or fiber, "raising" means breeding or increasing the value, size, or weight of the animal. Agricultural product does not include marijuana, useable marijuana, or marijuana-infused products as those terms are defined in RCW 69.50.101.

(e) "Applicant" means the owner who submits an application for classification or reclassification of land under chapter 84.34 RCW.

(f) "Application" means an application for classification or reclassification of land under chapter 84.34 RCW.

(g) "Approval" means a determination by the granting authority that land qualifies for classification or reclassification under chapter 84.34 RCW.

(h) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed or it may be equipment used for a particular purpose or task, such as tools, instruments, or machinery.

(i) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural purposes.

(j) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

(k) "Assessment year" means the year in which the property is listed and valued by the assessor and precedes the year in which the taxes on the property are due and payable.

(l) "Change in use" means a direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW ~~((see))~~ WAC 458-30-295~~(9)~~.

(m) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

(n) "Commercial agricultural purposes" means the use of farm and agricultural land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income by producing an agricultural product. ~~((In addition, commercial agricultural purposes include the following uses of agricultural land:~~

~~(i) Land enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture;~~

~~(ii) Land used primarily for equestrian related activities for which a charge is made, including but not limited to stabling, training, riding, clinics, schooling, shows, or grazing for feed;~~

~~(iii) Land used for incidental uses that do not exceed twenty percent of the total classified land and are compatible with commercial agricultural purposes;~~

~~(iv) Land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products;~~

~~(v) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified parcel of twenty acres or more, and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;~~

~~(vi) Land, one to five acres which is not contiguous to a classified parcel, that constitutes an integral part of the farming operation being conducted on land qualifying as "farm and agricultural land";~~

~~(vii) Cultivating Christmas trees or short rotation hardwoods, or growing other standing crops on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such trees or other standing crops;))~~

An owner or lessee must engage in commercial agricultural activities on the land to demonstrate a commercial agricultural purpose.

(o) "Contiguous" means land that adjoins and touches other land owned by the same owner or held under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be

separated by a public road, railroad, right of way, or waterway.

For purposes of this subsection (2)(o):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in this subsection (2)(o)(i)(B)(III).

(p) "County financial authority" and "financial authority" mean the treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

(q) "County legislative authority" means the county commission, council, or other legislative body.

(r) "County recording authority" means the auditor or any agency or person charged with the recording of documents.

(s) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

(t) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following its classification or reclassification under chapter 84.34 RCW.

(u) "Department" means the department of revenue.

(v) "Farm and agricultural conservation land" means either:

(i) Land previously classified as farm and agricultural land that no longer meets the criteria and is reclassified as open space land; or

(ii) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture.

(w) "Farm and agricultural land" means:

(i) Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the lands are:

(A) Primarily used to produce agricultural products for commercial agricultural purposes;

(B) Enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(C) Primarily used for other commercial agricultural purposes as established by rule.

(ii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or

(B) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(ii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(iii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes and that have:

(A) Standing crops with an expectation of harvest within seven years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year; or

(B) Standing crops of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year.

For the purposes of meeting the minimum investment requirements as described in (w)(iii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income invested by the lessee in the production of the standing crop on the owner's classified farm and agricultural land.

(iv) Any parcel of land or contiguous parcels of land less than five acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or

(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(iv)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agri-

cultural product on the owner's classified farm and agricultural land.

(v) Farm and agricultural land also includes:

(A) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified farm and agricultural land parcel of twenty acres or more or multiple parcels that are contiguous and total twenty acres or more, and the use of the housing or residence is integral to the use of the classified farm and agricultural land for commercial agricultural purposes;

(B) Land on which appurtenances necessary for the production, preparation, or sale of the agricultural products are situated when the appurtenances are used in conjunction with the land(s) producing agricultural products, such as a machinery maintenance shed or a shipping facility located on farm and agricultural land that produces the products to be shipped;

(C) Land incidentally used for an activity or enterprise that is compatible with commercial agricultural purposes as long as the incidental use does not exceed twenty percent of the classified land. An incidental use of classified farm and agricultural land may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand;

(D) A noncontiguous parcel of land from one to five acres in size that constitutes an integral part of the commercial agricultural operation being conducted on land qualifying as "farm and agricultural land." As used in this paragraph, noncontiguous means not adjoining or touching but held by the same ownership as defined in RCW 84.34.020;

(E) Land used primarily for equestrian related activities for which a charge is made including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meets the requirements in (w)(i), (ii), or (iv) of this subsection; or

(F) Land used primarily for horticultural purposes to include growing plants in the ground or in a container, whether under a structure, like a greenhouse, or not. Land will not qualify as farm and agricultural land if:

(I) The land is primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(II) More than twenty-five percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales. This only applies to classified land less than five acres;

(III) More than twenty percent of the land used for growing plants in containers is covered by pavement, then none of the paved area is eligible. However, this does not prevent up to twenty percent of the paved area from qualifying as incidental use; and

(IV) Land classified under (w)(v)(F) of this subsection, in addition to any contiguous land classified under this subsection (w), is less than twenty acres, must meet the applicable income or investment requirements in (w)(i), (iii), or (iv) of this subsection.

(x) "Farm employee or farm and agricultural employee" means an individual who is employed on farm and agricultural land on a full-time basis or a seasonal or migratory worker who works on farm and agricultural land only during the planting, growing, and/or harvesting seasons. For pur-

poses of (x) of this subsection, "full-time basis" refers to an individual who is employed at least twenty-five hours per week on farm and agricultural land. It does not include a person who is employed full time by a business activity that is not conducted on classified farm and agricultural land and who only works occasional weekends or during the harvest season on classified farm and agricultural land.

(y) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural purposes including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

((w)) (z) "Granting authority" means the appropriate agency or official that acts on an application for classification or reclassification under chapter 84.34 RCW. The granting authority for:

(i) Open space land classification under RCW 84.34.020(1) and 84.34.037 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative ~~((body))~~ authority and three members of the city legislative ~~((body))~~ authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications;

(ii) Farm and agricultural land classification under RCW 84.34.020(2) and 84.34.035 is the assessor or the assessor's designee; and

(iii) Timber land classification under RCW 84.34.020(3) and 84.34.041 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative ~~((body))~~ authority and three members of the city legislative ~~((body))~~ authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications.

((x)) (aa) "Gross income" means cash income derived from commercial agricultural purposes, as defined in (n) of this subsection. Gross income includes payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. It also includes the wholesale value of agricultural products produced from any parcel of classified land of at least five acres but less than twenty acres in which the agricultural products are donated to nonprofit food banks or feeding programs. The term does not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee;

(ii) Cash income derived from leases for the use of the land for noncommercial agricultural ~~((activities))~~ purposes;

(iii) Payments for soil conservation programs; or

(iv) The value represented from an exchange of goods or services for other goods or services (bartering).

~~((y))~~ (bb) "Incidental use" means a use of land classified as farm and agricultural land or timber land that is compatible with commercial agricultural purposes or the commercial growing and harvesting of timber. Incidental use for land classified as farm and agricultural land cannot exceed twenty percent of the total classified land, while incidental use for timber land cannot exceed ten percent of the total classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

~~((z))~~ (cc) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes. To be considered integral to the farming operation, the residence of the farm operator or owner and/or housing for farm employees must be the place(s) from which the farmer conducts his/her commercial agricultural business.

~~((aa))~~ (dd) "Interest" means the amount of applicable interest upon additional tax.

~~((bb))~~ (ee) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation.

~~((ee))~~ (ff) "Notice of continuance" means the notice signed when land classified under chapter 84.34 RCW is sold or transferred if the new owner of the land intends to continue the classified use of the land and elects to have the land remain classified under chapter 84.34 RCW. This notice is part of the real estate excise tax affidavit or may be a separate document prepared by the department and attached to this affidavit.

~~((dd))~~ (gg) "Open space land" means one of the following:

(i) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly;

(ii) Any parcel(s) of land, by preserving it in its present use would either:

(A) Conserve and enhance natural or scenic resources;

(B) Protect streams or water supply;

(C) Promote conservation of soils, wetlands, beaches, or tidal marshes;

(D) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space;

(E) Enhance recreation opportunities;

(F) Preserve historic sites;

(G) Preserve visual quality along highway, road, or street corridors, or scenic vistas;

(H) Retain in its natural state, tracts of land of not less than one acre in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority; or

(iii) Any parcel(s) of farm and agricultural conservation land.

(hh) "Owner" means:

(i) Any person(s) having a fee interest in a parcel of land; or

(ii) The contract vendee when the land is subject to a real estate contract.

~~((ee))~~ (ii) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel does not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

~~((ff))~~ (jj) "Penalty" means the amount due when land is removed from classification under chapter 84.34 RCW. The amount of the penalty is equal to twenty percent of the additional tax and interest calculated in accordance with RCW 84.34.080 or 84.34.108.

~~((gg))~~ (kk) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

~~((hh))~~ (ll) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use appears to be very limited or excluded. The primary use of a parcel does not represent a specific percentage of the total classified land.

~~((ii))~~ (mm) "Qualification of land" means the approval of an application for classification or reclassification of land by a granting authority in accordance with chapter 84.34 RCW.

~~((jj))~~ (nn) "Rating system" means a public benefit rating system adopted for classified open space land according to RCW 84.34.055.

~~((kk))~~ (oo) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to a different classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as open space land under RCW 84.34.020(1).

~~((ll))~~ (pp) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor either because the owner requests removal, the new owner fails to sign the notice of continuance, the assessor does not approve a notice of continuance, or the land is no longer being used for the purpose for which classification was granted.

~~((mm))~~ (qq) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for valuable consideration.

~~((nn))~~ (rr) "Standing crop" includes short rotation hardwoods, Christmas trees, vineyards, fruit trees, or other perennial crops that:

(i) Are planted using agricultural methods normally used in the commercial production of that particular crop; and

(ii) Typically do not produce harvestable quantities in the initial years after planting.

~~((oo))~~ (ss) "Tax year" means the year when property tax is due and payable.

~~((pp))~~ (tt) "Timber land" means any parcel of land, five or more acres in size, or multiple parcels of land that are contiguous and total five or more acres in size, that are primarily used for the commercial growth and harvesting of forest crops.

(i) Timber land refers only to the land and also includes:

(A) Land incidentally used for an activity or enterprise that is compatible with the commercial growing and harvesting of timber as long as the incidental use does not exceed ten percent of the classified land; and

(B) Land on which appurtenances necessary for the production, preparation, or sale of commercial timber products are situated when the appurtenances are used in conjunction with the land(s) producing timber products.

(ii) Timber land does not include:

(A) Land listed on the assessment roll as designated forest land according to chapter 84.33 RCW;

(B) Land on which nonforest crops are located; or

(C) Land used as a residential home site.

~~((uu))~~ "Timber management plan" (~~means the plan filed with the county legislative authority or the assessor when classified timber land is sold or transferred. It~~) is synonymous with a "forest management plan" and details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of timber. The elements of such a plan are set forth in WAC 458-30-232.

~~((qq))~~ (vv) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration and may include situations where classified land is donated to an owner, corporation, partnership, or limited liability corporation.

~~((rr))~~ (ww) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use. The term also refers to market value, that is, the amount of money a buyer of property willing, but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might reasonably be applied.

~~((ss))~~ (xx) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain ~~((so))~~ classified for at least ten years from the date of classification. At any time after eight years of the initial ten-year classification period have elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-30-210 Classification of land under chapter 84.34 RCW.

## WSR 14-24-120

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed December 3, 2014, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-101.

Title of Rule and Other Identifying Information: WAC 308-100-180 Third party testing fee.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on January 12, 2015, at 3:00 p.m.

Date of Intended Adoption: January 13, 2015.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by January 9, 2015.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by January 9, 2015, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend the method of payment of testing fees to third party testers. The current rule provides that the fee will be paid to the department, and the department will reimburse the third-party tester. The proposed change would allow the department to specify the method of payment in the agreements to provide tester services entered into with the third party testers.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.060, and 46.25.140.

Statute Being Implemented: RCW 46.25.060.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark Holloway, Olympia, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Olympia, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3) and 34.05.310 (4)(b).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

December 3, 2014  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-025, filed 11/28/07, effective 12/29/07)

**WAC 308-100-180 Third party testing fee.** (1)(a) Except as provided in WAC 308-100-190 or subsection (1)(b) of this section, the base fee for each classified skill examination or combination of skill examinations conducted by a third party tester shall not be more than one hundred dollars.

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by a third party tester shall not be more than seventy-five dollars:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(2) An applicant who has failed the skill examination must retest and pay the full fee required under subsection (1) of this section.

(3) The base fee shall apply only to the conducting of the examination, and is separate from any additional fees, such as vehicle use fees, which may be charged by the third party tester. Any additional fees to be charged shall be reported to the department.

(4) Fees owed to a third party tester under this section must be paid by the applicant ~~((to the department. The department will reimburse the third party tester for the fees))~~ as provided in the third party tester agreement entered into under WAC 308-100-140.

(5) The fees in this section are in addition to the regular drivers' licensing fees.

**WSR 14-24-124**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**ENTERPRISE SERVICES**  
[Filed December 3, 2014, 10:33 a.m.]

Supplemental Notice to WSR 14-16-122.

Preproposal statement of inquiry was filed as WSR 13-03-115.

Title of Rule and Other Identifying Information: Chapter 200-380 WAC, Print management.

Hearing Location(s): Presentation Room, 1500 Jefferson Street S.E., Olympia, WA 98501, on January 6, 2015, at 4:00 p.m. PDT.

Date of Intended Adoption: February 3, 2015.

Submit Written Comments to: Online <https://www.surveymonkey.com/s/ManagingPrintOperations>; e-mail [rules@des.wa.gov](mailto:rules@des.wa.gov). Comments will be accepted through January 9, 2015, 5:00 p.m. PDT.

Assistance for Persons with Disabilities: Contact Jack Zeigler by phone (360) 407-9209, or e-mail [jack.zeigler@des.wa.gov](mailto:jack.zeigler@des.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of

enterprise services (DES) has received comments from interested parties regarding the proposed rules and guidelines. After considering the comments, the department has determined that changes are needed to the proposed rule. Further, these changes are a substantial variance from the proposed rule.

This supplemental notice extends the public comment time until close of business on January 9, 2015. The department is holding an additional public hearing on January 6, 2015, at 4 p.m. DES will consider and respond to any additional comments.

Statutory Authority for Adoption: RCW 43.19.742.

Statute Being Implemented: RCW 43.19.742.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules are available online at <http://des.wa.gov/about/LawsRules/Pages/Rulemaking.aspx#MSPO>.

Name of Proponent: [DES], governmental.

Name of Agency Personnel Responsible for Drafting: Jack Zeigler, 1500 Jefferson Avenue S.E., Olympia, WA 98504, (360) 407-9209; Implementation: Neva Peckham, 1500 Jefferson Avenue S.E., Olympia, WA 98504, (360) 407-9411; and Enforcement: Farrell Presnell, 1500 Jefferson Avenue S.E., Olympia, WA 98504, (360) 407-8820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules have minimal or no cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further DES does not voluntarily make section 201 applicable to this rule adoption nor to date, has joint administrative rules review committee made section 201 applicable to this rule adoption.

December 3, 2014

Jack Zeigler

Policy and Rules Manager

**Chapter 200-380 WAC**

**PRINT MANAGEMENT**

NEW SECTION

**WAC 200-380-010 Purpose and authority.** RCW 43.19.742 requires the department to put in place rules and guidelines to improve the efficiency and minimize the costs of agency-based printing.

The requirements and definitions of this chapter are used by agencies in conjunction with the department's *Guidelines for Managing Print Operations* to:

1) Improve efficiencies and minimize the costs of agency-based printing;

2) Manage their printing operations, including both agency-based printing and those jobs that require services of a print shop; and

3) Implement managed print strategies.

Additional requirements related to printing are found under RCW 43.19.733 through RCW 43.19.757.

#### NEW SECTION

**WAC 200-380-020 Definitions.** For the purposes of this chapter, the definitions in this section apply unless the context clearly requires otherwise. Additional definitions are in RCW 39.26.010.

(1) "Agency-based printing" means an agency's internal printing, which does not require a private sector print shop or another state agency print shop.

(2) "Broker" means solicit and establish the acquisition of a range of services to account for differentiation of needs among state agencies.

(3) "Desktop Printing" means the use of a desktop printer to complete a print job.

(4) "Digital Printing" means a digital-based image transferred directly to a variety of media, usually liquid ink or toner based.

(5) "Managed print services (MPS)" are services offered by an external provider to optimize or manage an organization's document output to meet certain objectives; such as driving down costs, improving efficiency and productivity, or reducing the support workload.

The main components provided are needs assessment, selective or general replacement of scanning and document capture equipment, and the service, parts and supplies (excluding paper) needed to operate the new and/or existing equipment (including existing third-party equipment if this is required).

Some current examples of services are:

(a) Tracking how the printer fleet is being used, the problems and the user satisfaction;

(b) Analyzing the information gathered in the course of tracking printer usage and makes (or recommends to the customer) the adjustments needed not only to ensure fleet efficiency, but also to meet changing user needs;

(c) Developing custom applications for smart multifunction products (MFPs) that automate paper-intensive document workflows and route scanned pages to document management systems;

(d) Restructuring of document workflows;

(e) Improving document security; and

(f) Reducing print volumes and power consumption for environmental reasons.

Some current examples of equipment are:

(a) Multi-functional devices (MFDs);

(b) Networked printers;

(c) Non-networked printers;

(d) Plotters;

(e) Desktop printers;

(f) Scanners; and

(g) Large format devices.

(6) "Managing Print Guidelines" means a resource document provided by the department for agencies to use in order to identify and implement managed print strategies and other tools necessary to track, manage, and minimize agency-based printing.

(7) "MFD State Contract" means a state master contract brokered by the department for use by agencies and other authorized users for the lease, rental, or purchase of an MFD or a fleet of MFDs.

(8) "Multifunctional Device" (or MFD) means a networked or non-networked digital printing device capable of any combination of the following functions:

(a) Printing;

(b) Copying;

(c) Scanning; and

(d) Faxing.

(9) "MPS State Contract" means a state master contract brokered by the department for use by agencies and other authorized users for MPS. A MPS State Contract allows agencies to choose the optimal combination of managed print services based on an agency's specific business needs.

(10) "Offset Printing" means a printing technique where an inked image is offset by a plate or rubber blanket then transferred to a surface.

(11) "Print Assessment" means an analysis of print services required to meet an agency's printing needs in the most efficient cost and effective manner.

(12) "Print management" means the overarching general term that applies to the management of all agency printing operations, including agency self-service and supplier generated printed material, services, and/or equipment.

(13) "Print Services" means digital printing, quick copy, and offset printing, including but not limited to printing done in a print shop.

(14) "Print Shop" means a shop where printing is done, usually by an offset method where ink is applied to paper or other substrate.

(15) "Quick Copy" means quick turnaround services for short-run printed materials.

#### NEW SECTION

**WAC 200-380-030 Agency requirements.** In order to fully implement the requirements of this chapter:

(1) Agencies must adopt agency wide policies, standards and procedures governing the management of their print operations.

(2) Agencies must determine baseline print costs using life cycle cost analysis as defined by RCW 39.26.010(15). Where applicable, agencies must include the costs of equipment relocation and redeployment.

(3) Agencies must annually submit an Agency Print Management Strategy Report to the department.