

WSR 17-04-106
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed February 1, 2017, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-23-073.

Title of Rule and Other Identifying Information: SWCAA 400-036 Portable Sources From Other Washington Jurisdictions, this is an existing section that allows for operation of portable sources with valid approvals from other jurisdictions without obtaining an agency approval.

SWCAA 400-045 Permit Application for Nonroad Engines, this is an existing section identifying requirements for permit applications for nonroad engines.

SWCAA 400-046 Application Review Process for Nonroad Engines, this is an existing section identifying requirements for the processing and approval of permit applications for nonroad engines.

SWCAA 400-072 Small Unit Notification for Selected Source Categories, this is an existing section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of New Source Review for selected small source categories.

SWCAA 400-074 Gasoline Transport Tanker Registration, this is an existing section containing air emission standards, work practices, registration and monitoring/reporting requirements for gasoline transport tankers.

SWCAA 400-098 Procedure for Adoption and Revision of the Consolidated Fee Schedule, this is a new section containing procedures by which the agency may adopt or revise a fee schedule for programs and activities that require a fee to support those activities.

SWCAA 400-099 Per Capita Fees, this is an existing section identifying the authority for, method of determination, and amount of the agency's per capita fee assessment for supplemental income.

SWCAA 400-100 Registration Requirements, this is an existing section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-103 Operating Permit Fees, this is an existing section governing fee assessment and expenditure for the Operating Permit Program.

SWCAA 400-109 Air Discharge Permit Applications, this is an existing section that identifies requirements for the submission and content of Air Discharge Permit applications.

Hearing Location(s): Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on May 4, 2017, at 3:00 p.m.

Date of Intended Adoption: May 4, 2017.

Submit Written Comments to: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email Paul@swcleanair.org, fax (360) 576-0925, by April 28, 2017.

Assistance for Persons with Disabilities: Contact Tina Hallock by May 2, 2017, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-036, 400-045, 400-046, 400-072, 400-074, 400-099, 400-100, 400-103 and 400-109, the proposed rule change removes ref-

erence to specific fees and redirects the reader to consult the current Consolidated Fee Schedule.

This proposed change will consolidate all fees into a single location to make it easier for affected parties to locate applicable fees. It will also remove the fees from the rule and establish a process for public notice and board consideration of changes without going through the complicated and lengthy rule-making process.

SWCAA 400-098, the proposed rule provides for establishment of a Consolidated Fee Schedule outside of the rule-making process. It establishes a process and procedure for adoption and revision to the fee schedule and associated public notice and comment provisions.

This proposed rule will consolidate all fees into a single location to make it easier for affected parties to locate applicable fees. It will also remove the fees from the rule and establish a process for public notice and comment and board consideration of changes without going through the complicated and lengthy rule making process.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; and Enforcement: Uri Papish, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provision of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

February 1, 2017

Uri Papish

Executive Director

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions

(1) **Applicability.** Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction without filing an air discharge permit application pursuant to SWCAA 400-109 or obtaining an air discharge permit pursuant to SWCAA 400-110 provided the requirements of this section are met. If the owner or operator of such a portable source does not wish to utilize the

provisions of this section, an air discharge permit application must be filed for the portable source pursuant to SWCAA 400-109. Portable sources that have a valid air discharge permit issued by SWCAA must operate in accordance with the SWCAA permit, and may not use the provisions of this section. This section does not apply to nonroad engines of any type.

(2) **Nonattainment areas.** If a portable source is locating in a nonattainment area and emits the pollutant(s) or pollutant precursors for which the area is classified as nonattainment, the source must acquire a site-specific air discharge permit from SWCAA.

(3) **Major Stationary Source.** If a portable source is a major stationary source then the source must also comply with applicable requirements from WAC 173-400-700 through 173-400-750.

(4) **General Requirements.** Portable sources must comply with the requirements listed below in order to gain coverage under this section.

(a) The portable source must possess a valid approval issued by a Washington air pollution control authority after July 1, 2010. The approval must identify the affected emission units as a portable source.

(b) Approval for the portable source must contain emission limitations and operational requirements that are consistent with BACT as determined by SWCAA for similar sources.

(c) The owner/operator of the portable source must pay a review fee ~~((of \$500))~~ as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(d) The owner/operator must obtain written confirmation from SWCAA that the portable source complies with the provisions of this section prior to commencing operation within SWCAA jurisdiction.

(e) The owner/operator of the portable source must submit a relocation notice and a copy of the applicable order of approval or air discharge permit to SWCAA at least 15 calendar days prior to commencing operation within SWCAA jurisdiction. An additional relocation notice shall be submitted for each subsequent location at which the source operates.

(f) The owner/operator shall register the portable source with SWCAA, and pay a registration fee ~~((of \$90 per emission unit))~~ as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 prior to commencement of operation. For the purposes of this registration, the term emission unit means each rock crusher and aggregate screen and associated haul roads. Registration expires at the end of the Agency's fiscal year. If a permitted unit is still operating after its registration expires, it shall be reregistered including payment of the annual registration fee.

(g) The owner/operator must submit an emission inventory report to SWCAA as described in SWCAA 400-105(1). The inventory report must contain information sufficient to enable calculation of air emissions from operation of the portable source within SWCAA jurisdiction. If the portable source operated at multiple locations, the inventory report must identify emissions specific to each location.

(5) **Enforcement of approval conditions.** SWCAA will enforce all terms and conditions contained in the portable

source's order of approval or air discharge permit, regardless of which permitting authority approved the portable source.

(6) **Modification of approval conditions.** Terms and conditions contained in the portable source's order of approval or air discharge permit may only be modified by obtaining a new air discharge permit from SWCAA.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-045 Permit Application for Nonroad Engines

(1) **Purpose.** A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for the following:

- (a) Engines put into service prior to November 9, 2003;
- (b) Nonroad engine installations with an aggregate power rating less than 500 horsepower;
- (c) Individual nonroad engines with a power rating less than 50 horsepower;
- (d) Small/residential water well drilling rigs;
- (e) Portable firefighting equipment;
- (f) Mobile cranes and pile drivers;
- (g) Engines used for emergency flood control;
- (h) Engines used to power carnival or amusement rides;
- (i) Engines used to power portable equipment (sign boards, lights, compressors, etc.) operating in support of short term construction or maintenance projects (< 1 year in duration);
- (j) Engines used to replace utility power or utility powered equipment on a temporary basis (< 30 days in duration) provided that such engines are EPA Tier certified and use fuel with a maximum sulfur content of 0.0015% by weight;
- (k) Engines used in, or on, a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (e.g., mobile cranes, bulldozers, forklifts, etc.); or

(l) Engines integral to a stationary source (e.g., portable power units dedicated to supporting sources such as rock crushers, asphalt plants, rock screens, etc.). These engines are subject to permitting under SWCAA 400-109.

(3) **Application Submittal.** The owner or operator shall submit a complete nonroad engine permit application for each new installation, replacement, or other alteration of a nonroad engine.

(4) **Application Fees.** A filing fee ~~((of \$500))~~ plus a review fee, as ~~((shown in Table A))~~ provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, shall be submitted with the application prior to Agency review. ~~((If additional types of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an~~

additional review fee shall be paid as described in Table B. (Total Application Fee = Filing Fee + Application Review Fee [Table A] + Additional Review Fee [Table B]))).

Expedited Application Review

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited review, the applicant must pay **double the normal application and review fee**. An expedited permit application will be processed as soon as possible and will receive priority over non-expedited applications.

~~((TABLE A~~

~~**Nonroad Engine Permit Application Review Fees**~~

Equipment/Activity	Associated-Work-Hours*	Review-Fee
i. Nonroad Engine (Aggregate horsepower rating):		
500 or more but less than 2,000	14	1,000.00
2,000 or more but less than 5,000	21	1,500.00
5,000 or more but less than 10,000	42	3,000.00
10,000 or more	85	6,000.00
ii. Minor Change to Existing Permit Conditions:	8	\$600.00
iii. Other (Not classified above):		\$200.00 per ton of emission
iv. Emergency Applications	Double the normal application and review fee	

TABLE B

Additional Review Fees

Equipment/Activity	Associated-Work-Hours*	Review-Fee
v. State Environmental Policy Act (SEPA) – Lead Agency		
Minor	14	\$1,000.00
Major	35	2,500.00
vi. Environmental Impact Statement (EIS) Review		
Minor	11	\$800.00
Major	28	2,000.00
vii. Variance request	11	\$800.00
viii. Review of ambient impact analysis		\$70.00/hr

* If the staff time required to review a permit application exceeds the number of work hours associated with the applicable fee specified in Tables A and B, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.)

(5) **Agency actions.** Each acceptable and complete nonroad engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

(6) **Withdrawn or exempt applications.**

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the

Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-046 Application Review Process for Nonroad Engines

(1) **Applicability.**

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(115). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) **Requirements.**

(a) Provided that all review requirements are met, a nonroad engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with applicable ambient air quality standards. Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A. If the ambient impact of a proposed project could potentially exceed an applicable ambient air standard, the Agency may require that the applicant demonstrate compliance with available ambient air increments and applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, 2015). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) **Application processing/completeness determination.** Within 30 calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(4) **Final determination.**

(a) Within 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(c) Nonroad engine permits issued under this section become effective on the date of issuance unless otherwise specified.

(5) **Appeals.** A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) **Compliance.** Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration does not occur within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. The Agency may specify an earlier date for installation or alteration in a nonroad engine permit.

If a nonroad engine remains in use at the same location for more than 12 months, approval under this section expires and the nonroad engine becomes a stationary source subject to the provisions of SWCAA 400-109 and 400-110. The owner or operator shall maintain records of the length of use at each location for the purpose of documenting compliance with this requirement.

(8) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

(i) No ambient air quality standard will be exceeded as a result of the change;

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The ~~((fee schedule found in SWCAA 400-045(3)))~~ current Consolidated Fee Schedule established in accordance with SWCAA 400-098 shall apply to these requests.

(c) Actions taken under this subsection may be subject to the public involvement provisions of SWCAA 400-171.

(9) **Engine registration.** The owner or operator of nonroad engines approved pursuant to this section shall notify the Agency within 10 calendar days of engine installation. Subsequent to notification, each permitted unit shall be registered with the Agency and the owner or operator shall pay a registration fee according to the schedule below. Registration expires after a period of 12 consecutive months. If a permitted unit is still operating after its registration expires, it shall be reregistered and ~~((pay))~~ a second registration fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, must be paid.

((Engine Rating (per unit)	<u>Registration Fee</u>
500-horsepower or less	\$250
More than 500-horsepower	\$350))

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AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-072 Small Unit Notification for Selected Source Categories

Purpose. The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to section 400-072(2) is intended to take the place of an air discharge permit application in regards to approval of new emission units. An air discharge permit application as described in SWCAA 400-109 is not required for an affected emission unit if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. Emission units subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are part of a major stationary source or major modification.

Registration. All emission units subject to the provisions of this section are also subject to registration pursuant

to SWCAA 400-100 and periodic inspection by Agency representatives.

(1) Exceptions.

(a) The owner or operator of an emission unit meeting any of the applicability criteria listed below may voluntarily elect to file an air discharge permit application pursuant to SWCAA 400-109.

(b) If an emission unit subject to the provisions of this section is located at a "stationary source" that is otherwise required to be permitted pursuant to SWCAA 400-109, the Agency may require that the emission unit be included in the permit for the affected "stationary source".

(c) SWCAA may require any emission unit that fails to maintain ongoing compliance with the applicable requirements of this section to submit an air discharge permit application pursuant to SWCAA 400-109.

(2) Agency notification. An owner or operator who wishes to install and operate a new emission unit under the provisions of this section must file a formal notification with the Agency for each emission unit. Notification shall be performed using forms developed by the Agency for that purpose. The notification must include documentation sufficient to positively identify the affected emission unit, establish applicability under this section, and demonstrate compliance with applicable requirements.

A complete notification includes, but is not limited to, the following:

- (a) Location of installation and/or operation;
- (b) Identification of responsible party (owner or operator);
- (c) Applicable processing fee;
- (d) Purpose of installation and/or operation (e.g., replace an existing unit, expansion of facility, new facility, etc.). If intended as a replacement for an existing unit, the existing unit must be clearly identified in the notification to allow SWCAA to make necessary changes in the registration program;
- (e) Equipment specifications (equipment type, make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);
- (f) Control equipment specifications;
- (g) Vendor performance guarantees; and
- (h) Operational information (hours of operation, maximum product throughput, fuel type, fuel consumption, etc.).

(3) Processing fee. Each notification shall be accompanied by the payment of a processing fee ~~((of \$250.00))~~ as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

(4) Effective date. Emission units subject to the provisions of this section shall not be installed or operated until the Agency provides written confirmation that the affected emission units are capable of complying with applicable requirements.

(5) Source categories.

(a) Coffee roasters.

(i) **Applicability.** The provisions of this section apply to batch configuration coffee roasters with a capacity of less than 100 pounds of green coffee beans per batch.

(ii) Emission limits and standards.

(A) Visible emissions from the coffee roaster exhaust stack shall not exceed five percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(B) Operations that cause or contribute to odors that could unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce those odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) General requirements.

(A) Each coffee roaster shall be equipped with an afterburner designed for a minimum residence time of 0.5 seconds, and capable of maintaining an operating temperature of not less than 1,200°F.

(B) Each coffee roaster shall have an operable temperature gauge capable of monitoring afterburner operating temperature on a continual basis.

(C) Each coffee roaster shall be exhausted to the afterburner whenever smoke or odors are generated by roasting and cooling activities.

(D) Afterburners shall be operated whenever the associated coffee roaster is in operation. The afterburner shall be operated and maintained in accordance with the manufacturer's specifications. Furthermore, the afterburner shall be operated in a manner that minimizes emissions.

(E) The exhaust point for each coffee roaster shall be a minimum of 200 feet from the nearest residential structure.

(F) Each coffee roaster and afterburner shall only be fired on natural gas or propane.

(G) Afterburner exhaust shall be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) Monitoring and recordkeeping requirements.

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Afterburner operating temperature shall be recorded weekly;

(B) Quantity of coffee roasted shall be recorded weekly;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected coffee roaster shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of natural gas consumed by the roaster and afterburner;

(II) Quantity of coffee roasted; and

(III) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(b) Small gas fired boilers/heaters.

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas/propane/LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the term "boiler" means any combustion equipment designed to produce steam or to heat water that is not used exclusively to produce electricity for sale.

(ii) Emission limits and standards.

(A) Visible emissions from the boiler exhaust stack shall not exceed zero percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9. (SWCAA 400, Appendix A).

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O₂, dry, 1-hr avg). EPA test methods from 40 CFR 60, as in effect on July 1, 2015, shall be used to determine compliance.

(iii) General requirements.

(A) Each boiler/heater shall only be fired on natural gas, propane, or LPG.

(iv) Monitoring and recordkeeping requirements.

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Quantity of fuel consumed by the boiler/heater shall be recorded for each calendar month;

(B) Maintenance activities for the boiler/heater shall be logged for each occurrence;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) Testing requirements.

(A) Each boiler/heater shall undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring shall be conducted annually thereafter no later than the end of the month in which the original monitoring was conducted. All emission monitoring shall be conducted in accordance with the requirements of SWCAA 400-106(2).

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂, the owner or operator shall either perform 60 minutes of additional moni-

toring to more accurately quantify CO and NO_x emissions, or initiate corrective action. Corrective action shall be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action shall be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂.

(vi) Reporting requirements.

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to the Agency within 3 business days of receipt.

(C) Emission monitoring results for each boiler/heater shall be reported to the Agency within 15 calendar days of completion on forms provided by the Agency.

(D) The owner or operator of an affected boiler/heater shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of fuel consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(c) Emergency service internal combustion engines.

(i) **Applicability.** The provisions of this section apply to emergency service internal combustion engines with a rating of 50 or more, but less than 1,000 horsepower (e.g., emergency generators, fire pumps, sewer lift stations, etc.).

(ii) Emission limits and standards.

(A) Visible emissions from diesel fired engine exhaust stacks shall not exceed ten percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (See SWCAA 400, Appendix A). This limitation shall not apply during periods of cold start-up.

(iii) General requirements.

(A) Liquid fueled engines shall only be fired on #2 diesel or biodiesel. Fuel sulfur content of liquid fuels shall not exceed 0.0015% by weight (15 ppmw). A fuel certification from the fuel supplier may be used to demonstrate compliance with this requirement.

(B) Gaseous fueled engines shall only be fired on natural gas or propane.

(C) Each compression ignition engine shall be EPA Tier certified and manufactured no earlier than January 1, 2008.

(D) Engine operation shall be limited to maintenance checks, readiness testing, and actual emergency use.

(E) Engine operation for maintenance checks and readiness testing shall not exceed 100 hours per year. Actual emergency use is unrestricted.

(F) Each engine shall be equipped with a nonresettable hourmeter for the purpose of documenting hours of operation.

(G) Engine exhaust shall be discharged vertically. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) Monitoring and recordkeeping requirements.

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for

a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Total hours of operation for each engine shall be recorded annually;

(B) Hours of emergency use for each engine shall be recorded annually;

(C) Fuel sulfur certifications shall be recorded for each shipment of liquid fuel;

(D) Maintenance activities shall be recorded for each occurrence consistent with the provisions of 40 CFR 60.4214;

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within three calendar days of receipt.

(C) The owner or operator of an affected emergency engine shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Hours of engine operation; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(d) **Petroleum dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use petroleum solvent and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total manufacturers' rated dryer capacity is the sum of the manufacturers' rated dryer capacity for each existing and proposed petroleum solvent dryer at the facility.

(ii) **Emission limits and standards.**

(A) VOC emissions from each dry cleaning facility shall not exceed 1.0 ton per year. Emissions shall be calculated using a mass balance approach assuming that all cleaning fluid utilized at the facility is emitted to the ambient air. Documented quantities of cleaning fluid shipped offsite as waste may be deducted from the calculated emissions.

(B) Operations which cause or contribute to odors that unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce these odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each dry cleaning facility shall be operated in a business space zoned for commercial activity, located a minimum of 200 feet from the nearest residential structure.

(B) Dry cleaning machines shall use DF-2000 cleaning fluid or an equivalent solvent.

(C) Solvent or waste containing solvent shall be stored in closed solvent tanks or containers with no perceptible leaks.

(D) All cartridge filters shall be drained in their sealed housing or other enclosed container for 24 hours prior to disposal.

(E) Perceptible leaks shall be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts shall be ordered within 2 business days of detecting the leak and repair parts shall be installed within 5 business days after receipt.

(F) Pollution control devices associated with each piece of dry cleaning equipment shall be operated whenever the equipment served by that control device is in operation. Control devices shall be operated and maintained in accordance with the manufacturer's specifications.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Each dry cleaning machine shall be visually inspected at least once per week for perceptible leaks. The results of each inspection shall be recorded in an inspection log and maintained on-site. The inspection shall include, but not be limited to the following:

(I) Hose connections, unions, couplings and valves;

(II) Machine door gaskets and seating;

(III) Filter gaskets and seating;

(IV) Pumps;

(V) Solvent tanks and containers;

(VI) Water separators;

(VII) Distillation units;

(VIII) Diverter valves; and

(IX) Filter housings.

(B) The amount of cleaning fluid (e.g., DF-2000) purchased, used, and disposed of shall be recorded monthly.

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the permittee shall be reported to SWCAA within 3 calendar days of receipt.

(C) The owner or operator of an affected petroleum dry cleaner shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(e) **Rock crushers and aggregate screens.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens proposed for

installation at existing rock crushing operations subject to facilitywide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

The provisions of this section do not apply to internal combustion engines associated with proposed rock crushers or aggregate screens. Such engines are subject to the requirements of SWCAA 400-045 or 400-109, as applicable.

(ii) **Emission limits and standards.**

(A) Visible emissions from rock crushing operations shall not exceed 0% opacity for more than three (3) minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(iii) **General requirements.**

(A) Each rock crusher and aggregate screen shall be equipped with a high pressure water spray system for the control of fugitive PM emissions. Operating pressure in each spray system shall be maintained at 80 psig or greater. A functional pressure gauge shall be maintained onsite with a connection point provided for the purpose of demonstrating compliance with the minimum pressure requirement.

(B) Spray/fog nozzles in the high pressure water spray system shall be visually inspected a minimum of once per week when in operation to ensure proper function. Clogged or defective nozzles shall be replaced or repaired prior to subsequent operation.

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul roads shall be watered at reasonable intervals as necessary to control fugitive dust emissions.

(D) Additional wet suppression measures shall be employed, as necessary, to control fugitive dust from haul roads, rock crushing, and material handling equipment in the event that process changes or weather patterns result in insufficient water application to control fugitive dust from plant operations.

(E) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" shall comply with the applicable requirements of that regulation.

(F) For portable rock crushing operations, the owner or operator shall notify the Agency in advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(iv) **Monitoring and recordkeeping requirements.**

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Visual inspection of spray/fog nozzles shall be recorded weekly;

(B) Maintenance, repair, or replacement of affected equipment shall be recorded for each occurrence;

(C) Quantity and size of crushed/screened material shall be recorded monthly;

(D) Relocation of rock crushing equipment shall be recorded for each occurrence.

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** An initial emissions test shall be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing shall be conducted within 90 calendar days of commencing operation. All emission testing shall be conducted in accordance with the requirements of that regulation.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected rock crusher or aggregate screen shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity and size of crushed/screened material throughput;

(II) Air emissions of criteria air pollutants.

(D) Emission testing results for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO shall be reported to the Agency within 45 calendar days of test completion.

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

AMENDATORY SECTION (Amending WSR 09-21-056, filed 10/15/09, effective 11/15/09)

SWCAA 400-074 Gasoline Transport Tanker Registration

(1) Each owner(s) and/or operator(s) of a gasoline transport tank doing business within SWCAA jurisdiction shall register the transport tank with SWCAA prior to being placed into service. Such registration shall be made annually with SWCAA as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(2) Each registered gasoline transport tanker shall pay an annual registration fee as provided in the ~~((schedule provided in SWCAA 400-100(3)(a)))~~ current Consolidated Fee Schedule established in accordance with SWCAA 400-098. Each transport tanker shall have its own registration sticker, certification test and shall be assessed a separate registration fee.

(3) Prior to registration, SWCAA shall review the leak test certification documentation from the testing company required under SWCAA 490-202(3). Upon demonstration of a successful leak test and payment of registration fees, SWCAA shall issue a registration sticker that shall be applied to the tanker.

(4) The owner(s) and/or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the transport tank is on file with the facility or a valid SWCAA registration sticker is displayed on the tank(s) or remain with the tank.

(5) Each owner(s) and/or operator(s) of a petroleum product transport tank doing business within SWCAA jurisdiction shall notify SWCAA of a change in status of a tanker. Change in status shall include sale, operating only out of SWCAA jurisdiction, out of service, or other similar change. Such notification shall be made in writing to SWCAA within 10 days of the change of status.

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

NEW SECTION

SWCAA 400-098 Procedure for Adoption and Revision of the Consolidated Fee Schedule

The Consolidated Fee Schedule must be adopted or changed by resolution of SWCAA's Board of Directors. A proposed resolution that adopts or changes the Consolidated Fee Schedule and the Consolidated Fee Schedule described in this section shall be posted on the SWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, notice of proposed fee schedule changes shall be provided by e-mail to any person requesting notice, not less than 30 days prior to the Board meeting at which such changes are considered provided sufficient advanced request for notice is made. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to SWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public review and comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-099 Per Capita Fees

Each component city or town and county shall pay such proportion of the supplemental income to the Agency as determined by either one of two methods as provided under RCW 70.94.093. The first method is based on the assessed

valuation of property within such city or town and county limits bears to the total assessed valuation of taxable property within the jurisdiction of SWCAA. The second method is based on the total population of such city or town and county bears to the total population of the jurisdiction of SWCAA. In addition, a combination of the two methods is allowable provided that such combination is shared at 50 percent each. The SWCAA Board of Directors has elected to use the second method based on population (per capita). The population shall be determined by the most recent State of Washington Office of Financial Management (OFM) population estimate. The "per capita" assessment (~~(has been)~~) is established (~~(at the following rates:~~

<u>Assessment Rate</u>	<u>Effective Date</u>
\$0.33 per citizen	January 1, 2008)

in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

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

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-100 Registration Requirements

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or emission units shall be registered with the Agency in accordance with this section as set forth in RCW 70.94.151. A "source" or emission unit is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. Emission units that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

Registration requirements are not applicable to the following:

(a) Emission units or activities exempted under SWCAA 400-101; and

(b) "Stationary sources" required to apply for, or to maintain, an operating permit under Chapter 173-401 WAC.

Regardless of the exemptions provided above, gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and all dry cleaners with VOC or TAP emissions shall be registered.

(2) **General requirements.**

(a) The owner or operator of a "source" for which registration is required shall initially register affected emission units with the Agency. A unique identification number shall be assigned to each "source" and a separate registration fee shall be provided for each emission unit; provided that, an owner may request to register a process with a detailed inventory of air contaminant sources and emissions related to the

process as a single unit. A registration fee shall not be collected for exempt emission units identified in SWCAA 400-101.

(b) The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter 70.94 RCW. The owner, operator, or their designated representative shall sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee shall be paid before the Agency may register any emission unit. Annual registration fees are based on the number of registered emission units and the quantity of "source" emissions during the previous calendar year. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or emission units that permanently shut-down prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 (~~following schedule:~~

<u>Emission Unit Fee</u>	<u>Pollution Emission Fee</u>	<u>Effective Date</u>
\$90 per emission unit	\$45/ton of criteria pollutant or VOC emission	January 1, 2008
	\$25/ton of toxic air pollutant emission	

Exceptions:

(a) An annual registration fee (~~of \$50.00~~) shall be charged to each gasoline transport tank as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(b) The registration fee for a small operation may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), are not subject to Registration and shall pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. Pursuant to RCW 70.94.431(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an emission unit are delinquent for two consecutive years or more, the Agency may revoke the affected emission unit's air discharge permit or Order of Approval.

(5) Reporting requirements for transfer or permanent shutdown of registered emission units.

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of registered emission units to the Agency within 90 calendar days of shutdown or transfer. The report shall contain the following information:

- (i) Legal name of the registered owner or operator;
- (ii) Effective date of the shutdown or transfer;
- (iii) Comprehensive description of the affected emission units; and
- (iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of registered emission units shall file a written report with the Agency within 90 calendar days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

- (i) Legal name of the company or individual involved in the transfer;
- (ii) Effective date of the transfer;
- (iii) Description of the affected emission units; and
- (iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, affected process and air pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g.; disconnection of power to equipment, mechanical positioning that inhibits processing, placing of padlocks on equipment to prevent operation).

(6) Inspections.

(a) Periodic onsite inspections of emission units and "sources" shall be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70.94.200.

(b) Agency personnel or representatives shall have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person shall refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person shall obstruct, hamper or interfere with any such inspection.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-103 Operating Permit Fees

(1) **Applicability.** The owner or operator of all "stationary sources" required to obtain an Operating Permit under 40 CFR Part 70, Chapter 173-401 WAC or RCW 70.94.161,

shall pay an annual fee as specified in this section, or the equivalent over some other time period as approved by the Executive Director, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program.

(2) **Fee applicable pollutants.** The following pollutants shall be considered fee applicable for the purposes of fee assessment.

(a) A volatile organic compound.

(b) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(c) Each pollutant for which a national primary ambient air quality standard (NAAQS) has been promulgated except that carbon monoxide shall be excluded from this reference. PM₁₀ emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the "stationary source." Emission test data is required to demonstrate the PM₁₀ portion of total particulate matter emissions.

Fugitive pollutant emissions shall be included in determining the fee assessment for a "stationary source." Emissions of each fee applicable pollutant emitted in excess of 7,500 tons from a "stationary source" shall be excluded from fee assessment.

(3) **Program cost projections.** The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-103(6), Ecology's development and oversight costs, as provided in RCW 70.94.162, and the program reserve fund shall be considered in the workload analysis. The Executive Director shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine Operating Permit Program fees.

(4) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three-part fee assessment methodology as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 below:

~~((a) Participation Fee. Fees sufficient to cover one-third of the Board approved Operating Permit Program budget shall be assessed such that each "stationary source" shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. Participation fees shall be equal in amount for each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:~~

~~$$PF = B \div 3 \div n, \text{ where;}$$~~

~~PF = Participation fee portion of total fee~~
~~B = The total Agency budget for the Operating Permit Program~~
~~n = The number of 40 CFR Part 70 sources~~

~~(b) Emissions Fee. Fees sufficient to cover one-third of the budget shall be assessed such that each "stationary source" shall pay an amount equal to that "stationary source's" portion of the total annual emissions of the fee~~

~~applicable pollutants from all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The emissions portion of the fee shall be assessed according to the following formula:~~

~~$$EF = B \div 3 * SE \div TE, \text{ where:}$$~~

~~EF = Emissions fee portion of total fee~~
~~B = The total Agency budget for the Operating Permit Program~~
~~SE = The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 "stationary source" (not to exceed 7,500 tons per pollutant)~~
~~TE = The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 "stationary sources"~~

~~(c) Complexity Fee. Fees sufficient to cover one-third of the budget shall be assessed such that each 40 CFR Part 70 "stationary source" shall pay an amount equal to that "stationary source's" portion of the total emission units at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" emission units to the total number of emission units located at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The complexity portion of the fee shall be assessed according to the following formula:~~

~~$$CF = B \div 3 * SU \div TU, \text{ where:}$$~~

~~CF = Complexity fee portion of total fee~~
~~B = The total Agency budget for the Operating Permit Program~~
~~SU = The number of emission units at a "stationary source"~~
~~TU = The number of emission units at all 40 CFR Part 70 "stationary sources"~~

~~(d) Total Fee. The amount of the annual assessed fees for each 40 CFR Part 70 "stationary source" shall be the sum of the participation, emissions and complexity fee portions (PF+EF+CF = Total Fee). The sum of the total fees for all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.)~~

(5) Accountability.

(a) The sum of the fees assessed by the Agency to all "stationary sources" required to obtain Operating Permits within the Agency's jurisdiction shall not exceed the cost of developing and administering the program and maintaining a program reserve fund. All fees collected from permit program "stationary sources" as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program. The purpose of the program reserve fund is to ensure that permit program costs are not

funded by fees from "stationary sources" not participating in the operating permit program. The value of monies held in the program reserve fund shall not exceed 15 percent of the average permit program budget over the most recent three-year period.

(b) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual "stationary source's" fee.

(c) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, including the program reserve fund, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(6) Fee eligible activities.

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(b) Inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(c) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a "stationary source" is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(i) The share attributable to permitted "stationary sources" for the development and maintenance of emissions inventories;

(j) The share attributable to permitted "stationary sources" of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(m) Required fiscal audits, periodic performance audits and reporting activities;

(n) Tracking of time, revenues and expenditures and accounting activities;

(o) Administering the permit program including costs of clerical support, supervision and management;

(p) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(7) Activities not eligible for fee.

(a) New Source Review activity that does not include processing or preparing an operating permit;

(b) Development of BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants; and

(c) Acting on an application for a PSD permit.

(8) **Schedules of payment.** Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit "stationary source." An operating permit "stationary source" shall be allowed to pay its annual operating permit fees in one, two, or four installments. Each schedule of payment shall specify the terms and dates of payments.

(9) **Late fee payments.** Delinquent fees are subject to a late fee equal to three times the operating permit fee as provided under RCW 70.94.431(7). The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a "stationary source's" operating permit for failure to pay all or part of its permit fee.

(10) **Transfer of ownership.** Transfer of ownership of a source shall not affect that "stationary source's" obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a "stationary source."

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

SWCAA 400-109 Air Discharge Permit Applications

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270.

(2) Applicability.

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consis-

tent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

- (i) New construction or installation;
 - (ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);
 - (iii) Review of existing or installed equipment operating without prior approval;
 - (iv) Modification, alteration or replacement of existing process or control equipment;
 - (v) Relocation of existing equipment;
 - (vi) Review of existing equipment with an expired or lapsed approval or registration;
 - (vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT BART, LAER).
- (b) Submittal of an air discharge permit application shall not automatically impose review requirements pursuant to SWCAA 400-110.
- (c) Stationary sources subject to the PSD program (WAC 173-400-700 through -750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, shall include all information necessary to meet the requirements of SWCAA 400-800 through -860.

(e) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected emission units and quantify potential emissions, and the payment of a fee equal to \$300. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate of \$70/hr. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

- Name and location of "stationary source";
- Description of primary processes at the "stationary source";
- Description of emission units at the "stationary source"; and
- Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application shall be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" is exempt from this section if it meets the category criteria contained in SWCAA 400-072 and SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or emission unit may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas in any new air discharge permit.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all emission units at the affected site or facility are less than all of the following exemption emission thresholds.

<u>Pollutant</u>	<u>Exemption Threshold</u>
NO _x , CO, SO ₂	1.0 tpy (individual pollutant)
PM ₁₀	0.75 tpy
PM _{2.5}	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)
Toxic air pollutants	The lesser of 1.0 tpy (combined) or the individual SQER per WAC 173-460 (effective 8/21/98)

(e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

- (A) Relocation of a portable source that has an active air discharge permit from SWCAA allowing portable operation,
- (B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,

(C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,

(D) Emergency service internal combustion engines located at a facility where the aggregate power rating of all internal combustion engines is less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered,

(E) Asphalt roofing and application equipment (not manufacturing or storage equipment),

(F) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,

(G) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,

(H) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats,

(I) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,

(J) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),

(K) Retail paint sales establishments (not including manufacturing),

(L) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,

(M) Sewing equipment,

(N) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),

(O) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3)(c). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,

(P) Residential wood heaters (e.g., fireplaces and woodstoves),

(Q) Office equipment, operations and supplies,

(R) Steam cleaning equipment used exclusively for that purpose,

(S) Refrigeration systems that are not in air pollution control service,

(T) Housekeeping activities and equipment,

(U) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

(V) Natural and forced air vents and stacks for bathroom/toilet facilities,

(W) Personal care activities,

(X) Lawn and landscaping activities,

(Y) Flares used to indicate danger to the public,

(Z) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425,

(AA) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question, and

(AB) Emergency service internal combustion engines individually rated at less than 50 horsepower.

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application or issue a permit, the applicant shall submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. (~~following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee / Table A + Additional Review Fee / Table B (if applicable) + Major NSR Review Fee / Table C (if applicable)]~~)

Filing Fee

~~A filing fee of \$500.00 shall be submitted for each permit application:~~

Legal Notice Fee

~~An applicant who submits an Air Discharge Permit application that requires newspaper publication of a Legal Notice pursuant to SWCAA 400-171 will be invoiced for an additional fee. The additional fee will be equal to the actual cost of publication plus \$70 to compensate for the staff time required to prepare, mail and invoice the public notice.~~

Permit Application Review Fee

~~A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Permit application review fees based on equipment capacity or size are to utilize the design capacities of affected equipment. If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.~~

Expedited Application Review

~~An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to~~

support expedited processing. If the application is accepted for expedited processing, the applicant must pay double the normal filing and review fees. An expedited permit application will be processed as soon as possible and receives priority over non-expedited applications. However, the Agency will not guarantee an issue date for expedited permits since the development and issuance of a permit is highly dependent on the accuracy/completeness of the application and the responsiveness of the applicant.

Additional / Major NSR Review Fees

If additional actions, as identified in Tables B and C, must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay additional fees as specified in those Tables. The fees identified in Tables B and C are cumulative. If the staff time required to complete the additional review exceeds the number of work hours associated with the applicable review fee specified in Tables B and C, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

**TABLE A
Permit Application Review Fees**

Equipment/Activity	Associated-Work-Hours	Review-Fee
250 or more but less than 10,000	8	\$600.00
10,000 or more but less than 40,000	14	1,000.00
40,000 or more but less than 100,000	21	1,500.00
100,000 or more	28	2,000.00
v. Gasoline dispensing facilities:		
Stage I	8	\$600.00
Stage II	10	700.00
Stages I & II, combined	11	800.00
Toxics review for gasoline facility	21	1,500.00
Stage II removal	8	600.00
vi. Other:	\$200.00 per ton of emission	
(Not classified in Subsection i., ii., iii., iv. or v. above)		
vii. Toxic air contaminants	\$200.00 per ton of emission	
viii. Complex stationary source or modification:	85	\$6,000.00
ix. Synthetic minor application:	35	\$2,500.00
(Including, but not limited to: Title V, HAP)		
x. Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions – tons per year):		
Less than or equal to 10	8	\$600.00
More than 10 but less than or equal to 50	14	1,000.00
More than 50 but less than or equal to 100	21	1,500.00
More than 100 but less than 250	35	2,500.00
250 or greater	85	6,000.00
xi. Minor modifications to existing permit conditions:	8	\$600.00
xii. Dry cleaner:	8	\$600.00
xiii. Internal combustion engines (Aggregate horsepower rating):		
Less than 500	10	700.00
500 or more but less than 2,000	14	1,000.00
2,000 or more but less than 5,000	21	1,500.00
5,000 or more but less than 10,000	42	3,000.00
10,000 or more	85	6,000.00
xiv. Crematory/small incinerators/small flares:	10	\$700.00
xv. Gluing/flow coating operations without active ventilation:	11	\$800.00
xvi. Soil/groundwater remediation:	11	\$800.00
xvii. Composting facilities (Average material throughput – tons per day):		
Less than 50	8	\$600.00
50 or more but less than 100	14	1,000.00
100 or more but less than 200	21	1,500.00
200 or more but less than 500	42	3,000.00
500 or more	85	6,000.00
xviii. Coffee roasters:	10	\$700.00
xix. Municipal wastewater treatment plants: (Million gallons per day – annual average design capacity)		
More than 1 but less than 5	11	\$800.00
5 or more but less than 10	21	1,500.00
10 or more	35	2,500.00

Equipment/Activity	Associated-Work-Hours	Review-Fee
i. Fuel burning equipment (Million Btu/hr heat input @ design capacity):		
0.4 or more but less than 5	8	\$600.00
5 or more but less than 10	10	700.00
10 or more but less than 30	12	850.00
30 or more but less than 50	14	1,000.00
50 or more but less than 100	17	1,200.00
100 or more but less than 250	35	2,500.00
250 or more but less than 500	57	4,000.00
500 or more	85	6,000.00
Change in fuel type One half of the applicable fee listed above		
ii. Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute – ACFM):		
Less than 50	8	\$600.00
50 or more but less than 5,000	10	700.00
5,000 or more but less than 20,000	11	800.00
20,000 or more but less than 50,000	12	900.00
50,000 or more but less than 100,000	13	950.00
100,000 or more but less than 250,000	14	1,000.00
250,000 or more but less than 500,000	28	2,000.00
500,000 or more	57	4,000.00
iii. Refuse burning equipment (Incinerators) (Tons/day capacity):		
Less than 0.5	10	\$700.00
0.5 or more but less than 5	11	800.00
5 or more but less than 12	14	1,000.00
12 or more but less than 50	42	3,000.00
50 or more	85	6,000.00
iv. Storage tanks, reservoirs, or containers (Gallons total capacity): (Other than gasoline or diesel fuel dispensing facilities):		

**TABLE B
Additional Fees**

Equipment/Activity	Associated- Work- Hours	Fee
xx. Emission offset analysis or bubble:	10	\$700.00
xxi. Emission reduction credit (ERC) application: (Deposit or withdrawal)	10	\$700.00
xxii. RACT/BACT/MACT/BART/LAER determination:		\$70.00/hr
(xxiii.) Variance request:	11	\$800.00
(xxiv.) Review of ambient impact analysis:		\$70.00/hr
(xxv.) Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):		\$70.00/hr

**TABLE C
Major NSR Fees**

Equipment/Activity	Associated- Work- Hours	Fee
(xxvi.) Plantwide applicability limitations:	142	\$10,000.00

(5) Final determination.

(a) Each complete air discharge permit application shall result in the issuance of a final determination consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. Air discharge permit applications for actions that are subject to SEPA review shall include a completed environmental checklist as provided in WAC 197-11 or a copy of another agency's SEPA determination for the same action. A list of actions exempt from SEPA is found in WAC 197-11-800.

(6) Withdrawn or exempt applications.

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

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

**WSR 17-06-009
PROPOSED RULES
EASTERN WASHINGTON
STATE HISTORICAL SOCIETY**
[Filed February 17, 2017, 1:06 p.m.]

Continuance of WSR 16-23-151.
Preproposal statement of inquiry was filed as WSR 16-13-082.

Title of Rule and Other Identifying Information: Chapter 42.56 RCW, the Washington State Public Records Act; RCW 42.56.040; RCW 27.34.070 State historical societies—Powers and duties; and chapter 43.21C RCW, the State Environmental Policy Act (SEPA).

Date of Intended Adoption: March 1, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continue adoption date to March 1, 2017.

February 17, 2017
Betsy Godlewski
Development Director

**WSR 17-06-013
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY**
[Filed February 21, 2017, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-018.

Title of Rule and Other Identifying Information: Amending chapter 172-90 WAC, Student academic integrity, to codify rules related to academic integrity for students of Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, Washington 99004, on April 26, 2017, at 11:00 a.m.

Date of Intended Adoption: May 12, 2017.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, email clamberson@ewu.edu, fax (509) 359-7036, by April 19, 2017.

Assistance for Persons with Disabilities: Contact Chelsea Lamberson by April 19, 2017, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being changed based on a recent state appellate court case indicating that we must offer a full adjudicative hearing if a sanction could lead to suspension, expulsion or if charges were filed [filed] for felony level sexual misconduct. The changes amend university standards and processes to comply with the court case for handling incidents of academic integrity.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

Rule is necessary because of state court decision, *Arishi v. Washington State University*, No. 33306-0-III, (Wash. Ct. App. Div. III, 2016).

Name of Agency Personnel Responsible for Drafting: Chelsea Lamberson, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Angela Jones, 214 Showalter, Cheney, WA 99004, (509) 359-6361.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-90 WAC is not considered a significant legislative rule by Eastern Washington University.

February 14, 2017
Chelsea Lamberson
University Policy Administrator

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-010 General. These rules establish standards for student academic integrity at Eastern Washington University (EWU). EWU expects the highest standards of academic integrity of its students. Academic integrity is the responsibility of both students and instructors. The university supports the instructor in setting and maintaining standards of academic integrity. Academic integrity is the foundation of a fair and supportive learning environment for all students. Personal responsibility for academic performance is essential for equitable assessment of student accomplishments. Charges of violations of academic integrity are reviewed through a process that allows for student learning and impartial review.

These rules apply to all EWU instructors, staff, and students admitted to the university, including conditional or probationary admittance, and to all departments and programs, in all locations, including online. These rules provide procedures for resolving alleged violations by students. All academic integrity proceedings are brief adjudicative proceedings and shall be conducted in an informal manner. If the potential sanction for a violation of this policy is a suspension or expulsion, the academic integrity board will refer the matter for a full adjudicative proceeding under the Student conduct code, chapter 172-121 WAC, as detailed below in WAC 172-90-100, 172-90-160, and 172-90-170.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-020 Responsibilities. (1) ~~((Vice provosts: The vice provosts responsible for undergraduate and graduate education, or their designees, have primary responsibility))~~ Dean: The dean of the university is primarily responsible for the university academic integrity program. The ((vice provosts)) dean shall:

- (a) Oversee the academic integrity program;
- (b) Appoint the chair and members of the academic integrity board (AIB);

- (c) Maintain a system for academic integrity reporting and recordkeeping;

- (d) Serve as the final authority in administering the academic integrity program;

- (e) Maintain all academic integrity records per Washington state records retention standards;

- (f) Coordinate academic integrity training for instructors and students, as needed or requested; and

- (g) Develop and/or facilitate development of academic integrity program support resources, including guides, procedures, web presence, training materials, presentations, and similar resources.

Throughout this chapter and unless otherwise stated, the term "~~((vice provost)) dean,~~" ~~((when used in the singular,))~~ shall mean the ~~((vice provost)) dean~~ who is handling the academic integrity case or their designee.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

(a) The AIB shall:

- (i) Promote academic integrity at EWU;

- (ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;

- (iii) Conduct academic integrity board hearings;

- (iv) Assist ~~((vice provosts)) dean~~ in development of academic integrity program support resources;

- (v) Respond, as appropriate, to campus needs related to the academic integrity program;

- (vi) Coordinate AIB activities with the ~~((vice provosts)) dean~~; and

- (vii) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the ~~((vice provosts jointly)) dean~~, based on recommendations from represented groups (e.g., colleges, library, ASEWU). Board composition or membership may be modified to support university needs with the consent of the ~~((vice provosts)) dean~~ and approval of the provost. At a minimum, AIB membership will include:

- (i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice chair.

- (ii) One member representing EWU libraries.

- (iii) One student member representing ASEWU.

- (iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings every two weeks at fixed times and reviews cases at these meetings. The AIB also conducts AIB hearings, as needed, for academic integrity cases involving possible sanctions of suspension or expulsion. AIB reviews and hearings are held in abeyance during holidays, academic breaks, and other times when no classes are scheduled. AIB reviews and hearings may be canceled in other circumstances with the consent of the AIB

chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair or vice chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB and the ~~((vice provost))~~ dean.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) **Classes of violations:**

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated endnotes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or

selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Absent extenuating circumstances, assigned sanctions are imposed without delay and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

(a) Verbal or written reprimand;

(b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;

(c) Grade penalty for the assignment/test;

(d) Course grade penalty;

(e) Course failure;

(f) Removal from the academic program;

(g) Suspension for a definite period of time; and

(h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior.

(4) **Sanctioning authorities:**

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from an academic program, with the concurrence of the instructor and the department chair. The AIB may also refer the case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.

~~(c) ((In response to)) An AIB hearing panel's recommendation to suspend or expel a student((, the vice provost may concur with such recommendations and impose the suspension or expulsion, or may impose one or more lesser sanctions.~~

(d) In all cases, suspension and expulsion sanctions must also be approved by the provost before such sanction is imposed) will be forwarded to the director of student rights and responsibilities. The director of student rights and responsibilities will ensure the student is provided with a full council hearing under the Student conduct code, chapter 172-121 WAC. In such cases, a member of the AIB hearing panel will serve as the "complainant" for purposes of the student conduct code process. The AIB hearing panel member will explain the hearing panel's findings and recommendations to the student discipline council. The student discipline council will make its own factual determinations and may impose a sanction of suspension or expulsion, or a lesser sanction, in accordance with the student conduct code.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-120 Initiation. (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official. Students are strongly encouraged to report suspected violations to the course instructor, the ~~((vice provost))~~ dean, or other university official.

Throughout this chapter, the term "instructor" shall refer to the instructor or other university official who reports a suspected violation under this chapter.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) Dismiss the matter: If the instructor concludes that there is no violation of these rules, the matter is over.

(b) Resolve internally (internal resolution): If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;

(ii) Allow the student to modify or redo the assignment; and/or

(iii) Provide the student with an educational opportunity to reiterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process by reporting the violation as described in subsection (5) of this section.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the

violation to the ~~((vice provost))~~ dean per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the ~~((vice provost))~~ dean, including:

(a) A description of the alleged violation;

(b) A summary of any conversations the instructor has had with the student regarding the violation;

(c) The sanction(s) imposed and/or recommended by the instructor; and

(d) The method of resolution desired by the instructor (i.e., summary process, AIB review, or AIB hearing).

When reporting the violation, the instructor may also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, ~~((vice provost))~~ dean, or the AIB.

Instructors should initiate this process within seven calendar days after becoming aware of the suspected violation. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) ~~((Vice provost))~~ **Dean review.** After a violation has been reported, the ~~((vice provost))~~ dean will determine whether the summary process, AIB review process, or AIB hearing process will be used.

In cases where the student has any prior violation, the ~~((vice provost))~~ dean must process the case for AIB review under WAC 172-90-160, or AIB hearing under WAC 172-90-170.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-140 Summary process. (1) **Initiation:** The summary process may be initiated when:

(a) The instructor and student both agree to the summary process;

(b) The ~~((vice provost))~~ dean agrees that the summary process is appropriate to the circumstances;

(c) The student has no prior violations of academic integrity; and

(d) The alleged behavior would most likely not warrant a sanction of suspension or expulsion.

(2) **Student notification:** The ~~((vice provost))~~ dean will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university email address. If the student is no longer enrolled in the university, the ~~((vice provost))~~ dean shall send the notification to the student's last known address. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, information and documents should be redacted to the extent their release would compro-

mise test or examination contents or if the documents include other student's education records;

- (b) Documents related to the alleged violation;
- (c) A description of the university's academic integrity rules and processes, including a list of possible sanctions;
- (d) A description of the student's options; and
- (e) Contact information for the ~~((vice provost's))~~ dean's office where the student can request further information and assistance.

(3) Student response options:

(a) Concur: The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The ~~((vice provost))~~ dean will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) Conference: If a conference had not already occurred, the student may request to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). If the instructor declines the request, the matter will be referred to the AIB for further review and action. The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via email). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor or student may refer the matter to the AIB for review and action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the ~~((vice provost))~~ dean of the outcome. The ~~((vice provost))~~ dean will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement within seven instruction days, the instructor will inform the ~~((vice provost))~~ dean and the matter will then be referred for AIB review and action.

(c) AIB review: The student may request that the matter be referred to the AIB for review and further action.

(d) Failure to respond: If the student does not respond to the notification within three instruction days, the ~~((vice provost))~~ dean will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The ~~((vice provost))~~ dean will coordinate with the instructor to impose the appropriate sanction(s).

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-160 Academic integrity board review process. (1) **Initiation:** The AIB review process will be initiated when:

- (a) The instructor or student requests AIB review;

(b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or

(c) The ~~((vice provost))~~ dean determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within five instruction days of determining that an AIB review is in order, the ~~((vice provost))~~ dean shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The ~~((vice provost))~~ dean will notify the student, instructor, and AIB chair. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the ~~((vice provost's))~~ dean's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the ~~((vice provost))~~ dean to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must prepare a written statement and submit the statement to the ~~((vice provost's))~~ dean's office within three instruction days after receiving the AIB review notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the ~~((vice provost's))~~ dean's office.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within three instructional days, the ~~((vice provost))~~ dean will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The ~~((vice provost))~~ dean will coordinate sanctioning with the instructor and/or the AIB as needed. If a recommended sanction requires higher level authority to impose, the AIB will proceed with a hearing.

(6) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and

make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

(7) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. If the board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.

(8) **Conclusion:** The board should conclude its review and issue a decision within thirty days after the violation was initially reported. The ~~((vice provost))~~ dean shall notify the student and instructor of the board's decisions, along with the right to request reconsideration.

(9) **Requests for review:** Either the student or the instructor may request reconsideration by the ~~((vice provost))~~ dean by submitting a request in writing to the ~~((vice provost))~~ dean within twenty-one days after the board issues its written decision. The ~~((vice provost))~~ dean shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the board, the ~~((vice provost))~~ dean shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the ~~((vice provost's))~~ dean's decision and notice that judicial review may be available. All decisions of the ~~((vice provost))~~ dean are final and no appeals are permitted.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-170 Academic integrity board hearing. AIB hearings will only be conducted when the institution is pursuing sanctions that include either suspension or expulsion. The AIB hearing provides the instructor and the student with the opportunity to present evidence and witnesses.

(1) Scheduling and notification:

(a) Initiation: The AIB hearing process will be initiated when the ~~((vice provost))~~ dean or the AIB determines that the alleged violation may involve a possible sanction of suspension or expulsion.

(b) Scheduling: Within five instruction days of determining that an AIB hearing is in order, the ~~((vice provost))~~ dean shall schedule the hearing. The student must receive at least seventy-two hours' notice as to the time and place of the hearing. The ~~((vice provost))~~ dean may coordinate with the parties to facilitate scheduling, but is not required to do so.

(c) Notification: The ~~((vice provost))~~ dean will notify the student, instructor, and AIB hearing panel members. Notification will include:

(i) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in the notification sent to the student. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other students' education records;

(ii) A description of the university's academic integrity rules and processes, including any possible sanctions;

(iii) The date, time, and place of the AIB hearing;

(iv) Instructions on how to submit documents, statements, and other materials for consideration by the AIB hearing panel;

(v) A description of the specific rules governing the AIB hearing process;

(vi) A description of the student's options; and

(vii) Contact information for the ~~((vice provost's))~~ dean's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the ~~((vice provost))~~ dean to ensure that the student understands the process, the violation, and the potential sanctions.

(2) General provisions:

(a) All academic integrity board hearings are brief adjudicative proceedings in accordance with WAC 172-108-010 and shall be conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of procedure, evidence, and/or technical rules, such as are applied in criminal or civil courts, do not apply to AIB hearings.

(c) Hearing authority: When scheduling an AIB hearing, a member of the AIB will be designated as hearing authority. The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(d) Hearing panel composition: In addition to the hearing authority, an AIB hearing panel shall consist of three voting members of the AIB.

(e) Closed hearings: All AIB hearings will be closed. Admission of any person, other than the instructor and the student involved, to an AIB hearing shall be at the discretion of the hearing authority.

(f) Consolidation of hearings: In the event that one or more students are charged with an academic integrity violation arising from the same occurrence, the university may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance:

(a) Failure to appear: The student is expected to attend the AIB hearing. In cases where proper notice has been given but the student fails to attend an AIB hearing, the hearing panel shall decide the case based on the information available.

(b) Disruption of proceedings: Any person, including the student, who disrupts a hearing, may be excluded from the proceedings.

(c) Alternative methods of appearance. In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, written statement, or other means, as appropriate.

(d) The instructor may attend the hearing but is not required to do so. The instructor's report of the violation and all associated evidence shall constitute the appearance of the instructor.

(4) **Advisors:** The instructor and the student may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the instructor or the student that employed the advisor;

(b) The advisor may be an attorney;

(c) The instructor and the student are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any AIB hearing proceeding. The instructor and/or the student may, however, speak quietly with their advisor during such proceedings; and

(d) If an attorney is used as an advisor, the person using the attorney shall inform the AIB hearing authority of their intent to do so at least two business days prior to the hearing.

(5) **Review of evidence:** The student and the instructor may request to view material related to the case prior to a scheduled hearing by contacting the ~~((vice provost))~~ dean. To facilitate this process, the party should contact the ~~((vice provost))~~ dean as early as possible prior to the scheduled hearing. The ~~((vice provost))~~ dean shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(6) **Evidence:**

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing panel. However, AIB hearings are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The student and the instructor have the right to view all material presented during the course of the hearing.

(7) **Standard of proof:** The hearing panel shall determine whether the student violated student academic integrity standards, as charged, based on a preponderance of the evidence.

A preponderance means, based on the evidence admitted, whether it is more probable than not that the student violated academic integrity standards.

(8) **Witnesses:**

(a) The instructor, student, and hearing authority may present witnesses at AIB hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses

called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(9) **Questioning:**

(a) The instructor and the student may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During an AIB hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

(10) **Deliberations and sanctions:**

(a) Within seven days after the hearing, the AIB hearing panel shall meet in closed session, without either of the parties present, and determine by majority vote whether, by a preponderance of the evidence, the accused violated academic integrity standards. If the hearing panel determines that the accused violated academic integrity standards, the panel shall then determine, by majority vote, what sanctions shall be imposed. This session may take place immediately following the hearing or at another time within the seven days following the hearing.

(b) In determining what sanctions shall be imposed, the hearing panel may consider the evidence presented at the hearing as well as any information contained in the student's records.

(11) **Notification:** If the panel determines that suspension or expulsion is appropriate, they will forward that recommendation to the ~~((vice provost))~~ director of student rights and responsibilities to conduct a hearing under the student conduct code. If the panel is not recommending suspension or expulsion, they shall notify the ~~((vice provost))~~ dean of the sanctions to be imposed.

(12) ~~((Vice provost))~~ **Dean:**

(a) If the AIB panel recommends suspension or expulsion, the ~~((vice provost may approve the recommendation, subject to the approval of the provost, or may impose lesser sanctions))~~ dean will appoint a member of the AIB hearing panel to serve as the complainant for purposes of the student conduct proceeding and will forward the records used during the academic integrity proceeding to the director of student rights and responsibilities. If the AIB panel does not recommend suspension or expulsion, the ~~((vice provost))~~ dean shall impose the sanctions determined by the AIB panel.

(b) The ~~((vice provost))~~ dean shall notify the student and the instructor of the hearing panel's decision, the sanctions to be imposed, and of the right to appeal.

(13) **Appeals of AIB hearing determinations:** Either the student or the instructor may request reconsideration by the provost by submitting a request in writing to the provost within twenty-one days after the hearing panel issues its decision. The provost shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be sub-

mitted within five instructional days of the request for review. After reviewing the responses and materials considered by the hearing panel, the provost shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the provost's decision and notice that judicial review may be available. All decisions of the provost are final and no appeals are permitted.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-180 Administration. After the resolution process, the ((~~vice provost~~)) dean will coordinate sanctions and administrative actions, including:

- (1) Notifying the parties of the results in writing;
- (2) Creating or updating the student's academic disciplinary record;
- (3) Updating academic integrity reporting and record-keeping systems;
- (4) Coordinating sanctioning; and
- (5) Referring cases to the student disciplinary council as needed.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-200 Failing grade. A sanction of a failing course grade is recorded on the transcript as an "XF" and indicates a failure of the course due to violation of academic integrity standards. An XF is counted as a 0.0 for purposes of grade point average calculation.

(1) To petition to have an XF grade changed to an "F" (0.0), a student must submit a written request to the ((~~vice provost~~)) dean. Requests will generally not be considered unless the following conditions are met:

- (a) At least one year has passed since the XF grade was entered;
- (b) The student has had no other violations of academic integrity standards; and
- (c) The student has successfully completed a university sponsored noncredit seminar on academic integrity; or, for a person no longer enrolled at the university, an equivalent educational activity as determined by the AIB.

(2) The ((~~vice provost~~)) dean will review the case and may consult with the referring instructor or academic unit head who originally reported the violation(s). If the ((~~vice provost~~)) dean denies the request, the student may submit a new request one year later.

WSR 17-06-014

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed February 21, 2017, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-017.

Title of Rule and Other Identifying Information: Amending chapter 172-108 WAC, Adjudicative proceedings, to codify rules related to adjudicative proceedings for students of Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, Washington 99004, on April 26, 2017, at 11:00 a.m.

Date of Intended Adoption: May 12, 2017.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, email clamberson@ewu.edu, fax (509) 359-7036, by April 19, 2017.

Assistance for Persons with Disabilities: Contact Chelsea Lamberson by April 19, 2017, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being changed based on a recent state appellate court case indicating that we must offer a full adjudicative hearing if a sanction could lead to suspension, expulsion or if charges were filed [filed] for felony level sexual misconduct. The changes amend university standards and processes to comply with the court case for handling incidents of academic integrity.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

Rule is necessary because of state court decision, *Arishi v. Washington State University*, No. 33306-0-III, (Wash. Ct. App. Div. III, 2016).

Name of Agency Personnel Responsible for Drafting: Chelsea Lamberson, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Angela Jones, 214 Showalter, Cheney, WA 99004, (509) 359-6361.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-108 WAC is not considered a significant legislative rule by Eastern Washington University.

February 14, 2017

Chelsea Lamberson

University Policy Administrator

AMENDATORY SECTION (Amending WSR 14-24-038, filed 11/24/14, effective 12/25/14)

WAC 172-108-035 Advising and representation of parties. Parties to ((~~an~~)) any brief adjudicative proceeding as designated in WAC 172-108-050, may be assisted by one advisor of their choice, subject to the following provisions:

(1) Any fees or expenses associated with the services of an advisor are the responsibility of the person who employed the advisor;

(2) The advisor may be an attorney;

(3) Advisors may not speak or participate directly in any proceeding; the person requesting an adjudicative proceeding is responsible for presenting their own case but may speak quietly with their advisor during such proceedings;

(4) If an attorney is used as an advisor, the person using the attorney shall inform the presiding officer of their intent

to do so at least two business days prior to any adjudicative proceeding; and

(5) The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 14-24-038, filed 11/24/14, effective 12/25/14)

WAC 172-108-040 Formal adjudicative proceedings.

(1) ~~((H))~~ Eastern Washington University utilizes a formal adjudicative proceeding for certain student conduct proceedings as identified in chapter 172-121 WAC and certain academic integrity code proceedings as identified in chapter 172-90 WAC. The procedural rules for these formal adjudicative proceedings are contained in the Student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. In all other cases, Eastern Washington University only utilizes formal adjudicative proceedings when required ((pursuant to)) by RCW 34.05.413 through 34.05.476. For such proceedings, excluding the student conduct process, Eastern Washington University adopts the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, except for those rules which are in conflict with the provisions set forth in this chapter. The model rules are contained in chapter 10-08 WAC. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted by Eastern Washington University shall govern.

(2) An application for a formal adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Office of the President; Eastern Washington University; Showalter 214, Cheney, WA 99004-2496. Written application for a formal adjudicative proceeding in response to the institution's action must be submitted to the above address within twenty-one calendar days of the action, unless otherwise provided by statute or rule.

AMENDATORY SECTION (Amending WSR 14-24-038, filed 11/24/14, effective 12/25/14)

WAC 172-108-050 Brief adjudicative proceedings.

In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Office of the President; Showalter 214; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

(1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;

(2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;

(3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;

(4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;

(5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;

(6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC((-);

(7) Library fines and charges;

(8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules;

(9) Administrative decisions regarding mandatory tuition and/or fee waivers;

(10) Intellectual property ownership determinations in accordance with EWU Policy 302-04;

(11) Ethics in research violations in accordance with EWU Policy 302-05;

(12) Matters subject to review by the academic appeals board in accordance with EWU Policy 303-21;

(13) Matters subject to review regarding graduate students in accordance with EWU Policy 303-22;

(14) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;

(15) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;

(16) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;

(17) Denial of work study or termination from a work study position when required by federal law;

(18) Notice against trespass issued per WAC 172-122-200;

(19) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;

(20) Fines assessed under a university housing agreement; and

(21) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

WSR 17-06-046
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed February 27, 2017, 2:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-009.

Title of Rule and Other Identifying Information: Chapter 246-339 WAC, Blood establishments, the department of health (department) is proposing adding a new chapter to Title 246 WAC to establish requirements and set fees related to an online public registry to ensure the transparency of blood-collecting or distributing establishments pursuant to SHB 2580 (chapter 47, Laws of 2016) that was codified into chapter 70.335 RCW.

Hearing Location(s): Department of Health, Town Center 2, Conference Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on April 25, 2017, at 2:30 p.m.

Date of Intended Adoption: May 2, 2017.

Submit Written Comments to: Susan Walker, Lab Quality Assurance Supervisor, Department of Health, 20425 72nd Avenue South, Suite 310, Kent, WA 98032, email <https://fortress.wa.gov/doh/policyreview>, fax (253) 395-6365, by April 25, 2017.

Assistance for Persons with Disabilities: Contact Susan Walker by April 20, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 246-339 WAC, Blood establishments, the proposal establishes requirements for an online public registration process for blood-collecting or blood-distributing establishments that collect or distribute blood for allogeneic transfusion in Washington state, and which are licensed by the United States Food and Drug Administration (FDA). The purpose of the online public registry is to ensure the safety and transparency of Washington's blood supply.

Reasons Supporting Proposal: The proposed rules comply with chapter 70.335 RCW that allows the department to: (1) Establish a registration process for blood establishments; (2) create and maintain an online public registry of all registered blood establishments that supply blood products for transfusion in Washington state; and (3) set fees for those blood establishments applying for or renewing a registration. The public registry will allow hospitals and other institutions that use blood for transfusion in Washington to see that blood establishments are in good standing with FDA.

Statutory Authority for Adoption: RCW 43.70.040 and chapter 70.335 RCW.

Statute Being Implemented: Chapter 70.335 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Walker, 20425 72nd Avenue South, #310, Kent, WA 98032, (253) 396-6745.

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 state-

ment 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.

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.

February 27, 2017

John Wiesman, DrPH, MPH
 Secretary

Chapter 246-339 WAC

BLOOD ESTABLISHMENTS

NEW SECTION

WAC 246-339-001 Purpose. The purpose of this chapter is to implement chapter 70.335 RCW by establishing an online public registry and all necessary requirements for registered blood-collecting or distributing blood establishments or organizations that supply blood products for allogeneic transfusion in Washington state. This public registry of Washington state registered blood establishments is intended to help ensure public transparency, trust, and confidence in the safety of the community blood supply.

NEW SECTION

WAC 246-339-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Allogeneic transfusion" means a blood transfusion where the donated blood comes from an individual other than the recipient.

(2) "Autologous donation" means the infusion or transfer of human blood cells back into the individual from whom the cells were recovered.

(3) "Blood establishment" means a blood-collecting or distributing blood establishment or organization that collects or distributes blood for allogeneic transfusion in Washington state. This chapter does not apply to a hospital licensed under chapter 70.41 or 71.12 RCW unless the hospital collects blood directly from donors for the purpose of allogeneic transfusions. For the purposes of this chapter, blood establishment does not include organizations that collect source plasma as defined in this section.

(4) "Change in standing" means that a blood establishment is the subject of titled letters, fines, suspensions, or revocations of its United States Food and Drug Administration (FDA) license, or judicial consent decrees.

(5) "Department" means the Washington state department of health.

(6) "Directed donation" means a donation of blood or blood products to a specific recipient who is personally known by the donor before donation.

(7) "FDA" means United States Food and Drug Administration.

(8) "Judicial consent decree" means an agreement between the FDA and a blood establishment that outlines steps that a blood establishment must take in order to return to full, independent production. The consent decree mandates that a blood establishment initiate change, and that change is usually associated with the way the blood establishment is manufacturing a product in order to bring it into compliance with the FDA's requirements.

(9) "Source plasma" means the fluid portion of human blood collected and intended as source material for further manufacturing use. The definition excludes single donor plasma products intended for intravenous use.

(10) "Titled letter" or "warning letter" means an FDA-issued correspondence that notifies blood establishments about violations that the FDA has documented during its inspections or investigations. Typically, a warning letter notifies a responsible individual or firm that the FDA considers one or more products, practices, processes, or other activities to be in violation of the Federal Food, Drug, and Cosmetic Act (the act), its regulations, and other federal statutes.

NEW SECTION

WAC 246-339-020 Registration of a blood establishment. Starting July 1, 2017, any blood establishment collecting or distributing blood for the purpose of allogeneic transfusion in Washington state must be registered with the department in accordance with chapter 70.335 RCW. To be eligible for registration with the department, the blood establishment must hold a current FDA blood establishment license, and must provide to the department proof of the blood establishment's current FDA licensure at the time of initial registration or renewal registration. Applicants for initial registration and renewal registration with the department must follow the procedures established under this chapter.

NEW SECTION

WAC 246-339-025 Exemptions for blood establishment registration. A blood establishment is exempt from the requirements of this chapter if it meets one or more of the following:

(1) Hospitals licensed under chapter 70.41 or 71.12 RCW unless the hospital collects and distributes blood directly from donors for the purpose of allogeneic transfusions.

(2) Organizations that collect source plasma for the production of plasma derivatives by fractionation.

(3) Cases of individual patient medical need, as determined by a qualified health care provider, such as:

(a) An autologous or directed donation as defined in WAC 246-339-010; and

(b) An out-of-state blood establishment that supplies blood products for allogeneic transfusion based upon a request from a Washington state registered blood establish-

ment in order to meet individual patient need, as determined by a qualified health care provider.

NEW SECTION

WAC 246-339-030 Initial application for blood establishment registration. Initial application procedure. To register with the department a blood establishment must:

(1) Submit a completed application on forms provided by the department that are signed by the owner or authorized representative that includes all of the following:

(a) The name, current and valid email address, mailing address, and telephone number of the blood establishment.

(b) Proof of the blood establishment's current FDA licensure.

(c) A list of all of the blood establishment's clients in Washington state as required by chapter 70.335 RCW, including current and valid email addresses for all clients of a blood establishment.

(d) A copy of any of the following disciplinary actions issued upon, or active against, the blood establishment's FDA license in the two years prior to submission of the initial application to the department:

(i) Titled letters, fines, license suspensions, or revocations issued by the FDA.

(ii) Judicial consent decrees.

(e) Any other information required by the department.

(2) Submit the designated fee(s) with the application as required by WAC 246-339-990.

NEW SECTION

WAC 246-339-035 Renewal registration process. (1) The department will issue a renewal registration for a Washington state registered blood establishment when the owner or authorized representative of the blood establishment:

(a) Submits a completed application provided by the department at least five working days prior to the expiration of the current registration, which is signed by the owner or authorized representative that includes the following:

(i) The name, current and valid email address, mailing address, and telephone number of the blood establishment.

(ii) Proof of the blood establishment's current FDA licensure.

(iii) A list of all of the blood establishment's clients in Washington state as required by chapter 70.335 RCW, including current and valid email addresses for all clients of a blood establishment.

(iv) A copy of any of the following disciplinary actions issued upon, or active against, the blood establishment's FDA license in the two years prior to the submission of a renewal application to the department:

(A) Titled letters, fines, or license suspensions or revocations issued by the FDA.

(B) Judicial consent decrees.

(v) Any other information as required by the department.

(b) Submits the designated fee(s) with the application for renewal registration pursuant to WAC 246-339-990.

(c) Meets all of the requirements set forth under chapter 70.335 RCW and this chapter.

(2) The renewal registration will expire one year from the date of issuance.

NEW SECTION

WAC 246-339-040 Change of ownership requirements. (1) If there is a change in ownership of a Washington state registered blood establishment, the new owner must submit to the department within five working days of the change in ownership:

(a) New blood establishment application packet per WAC 246-339-030; and

(b) Any applicable fees as required in WAC 246-339-990.

(2) The registration will expire one year from the date of issuance as provided in WAC 246-339-035.

(3) The Washington state blood establishment registration is not transferable.

NEW SECTION

WAC 246-339-045 Blood establishment notification requirements. A Washington state registered blood establishment will notify the department within fourteen days of a change in standing of its FDA license. The notification will include:

(1) The name, email address, mailing address, and telephone number of the blood establishment.

(2) A list of all of the blood establishment's clients in Washington including their current and valid email addresses.

(3) Copies of any of the following disciplinary actions issued upon, or active against, the blood establishment's FDA license:

(a) Titled letters, fines, or license suspensions or revocations issued by the FDA.

(b) Judicial consent decrees.

NEW SECTION

WAC 246-339-050 Grounds for action against blood establishments. (1) The department will deny an initial or renewal application for registration if the applicant or Washington state registered blood establishment no longer holds a license issued by the FDA.

(2) The department may suspend or revoke a registration of a Washington state registered blood establishment if the blood establishment no longer holds a license issued by the FDA.

(3) In accordance with chapter 70.335 RCW, the department will issue a summary suspension of the registration if a Washington state registered blood establishment no longer holds a license issued by the FDA. The summary suspension will remain in effect until proceedings are completed under RCW 43.70.115 and will be limited to the issue of whether the blood establishment is qualified to hold a registration under this chapter or chapter 70.335 RCW.

(4) The department may investigate and maintain an action under RCW 70.335.050 if a blood establishment has operated without having a valid registration under this chapter.

NEW SECTION

WAC 246-339-990 Fees. (1) Registrations must be renewed every year from the date of issuance.

(2) The following nonrefundable fees will be charged for registration:

Fee Type	Amount
Initial application fee	\$13,000.00
Annual renewal fee	13,000.00
Late renewal fee	300.00
Application fee - Change of ownership	13,000.00

WSR 17-06-047

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 27, 2017, 4:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-20-101.

Title of Rule and Other Identifying Information: WAC 182-518-0030 Washington apple health—Notice requirements—Electronic notices.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Pear Conference Room 107, 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 or directions can be obtained by calling (360) 725-1000), on April 4, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 5, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on April 4, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by March 31, 2017, email amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to update its notification practices.

Reasons Supporting Proposal: See Purpose above.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Sarah Michael, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1919.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

February 27, 2017
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-518-0030 Washington apple health—Modified adjusted gross income (MAGI) notice requirements—Electronic notices. (1) For programs based on modified adjusted gross income (MAGI), you may choose to get notices by regular mail or in an electronic format through Washington Healthplanfinder.

~~(2) We send you letters (notices) ((to inform you)) about your eligibility for Washington apple health ((WAH)) programs as described in WAC 182-518-0005 through 182-518-0025.~~

~~((2) For programs based on modified adjusted gross income (MAGI), you have the right to choose to get WAH eligibility notices by regular mail, in an electronic format, or both.~~

~~(3) To receive electronic notices you must:~~

~~(a) Have an account with Washington Healthplanfinder. (There is no charge to create an account); and~~

~~(b) Provide us with the following information: A valid e-mail address, your name, and your application identification number.~~

~~(4) You may ask to receive WAH notices electronically by:~~

~~(a) Mailing, delivering, or giving us a written letter to the address listed on our web site;~~

~~(b) Sending a facsimile letter to us as directed on our web site;~~

~~(c) Calling the WAH customer service center at the number listed on our web site;~~

~~(d) Logging on to your Healthplanfinder account online and selecting the "I would prefer to receive written communications by e-mail" check box on the contact information page; or~~

~~(e) Calling the Healthplanfinder customer support center.~~

~~(5) When you have asked for electronic notification, we:~~

~~(a) Send the notice to your Healthplanfinder account no later than one business day after creating the notice.~~

~~(b) Send you an e-mail message to notify you when a new WAH notice has been sent electronically to your Healthplanfinder account.~~

~~(i) The e-mail message will not include the notice, information about the content of the notice, or other confidential information; and~~

~~(ii) You must log on to your Healthplanfinder account to get the notice.~~

~~(6) We will stop sending WAH notices electronically to you if you ask us. You must notify us if your e-mail address changes.)) (3) When you select electronic notifications, also referred to as "paperless," we:~~

~~(a) Confirm your selection by regular mail;~~

~~(b) Notify you by email when a new notice has posted to your account; and~~

~~(c) Consider the notice received by you as of the date on the notice as described in WAC 182-518-0005.~~

~~(4) To read the notice, you must log in to your Washington Healthplanfinder account, as email messages do not include the content of the notice or other confidential information.~~

~~(5) If an email message is returned as undeliverable, we send the message to you by regular mail no later than three business days after the date of the undeliverable email response.~~

~~(6) You may ask at any time to stop receiving electronic notices from us.~~

WSR 17-06-052
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 28, 2017, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-19-075.

Title of Rule and Other Identifying Information: Proposed amendments to the electrical rules, chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501 (for directions to the L&I office <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>) on April 6, 2017, at 9:00 a.m.

Date of Intended Adoption: May 23, 2017.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax (360) 902-5292, by 5 p.m. on April 6, 2017.

Assistance for Persons with Disabilities: Contact Alicia Curry by March 23, 2017, at (360) 902-6244, or email Alicia.Curry@Lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to adopt new safety code requirements from the 2017 edition of the National Electrical Code (NEC) and to the existing electrical rules. The electrical rules are systematically reviewed each code cycle for consistency with national electrical safety standards and industry practice, for rule clarity, housekeeping changes, etc. The proposed amendments are needed to:

- Adopt the 2017 NEC in the state of Washington;
- Amend the 2017 NEC safety requirements to eliminate rule conflicts;

- Amend the rules for clarity, to improve safety and reflect current processes;
- Amend language for consistency with statutory requirements;
- Adopt proposals requested by stakeholders, such as:
 - o Modified requirements for kitchen peninsula receptacle outlets;
 - o Expanding the qualifications for continuing education instructors; and
 - o Adopting ground-fault testing requirements for large branch circuits.
- Adopt rules to formalize existing policies that are standard practice of the department and accepted by the industry;
- Amend language for general housekeeping, grammatical and reference corrections to bring the rules up-to-date.

Reasons Supporting Proposal: NEC sets the standard for safe electrical installation and inspection in homes, businesses, industry and institutions to protect people and property from electrical hazards. These rules are necessary to ensure the new code requirements that impact electrical work align with existing rules and amendments are proposed before NEC is implemented.

For more information on this rule making, visit the L&I web site at <http://www.lni.wa.gov/TradesLicensing/Electrical/LawRulePol/RuleDev/default.asp> or contact the individual below. Interested parties can sign up for email updates at <http://www.lni.wa.gov/Main/Listservs/Electrical.asp>.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.010 and 19.28.031.

Statute Being Implemented: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.010 and 19.28.031.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to chapter 296-46B WAC generate probable benefits that exceed probable costs. Moreover, the department concludes, based on the best information available, that the probable imposed costs are estimated to be no more than minor costs to the affected businesses. As such, the department is exempt from conducting a small business economic impact statement for this rule making.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, P.O. Box 44410, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, email alicia.curry@lni.wa.gov.

February 28, 2017
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-010 General.

Adopted standards.

(1) The ((2014)) 2017 edition of the National Electrical Code (NFPA 70 - ((2014)) 2017) including Annex A, B, and C; Commercial Building Telecommunications Cabling Standard (ANSI/TIA-568-C series, February 2009); Commercial Building Standard for Telecommunications Pathway and Spaces (TIA-569-B, October 2004); Commercial Building Grounding and Bonding Requirements for Telecommunications (ANSI-TIA-607-B, August 2011); Residential Telecommunications Cable Standard (ANSI/TIA/EIA 570-B-2004); and the National Electrical Safety Code (NESC C2-2012 excluding Appendixes A and B) are hereby adopted by reference as part of this chapter.

This chapter will be followed where there is any conflict between this chapter and the above adopted standards.

The National Electrical Code will be followed where there is any conflict between the National Electrical Code and, ANSI/TIA/EIA 568-C, ANSI/TIA/EIA 569-B, ANSI/TIA/EIA 607-B, ANSI/TIA/EIA 570-B, or the NESC C2.

Inspections - General.

(2) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department or the city that has electrical inspection jurisdiction when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector or to the city that has electrical inspection jurisdiction. The request must include:

(i) A description of the installation as installed or proposed;

(ii) A detailed list of the applicable code violations;

(iii) A detailed list of safety violations;

(iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and

(v) Appropriate variance application fee as listed in chapter 296-46B WAC, Part C.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter with the exception of not more than ((2.44 m (8 ft))) 8 feet of electrical conduit in a foundation for a one- or two-family dwelling or residential outbuilding for use as service entrance raceway.

(5) All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

(6) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.)

must be complete in the area(s) where electrical inspection is requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector and, where siding nails or fasteners which penetrate into the wall cavity are to be used, all siding must be installed; or

(b) All wiring and device boxes must be a minimum of ~~((63 mm (2 1/2")))~~ 2 1/2 inches from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of ~~((1.6 mm (1/16")))~~ 1/16 inch thick and of appropriate width and height installed to cover the area of the wiring or box.

(7) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable electrical product standards recognized by the department, be listed, or field evaluated. For any equipment that requires an amusement operating permit under chapter 67.42 RCW, the operating permit is prima facie evidence of an appropriate standard. Other than as authorized by the chief electrical inspector or a city authorized to do electrical inspection, equipment must not be energized until such standards are met.

(8) The state department of transportation is recognized as the inspection authority for telecommunications systems installations within the rights of way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction, and of materials, devices, appliances, and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

Inspection move on buildings and structures.

(9) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

(10) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

(11) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(c) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and arc fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997 must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "suitable for use as service equipment" will be considered to be approved as "suitable for use only as service equipment."

(ii) CSA listed panelboards used as panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

Wiring methods for designated building occupancies.

(12) Wiring methods in educational or institutional facilities as defined in this chapter must be metallic or nonmetallic raceways, MI, MC, or AC cable. Places of assembly located within these facilities must comply with NEC 518.4(A).

(13) Assisted living facility generator systems may be wired and installed per NEC 517.

(14) Lawfully installed existing electrical installations that do not comply with the provisions of this chapter and remain in compliance with the code at the time of the installation, will be permitted to be continued without change (i.e., without circuitry or occupancy change). Additions, alterations, modifications, or repairs to the electrical system must conform to the current requirements of this chapter.

(15) ~~(Listed tamper-resistant receptacles are required in all licensed day care centers, all licensed children group care facilities, and psychiatric patient care facilities where accessible to children five years of age and under. Listed tamper-resistant receptacles are required in psychiatric patient care facilities where accessible to psychiatric patients over five years of age and the public access areas in medical facilities.) See WAC 296-46B-406R for tamper-resistant receptacle requirements in psychiatric patient care facilities.~~

Traffic management systems.

(16) The department or city authorized to do electrical inspections will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

(a) Traffic illumination systems;

(b) Traffic signal systems;

(c) Traffic monitoring systems;

(d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and

(e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

(17) The department or city authorized to do electrical inspections recognizes that traffic signal conductors, pole and bracket cables, signal displays, traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

(a) WSDOT/APWA standard specifications and plans;

(b) WSDOT *Design Manual*;

(c) International Municipal Signal Association (IMSA);

(d) National Electrical Manufacturer's Association (NEMA);

(e) Federal Standards 170/Controller Cabinets;

(f) Manual for *Uniform Road, Bridge, and Municipal Construction*;

(g) Institute of Transportation Engineers (ITE); or

(h) Manual of *Uniform Traffic Control Devices (MUTCD)*.

(18) Associated induction detection loop or similar circuits will be accepted by the department or city authorized to do electrical inspections without inspection.

(19) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for another jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department or city authorized to do electrical inspections prior to work being performed for this provision to apply.

(20) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

(21) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department or city authorized to do electrical inspections will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, email, fax, etc.) for inspection, made to the department or city authorized to do electrical inspections office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days 10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department or city authorized to do electrical inspections fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department or city authorized to do electrical inspections when requested. Written documentation will include:

(i) Date and time of inspection;

(ii) Location;

(iii) Installing firm;

(iv) Owner;

(v) Type of conduit;

(vi) Size of conduit;

(vii) Depth of conduit; and

(viii) Project inspector/designee name and contact information.

(22) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not required to be listed but will conform to the standards in subsection ~~((23))~~ (17) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

(23) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-100 General definitions. All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter and chapter 19.28 RCW. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

"Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is therefore authorized to evaluate electrical products that are for sale in the state of Washington.

"Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

"ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

"Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

"Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

"Appliance" means household appliance.

"ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

"AWG" means American Wire Gauge.

"Basement" means that portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than ~~((1829 mm (six feet)))~~ 6 feet above grade plane;

(b) More than ~~((1829 mm (six feet)))~~ 6 feet above the finished ground level for more than 50% of the total building perimeter; or

(c) More than ~~((3658 mm (twelve feet)))~~ 12 feet above the finished ground level at any point. Also see "mezzanine" and "story."

"Board" means the electrical board established and authorized under chapter 19.28 RCW.

~~("Chapter" means chapter 296-46B WAC unless expressly used for separate reference.)~~

"Category list" is a list of manufacturing safety standards or product types determined by the department.

A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

"Certificate of competency" includes the certificates of competency for master journey level electrician, master specialty electrician, journey level, and specialty electrician.

A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

A "complete application" includes the submission of all appropriate fees, documentation, and forms.

~~"Chapter" means chapter 296-46B WAC unless expressly used for separate reference.~~

"Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

"Coordination (selective)" as defined in NEC 100 must be determined and documented by a professional engineer registered under chapter 18.43 RCW.

"Department" means the department of labor and industries of the state of Washington.

"Director" means the director of the department, or the director's designee.

"Egress - Unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

"Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28-006(9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

"Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department,

and may include component sampling and/or laboratory testing.

"Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

The "filing" is the date the document is actually received in the office of the chief electrical inspector.

"Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

"Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

"Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more functions such as cooking and other equipment installed in a kitchen, clothes drying, clothes washing, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data

centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems).

"IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925. An installation is not the passive testing or operational programming of an electrical system, component, equipment, or wire. See "passive testing."

An "identification plate" is suitable for the environment and is a printed or etched adhesive label approved by the department or a phenolic or metallic plate or other similar material engraved in block letters at least 1/4(~~"(6 mm)")) inch high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, permanent adhesive, or methods specifically described in this chapter must be used to affix an identification plate to the equipment or enclosure.~~

"Job site" means a specific worksite having a single address or specific physical location (e.g., a single family residence, a building, a structure, a marina, and individual apartment building with a specific address, etc.).

"Journey level electrician" means a person who has been issued a journey level electrician certificate of competency by the department. The terms "journey level" and "journey-person" in chapter 19.28 RCW are synonymous.

~~("License" means a license required under chapter 19.28 RCW.)~~

"Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

"License" means a license required under chapter 19.28 RCW.

"Like-in-kind" means having the same overcurrent protection requirements and similar characteristics such as voltage requirement, current draw, short circuit characteristics,

and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

For the purpose of WAC 296-46B-940, a "lineworker" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved lineworker's apprenticeship course; or

(b) Are currently registered in a department-approved lineworker's apprenticeship course and are working under the direct one hundred percent supervision of a journey level electrician or a graduate of a lineworker's apprenticeship course approved by the department. The training received in the lineworker's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

"Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

"Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

"Member of the firm" means the member(s) on file with the department of licensing for sole proprietorships/partnerships or with the secretary of state for corporations.

"Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

"NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

"NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

"NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

"NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

"NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

"NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 C.F.R. 1910.7.

"Passive testing" (e.g., pressing of test buttons, use of testing equipment like voltage testers, clamp-on meters,

removal of a device head where the wiring is terminated on a separate base plate, etc.) means testing that does not require any:

(a) Physical modification to the electrical system wiring; or

(b) Wiring to be disconnected or terminated, except as necessary for an approved electrical testing laboratory or approved engineer performing an equipment evaluation.

"Point of contact" or "point of connection" means the service point.

"Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

"Public area or square" is an area where the public has general, clear, and unrestricted access.

A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

"RCW" means the Revised Code of Washington. Copies of electrical RCW((§)) are available from the department and the office of the code reviser.

"Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

Service specific definitions replacing those found in NEC Article 100:

(a) "Service drop" means the overhead service conductors from the service point to the connection to the service-entrance conductors at the building or other structure.

(b) "Service-entrance conductors, overhead system" means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop or service point.

(c) "Service-entrance conductors, underground system" means the service conductors between the terminals of the service equipment and the point of connection to the service lateral or service point. Where the service equipment is located outside the building walls, there may be no service-entrance conductors or they may be entirely outside the building.

(d) "Service lateral" means the underground service conductors from the service point to the point of connection to the service-entrance conductors in a terminal box, meter, or other enclosure. Where there is not a terminal box, meter, or other enclosure, the point of connection is the point of entrance of the service conductors into the building.

A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification, and reproduction. This definition does not apply to telecommunications installations.

"Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

A "sign," when required by the NEC, for use as an identification method (e.g., legibly marked, legible warning notice, marked, field marked, permanent plaque/directory, etc.) means "identification plate."

"Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

"Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

"Supervision" for the purpose of supervising electrical trainees, means that the appropriately certified supervising electrician is on the same job site as the trainee being supervised. The trainee is not considered to be on the same job site if the supervising electrician and the trainee are working:

(a) In separate buildings at a single address (e.g., a campus, multibuilding industrial complex, multibuilding apartment complex, etc.) except for a single-family residence; or

(b) On an outdoor project (e.g., irrigation system, farm, street lighting, traffic signalization, etc.) where the trainee is more than ~~((one thousand))~~ 1000 feet from the supervising electrician or where the trainee is more than ~~((two hundred))~~ 200 feet from the supervising electrician and out of sight.

"System design review" means a set of design documents that include the manufacturer's installation information, a legible one-line diagram of the system design, and calculations used to determine voltage and current within the system. The one-line diagram must show the system equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points. The review must be available to the inspector during all inspections.

A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

"TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

A "training school" is a public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

"Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

"UL" means Underwriters Laboratory.

"Utility" means an electrical utility.

"Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

"Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

"Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

"WAC" means the Washington Administrative Code. Copies of this chapter of the WAC are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-110 General—Requirements for electrical installations.

003 Examination, identification, installation, and use of equipment.

(1) Listed electrical conduit can only be installed and used in accordance with its listing (i.e., as an electrical raceway for electrical conductors). If used as a sleeve for electrical conductors or other listed electrical conduits, the installation of a listed electrical conduit will be assumed to be for use as an electrical raceway and must be installed as allowed by chapter 19.28 RCW and this chapter (e.g., owner exemption, electrical contractor, etc.).

011 Deteriorating agents.

(2) Electrical equipment and wiring that has been submerged or exposed to water must comply with the following:

(a) All breakers, fuses, controllers, receptacles, lighting switches/dimmers, electric heaters, and any sealed device/equipment (e.g., relays, contactors, etc.) must be replaced.

(b) All other electrical equipment (e.g., wiring, breaker panelboards, disconnect switches, switchgear, motor control centers, boiler controls, HVAC/R equipment, electric motors, transformers, appliances, water heaters, and similar appliances) must be replaced or reconditioned by the original manufacturer or by its approved representative.

022 Identification of disconnecting means.

(3) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other than dwelling units, the identification plate must

include the identification designation of the circuit source panelboard that supplies the disconnecting means.

030 Over ~~((600))~~ 1000 volts - General.

(4) Each cable operating at over ~~((600))~~ 1000 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-210 Wiring and protection—Branch circuits.

008(A) Dwelling units GFCI requirements.

(1) In a garage or unfinished basement, a red receptacle, with a red cover plate, supplying a fire alarm system is not required to have ground-fault circuit-interrupter protection. The receptacle must be identified for use only with the fire alarm system by an identification plate or engraved cover with letters at least 1/4(~~(²)~~) inch high.

(2) All fixed electrical equipment with exposed grounded metal parts within an enclosed shower area or within ~~((five))~~ 5 feet of the top inside edge of a bathtub must have ground fault circuit interrupter protection.

008(B) Other than dwelling units - GFCI requirements.

(3) GFCI requirements.

For the purposes of NEC 210.8(B), kitchen means any area where utensils, dishes, etc., are cleaned or where food or beverages are prepared or cooked.

011 Branch circuits.

(4) A raceway system or one dedicated 15-ampere minimum, 120 volt circuit must be taken to all unfinished space areas adaptable to future dwelling unit living areas that are not readily accessible to the service or branch circuit panelboard. One circuit or raceway is required for each 480 square feet or less of unfinished space area. If the total adjacent unfinished space area is less than 480 square feet, the circuit can be an extension of an existing circuit. The circuits must terminate in a suitable box(es). The box must contain an identification of the intended purpose of the circuit(s). The branch circuit panelboard must have adequate space and capacity for the intended load(s).

013 Ground fault protection of equipment.

(5) Equipment ground fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be available at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

025 Common area branch circuits.

~~((5))~~ (6) For the purpose of NEC 210.25, loads for septic or water well systems that are shared by no more than two dwelling units may be supplied from either of the two dwelling units if approved by the local building official and local health department.

052 (A)(2) Dwelling unit receptacle outlets.

~~((6))~~ (7) For the purpose of NEC 210.52 (A)(2)(1), "similar openings" include the following configurations that are a permanent part of the dwelling configuration or finish:

(a) Window seating; and

(b) Bookcases or cabinets that extend from the floor to a level at least ~~((1.7 meters (five (5) feet six (6) inches)))~~ 5 feet 6 inches above the floor.

Any outlets eliminated by such window seating, bookcases, or cabinets must be installed elsewhere within the room.

052(C) Countertops.

~~((7) If it is impracticable to install the outlet(s) required in NEC 210.52 (C)(3), a receptacle is not required on any peninsular counter surface as required by NEC 210.52 (C)(3) so long as the peninsular counter area extends no farther than 6' from the face of the adjoining countertop. Any outlet(s) eliminated using this subsection must be installed in the wall space at the point where the peninsula connects to the wall countertop in addition to the outlets required by NEC 210.52 (C)(1-))~~ (8) A receptacle in a wall countertop space shall be permitted to serve as the receptacle for a peninsular countertop space where the spaces are contiguous and the receptacle is located within 8 feet of the outside edge of the peninsular countertop.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-220 Wiring and protection—Branch circuit, feeder, and service calculations.

012 Lighting load calculations.

In determining feeder and service entrance conductor sizes and equipment ratings, a building that is designed and constructed to comply with the currently adopted Washington state energy code unit lighting power allowance table and footnotes may be used in lieu of NEC 220.12. The requirements of NEC 220.12 Exception No. 1, items 1, 2, and 3 do not apply.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-230 Wiring and protection—Services.

001 General service requirements.

(1) The owner, the owner's agent, or the electrical contractor making the installation must consult the serving utility regarding the utility's service entrance requirements for equipment location and meter equipment requirements before installing the service and equipment. Provisions for a meter and related equipment, an attachment of a service drop, or an underground service lateral must be made at a location

acceptable to the serving utility. The point of contact for a service drop must permit the clearances required by the NEC.

(2) A firewall must have a minimum two-hour rating as defined by the local building official to be considered a building separation in accordance with Article 100 NEC.

(3) The height of the center of the service meter must be as required by the serving utility. Secondary instrument transformer metering conductor(s) are not permitted in the service raceway.

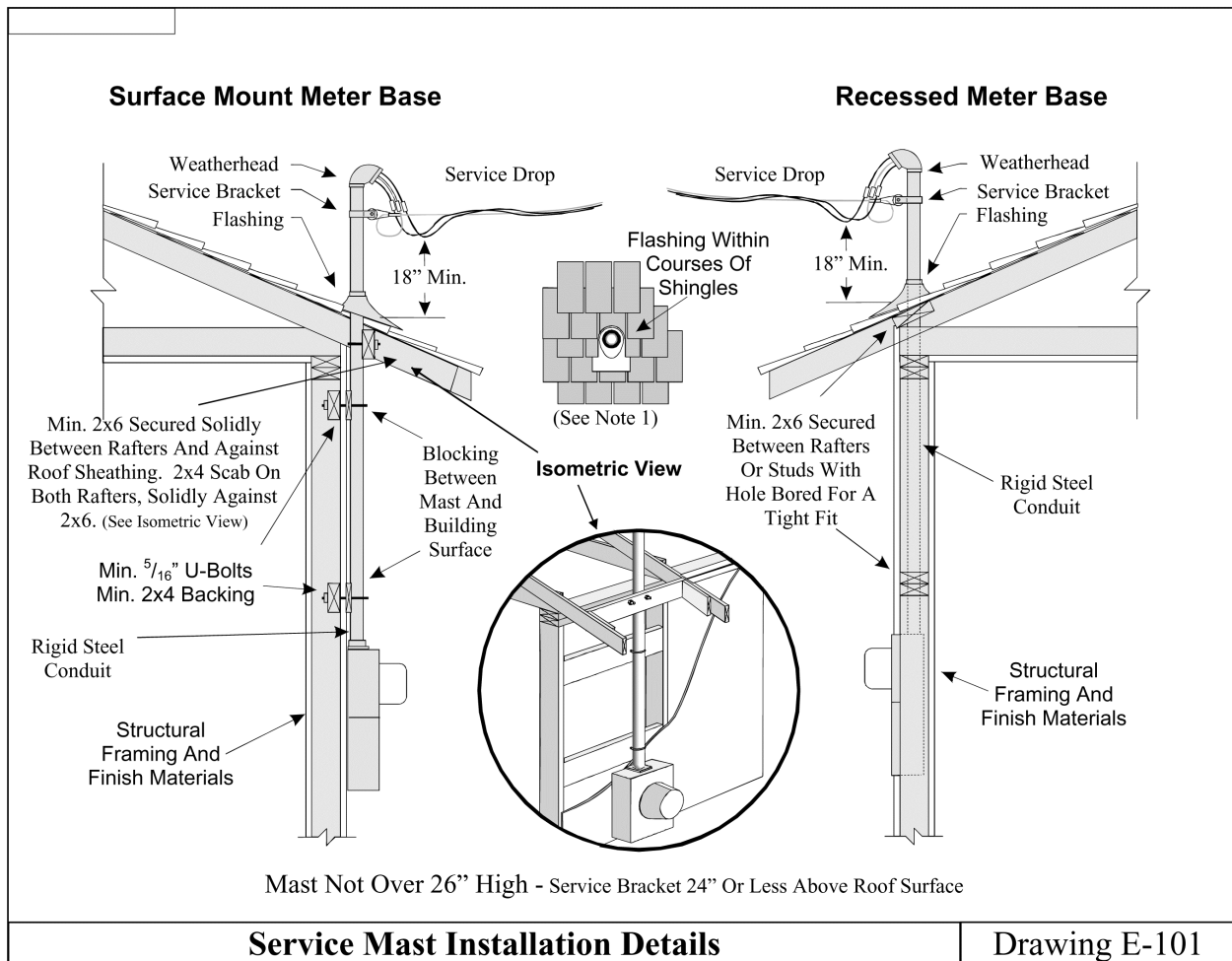
028 Service or other masts.

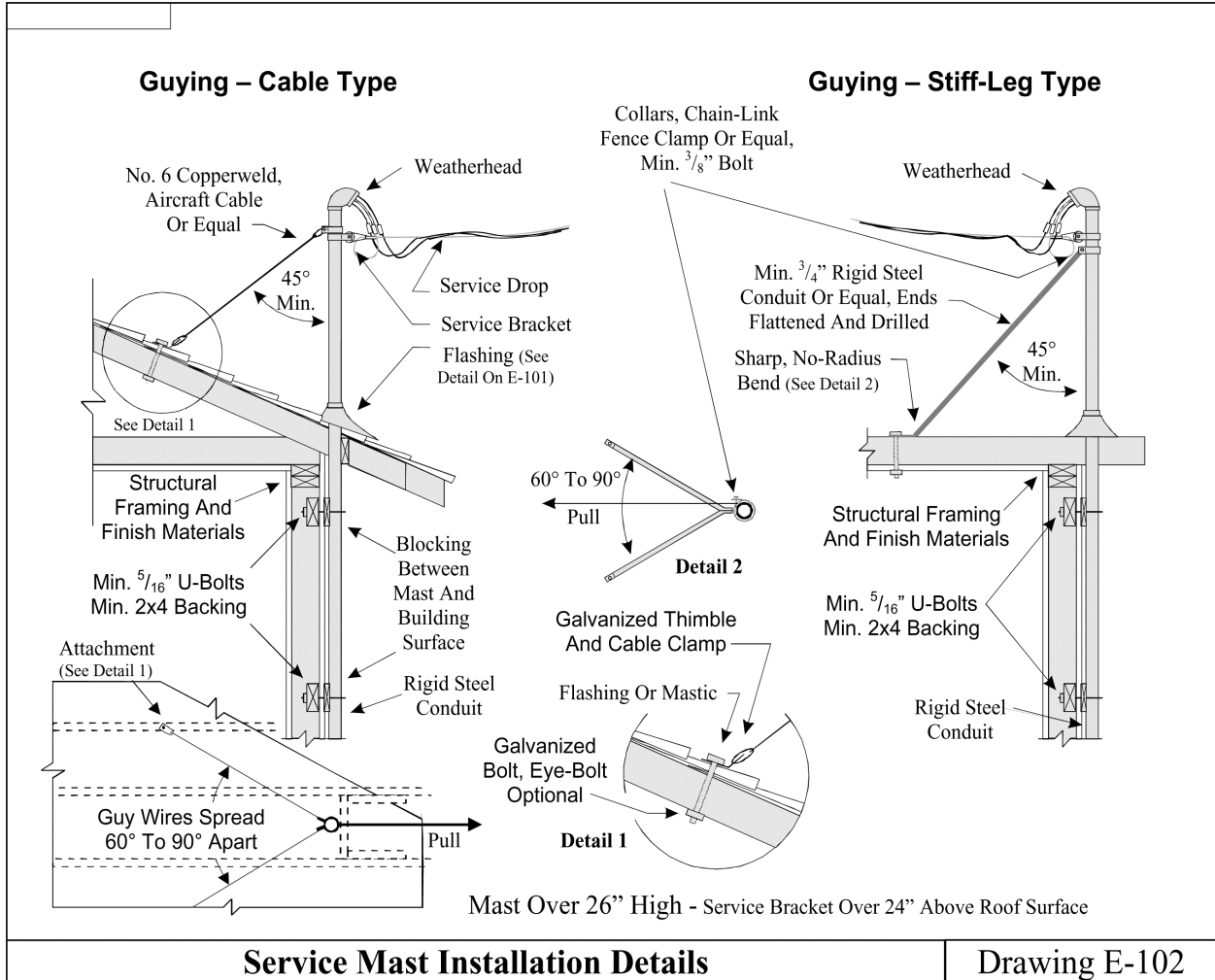
(4) Conduit extended through the roof to provide means of attaching:

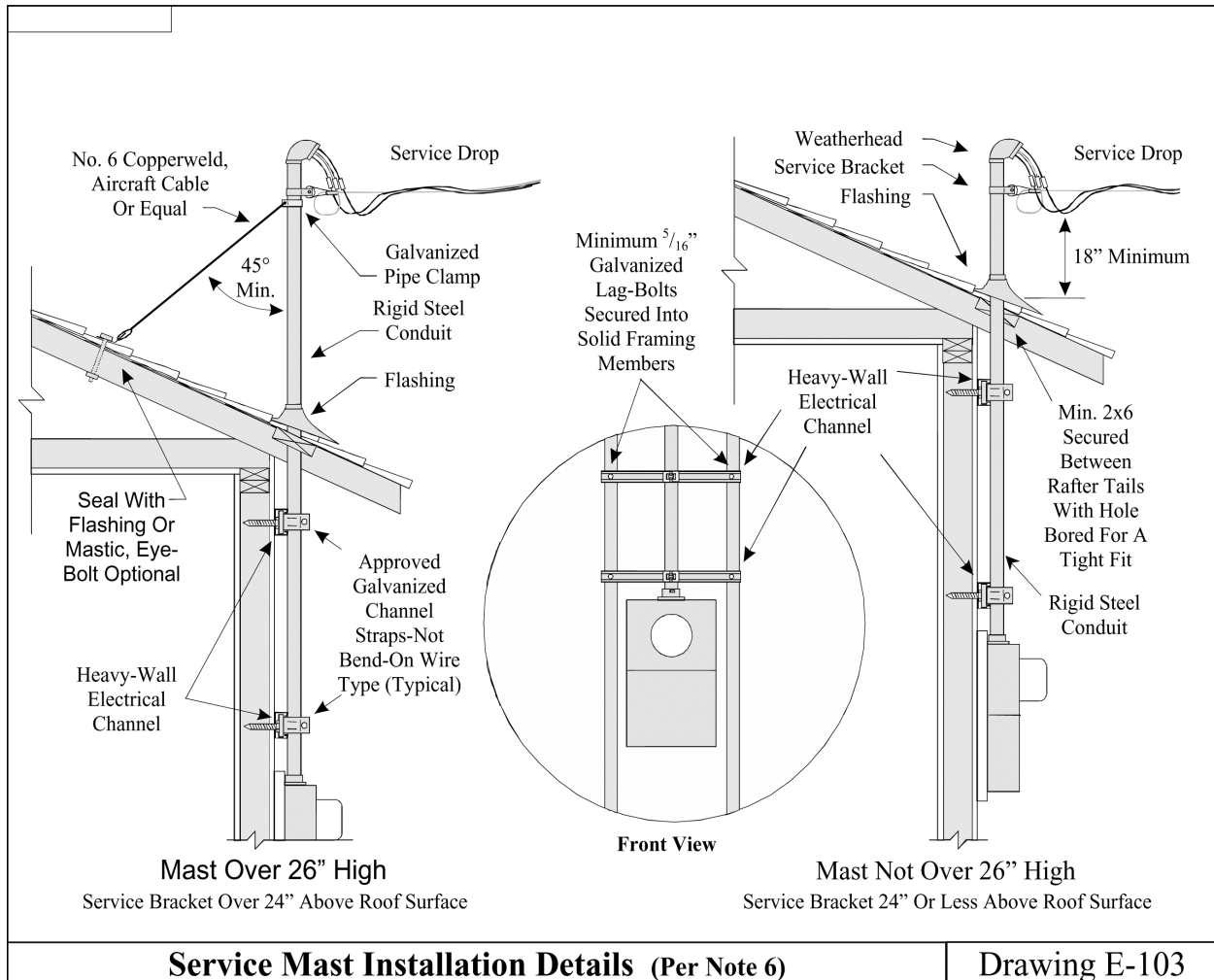
(a) All overhead drops for service, feeder, or branch circuits exceeding #1 AWG aluminum or #3 AWG copper must be rigid steel galvanized conduit no smaller than ~~((two))~~ 2 inches.

(b) All overhead drops for service, feeder or branch circuits not exceeding #1 AWG aluminum or #3 AWG copper must be rigid steel galvanized conduit no smaller than ~~((one and one-quarter inch))~~ 1 1/4 inches. The installation must comply with drawings E-101 and/or E-102, or must provide equivalent strength by other approved means. Masts for altered or relocated installations will be permitted to comply with drawing E-103.

(c) For the purposes of NEC 225.19 and 230.24, a residential patio cover, that is not over one story and not over twelve feet in height and is used only for recreation or outdoor living purposes and not as a carport, garage, storage room or habitable room as described in Appendix Chapter 1 in the IBC and Appendix Chapter H in the IRC, is not considered a roof. Overhead conductor spans must maintain a minimum ~~((900 mm (36"))~~ 36 inches clearance above these covers.







Notes to drawings E-101, E-102, and E-103

- (1) An approved roof flashing must be installed on each mast where it passes through a roof. Plastic, nonhardening mastic must be placed between lead-type flashings and the conduit. Neoprene type flashings will also be permitted to be used.
- (2) Masts must be braced, secured, and supported in such a manner that no pressure from the attached conductors will be exerted on a roof flashing, meter base, or other enclosures.
- (3) Utilization of couplings for a mast is permitted only below the point the mast is braced, secured, or supported. There must be a minimum of two means of support above any couplings used. A properly installed cable or stiff leg type support qualifies as one of the two required means of support.
- (4) Except as otherwise required by the serving utility, service mast support guys must be installed if the service drop attaches to the mast more than ~~((twenty-four))~~ 24 inches above the roof line or if the service drop is greater than ~~((one-hundred))~~ 100 feet in length from the pole or support. Masts for support of other than service drops must comply with this requirement as well.

- (5) Intermediate support masts must be installed in an approved manner with methods identical or equal to those required for service masts.
- (6) For altered services, where it is impractical to install U bolt mast supports due to interior walls remaining closed, it will be permissible to use other alternate mast support methods such as heavy gauge, galvanized, electrical channel material that is secured to two or more wooden studs with ~~((five-sixteenths))~~ 5/16 inch diameter or larger galvanized lag bolts.
- (7) Conductors must extend at least ~~((eighteen))~~ 18 inches from all mastheads to permit connection to the connecting overhead wiring.

040 Service conductors - Two-family and multiple-occupancy buildings.

(5) Two-family and multiple-occupancy buildings. A second or additional service drop or lateral to a building having more than one occupancy will be permitted to be installed at a location separate from other service drops or laterals to the building provided that all the following conditions are complied with:

- (a) Each service drop or lateral must be sized in accordance with the NEC for the calculated load to be served by the conductors;

(b) Each service drop or lateral must terminate in listed metering/service equipment;

(c) Each occupant must have access to the occupant's service disconnecting means;

(d) No more than six service disconnects may be supplied from a single transformer;

(e) All service drops or laterals supplying a building must originate at the same transformer or power supply;

(f) A permanent identification plate must be placed at each service disconnect location that identifies all other service disconnect locations in or on the building, the area or units served by each, the total number of service disconnecting means on the building/structure and the area or units served. If a structure consists of multiple buildings (i.e., by virtue of fire separation), all service disconnects in or on the entire structure must be labeled to identify all service disconnects in or on the structure; and

(g) A permanent identification plate must be placed at each feeder disconnecting means identifying the area or units served if the feeder disconnecting means is remote from the area or unit served.

042 Service conductor - Size and rating.

(6) If the service conductors have a lesser ampacity than the overcurrent protection, permitted by NEC 230.90 or NEC 310.15, or the equipment rating that they terminate in or on, an identification plate showing the ampacity of the conductors must be installed on the service equipment.

043 Wiring methods for ~~((600))~~ 1000 volts, nominal or less.

(7) The installation of service conductors not exceeding ~~((600))~~ 1000 volts, nominal, within a building or structure is limited to the following methods: Galvanized or aluminum rigid metal conduit; galvanized intermediate metal conduit; wireways; busways; auxiliary gutters; minimum schedule 40 rigid polyvinyl chloride conduit; cablebus; or mineral-insulated, metal-sheathed cable (type MI).

(8) Electrical metallic tubing must not be installed as the wiring method for service entrance conductors inside a building. Existing electrical metallic tubing, installed prior to October 1984, which is properly grounded and used for service entrance conductors may be permitted to remain if the conduit is installed in a nonaccessible location and is the proper size for the installed conductors.

(9) In addition to methods allowed in the NEC, the grounded service conductor is permitted to be identified with a yellow jacket or with one or more yellow stripes.

070 Service equipment - Disconnecting means.

(10) In addition to the requirements of NEC 230.70(A), service equipment, subpanels, and similar electrical equipment must be installed so that they are readily accessible and may not be installed in clothes closets, toilet rooms, or shower rooms. All indoor service equipment and subpanel equipment must have adequate working space and be adequately illuminated.

(11) The service disconnecting means must be installed at a readily accessible location in accordance with (a) or (b) of this subsection.

(a) Outside location: Service disconnecting means will be permitted on the building or structure or within sight and within fifteen feet of the building or structure served. The

building disconnecting means may supply only one building/structure. The service disconnecting means must have an identification plate with one-half-inch high letters identifying:

(i) The building/structure served; and

(ii) Its function as the building/structure main service disconnect(s).

(b) Inside location: When the service disconnecting means is installed inside the building or structure, it must be located so that the service raceway extends no more than fifteen feet inside the building/structure.

095 Ground-fault protection of equipment.

(12) Equipment ground-fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. This test or a subsequent test must include all service voltage feeders unless the installer can demonstrate, in a manner acceptable to the department, that there are no grounded conductor connections to the feeder(s). A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be ~~((provided))~~ available for the ~~((inspector's records))~~ inspector at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

200 Wiring methods exceeding ~~((600))~~ 1000 volts.

(13) The installation of service conductors exceeding ~~((600))~~ 1000 volts, nominal, within a building or structure must be limited to the following methods: Galvanized rigid metal conduit, galvanized intermediate metal conduit, schedule 80 polyvinyl chloride conduit, metal-clad cable that is exposed for its entire length, cablebus, or busways.

(14) In addition to methods allowed in the NEC, the grounded service conductor is permitted to be identified with a yellow jacket or with one or more yellow stripes.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-240 Overcurrent protection.

024(C) Not exposed to physical damage.

(1) Where the NEC or manufacturer's instructions do not specify minimum height requirements for equipment enclosures, enclosures installed outdoors containing an overcurrent device(s) shall be installed so the bottom of the enclosure containing the overcurrent device(s) is not less than 24 inches above finished grade unless:

(a) The equipment enclosure or listed equipment on which the enclosure is mounted is approved for pad-, floor-, ground-, dock-, or pier-mounting; or

(b) The equipment enclosure is located over:

(i) Concrete or asphalt paving that extends 3 or more feet horizontally from the surface of the enclosure; or

(ii) Roofs.

024(F) Not located over steps.

(2) If the overcurrent device is a part of a panelboard that is being repaired or replaced in an existing location, the installation is allowed to be made above the steps.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-250 Wiring and protection—Grounding and bonding.**028 (D)(3) Separately derived system with more than one enclosure.**

(1) NEC 250.28 (D)(3) is amended to read: Where a separately derived system supplies more than a single enclosure, the system bonding jumper for each enclosure shall be sized in accordance with 250.28 (D)(1) based on the largest ungrounded feeder/tap conductor serving that enclosure, or a single system bonding jumper shall be installed at the source and sized in accordance with 250.28 (D)(1) based on the equivalent size of the largest supply conductor determined by the largest sum of the areas of the corresponding conductors of each set.

052 Grounding electrodes.

(2) Except for mobile/manufactured homes, a concrete encased grounding electrode must be installed and used at each new building or structure that is built upon a permanent concrete foundation. The electrode must comply with NEC 250.52 (A)(3). Inspection of the electrode, may be accomplished by the following methods:

(a) At the time of inspection of other work on the project, providing the concrete encased electrode is accessible for a visual inspection;

(b) At the time of the service inspection providing the installer has provided a method so the inspector can verify the continuity of the electrode conductor along its entire length, with a minimum (~~(twenty)~~) 20 foot linear span between testing points (e.g., attaching a length of copper wire to one end of the electrode that reaches the location of the grounding electrode conductor that will enable the inspector to measure the resistance with a standard resistance tester). The concrete encased electrode does not have to be accessible for a visual inspection; or

(c) Other method when prior approval, on a job site basis, is given by the inspector.

If a special inspection trip is required to inspect a grounding electrode conductor, a trip fee will be charged for that inspection in addition to the normal permit fee.

Exception: If the concrete encased grounding electrode is not available for connection, a ground ring must be installed per NEC 250 or other grounding electrode installed per NEC 250 verified to measure 25 ohms or less to ground. Resistance verification testing must be performed by an independent firm having qualified personnel and proper equipment. A copy of the testing procedures used and a written resistance test record signed by the person performing the test must be available at the time of inspection. The resistance test record must include test details including, but not limited to, the type of test equipment used, the last calibration date of the test equipment, and all measurements taken during the test.

053 (A)(2) Resistance of rod, pipe, and plate electrodes.

(3) For rod, pipe and plate electrodes, if a ground resistance test is not performed to ensure a resistance to ground of (~~(twenty-five)~~) 25 ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of (~~(six)~~) 6 feet apart. A temporary construction service is not required to have more than one made electrode.

(4) For services only, when multiple buildings or structures are located adjacent, but structurally separate from each other, any installed rod, pipe, or plate electrodes used for those services must be installed so that each building's or structure's electrodes are not less than (~~(1.8 m (6 ft))~~) 6 feet apart from the adjacent building's or structure's electrodes.

064 Grounding electrode conductor installation - Physical protection.

(5) Grounding electrode conductors will be considered to be not exposed to physical damage when the conductor(s) are:

(a) Buried more than 12 inches deep in the earth outside the building's footprint;

(b) Encased or covered by 2 inches of concrete or asphalt;

(c) Located inside the building footprint and protected by the building's structural elements or when inside and determined, by the inspector, to not be subject to physical damage;
or

(d) Enclosed by a metal or nonmetallic raceway or enclosure. The raceway or enclosure must be approved to protect from severe physical damage if it is not protected by appropriate physical barriers from contact with vehicles, lawn mowers, and other equipment that might damage the conductor or enclosure.

068 Accessibility.

~~((5))~~ (6) The termination point of a grounding electrode conductor tap to the grounding electrode conductor must be accessible unless the connection is made using an exothermic or irreversible compression connection.

090 Bonding.

~~((6))~~ (7) Metallic stubs or valves used in nonmetallic plumbing systems are not required to be bonded to the electrical system unless required by an electrical equipment manufacturer's instructions.

~~((7))~~ (8) Hot and cold water plumbing lines are not required to be bonded together if, at the time of inspection, the inspector can determine the lines are mechanically and electrically joined by one or more metallic mixing valves.

~~((94 Bonding for other systems.~~

~~(8) NEC 250.94 is not adopted.~~

~~(9) An accessible means external to enclosures for connecting intersystem bonding and grounding electrode conductors must be provided at the service equipment and at the disconnecting means for any additional buildings or structures by at least one of the following means:~~

~~(a) Exposed nonflexible metallic raceways;~~

~~(b) Exposed grounding electrode conductor or electrode;~~

~~(c) Approved means for the external connection of a copper or other corrosion resistant bonding or grounding conductor to the grounded raceway or equipment.)~~

104(B) Bonding - Other metal piping.

~~((10))~~ (9) For flexible metal gas piping, installed new or extended from an existing rigid metal piping system, either:

(a) Provide a copy of the manufacturer's bonding instructions to the inspector at the time of inspection and follow those instructions; or

(b) The bonding conductor for the gas system must:

(i) Be a minimum 6 AWG copper; and

(ii) Terminate at:

(A) An accessible location at the gas meter end of the gas piping system on either a solid iron gas pipe or a cast flexible gas piping fitting using a listed grounding connector; and

(B) Either the service equipment enclosure, service grounding electrode conductor or electrode, or neutral conductor bus in the service enclosure.

184 Solidly grounded neutral systems over ~~((14V))~~ 1000 volts.

~~((11))~~ (10) In addition to the requirements of NEC 250.184(A), the following applies for:

(a) Existing installations.

(i) The use of a concentric shield will be allowed for use as a neutral conductor for extension, replacement, or repair, if all of the following are complied with:

(A) The existing system uses the concentric shield as a neutral conductor;

(B) Each individual conductor contains a separate concentric shield sized to no less than thirty-three and one-half percent of the ampacity of the phase conductor for three-phase systems or one hundred percent of the ampacity of the phase conductor for single-phase systems;

(C) The new or replacement cable's concentric shield is enclosed inside an outer insulating jacket; and

(D) Existing cable (i.e., existing cable installed directly in the circuit between the work and the circuit's overcurrent device) successfully passes the following tests:

- A cable maintenance high potential dielectric test. The test must be performed in accordance with the cable manufacturer's instruction or the 2011 NETA maintenance test specifications; and

- A resistance test of the cable shield. Resistance must be based on the type, size, and length of the conductor used as the cable shield using the conductor properties described in NEC Table 8 Conductor Properties.

An electrical engineer must provide a specific certification to the electrical plan review supervisor in writing that the test results of the maintenance high potential dielectric test and the resistance test have been reviewed by the electrical engineer and that the cable shield is appropriate for the installation. The electrical engineer must stamp the certification document with the engineer's stamp and signature. The document may be in the form of a letter or electrical plans.

Testing results are valid for a period of seven years from the date of testing. Cable will not be required to be tested at a shorter interval.

(ii) A concentric shield used as a neutral conductor in a multigrounded system fulfills the requirements of an equipment grounding conductor.

(b) New installations.

(i) New installations do not include extensions of existing circuits.

(ii) The use of the concentric shield will not be allowed for use as a neutral conductor for new installations. A listed separate neutral conductor meeting the requirements of NEC 250.184(A) must be installed.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-300 Wiring methods and materials—
Wiring methods. (1) Cables and raceways for power limited, NEC Class 2 and Class 3 conductors must be installed in compliance with Chapter 3 NEC unless other methods are specifically required elsewhere in the NEC, chapter 19.28 RCW, or this chapter.

005 Underground installations.

(2) Induction loops.

See WAC 296-46B-010~~((17))~~ (18) for induction detection loops that are made in a public roadway and regulated by a governmental agency.

Other induction loops must comply with the following requirements:

(a) General:

(i) A preformed direct burial induction loop is designed to be installed within the road surface base (e.g., concrete or asphalt) or below the road surface of a road with an unpaved surface (e.g., gravel or brick pavers);

(ii) A saw-cut induction detection loop is designed to be installed into a groove saw-cut into an existing paved road surface (e.g., concrete or asphalt);

(iii) The loop system includes the loop and the lead-in conductor;

(iv) The loop system must be:

(A) Tested to assure that at 500 volts DC, the resistance between the conductor and ground equals or exceeds 50 megohms; and

(B) Without splice; or

(C) If spliced, the splice must be soldered and appropriately insulated;

(v) The lead-in conductor must comply with the following:

(A) Must be stranded and have a lay (i.e., twist) of two turns per foot; and

(B) If installed in an electrical raceway;

- Are not required to be listed or suitable for wet locations; and

- Must have a burial cover of at least 6(ⁱⁿ) inches; or

(C) If direct buried;

- Must be listed for the use; and

- Must have a burial cover of at least 18(ⁱⁿ) inches.

(b) Preformed direct burial induction detection loops must conform with the following:

(i) The loop conductor must be rated for direct burial and be a minimum of No. 16 AWG;

(ii) The loop design must not allow movement of the loop conductor within the outer jacket. The outer jacket containing the loop conductor is not required to be listed;

(iii) The loop yoke casing (i.e., the location where the lead-in conductor is connected to the loop):

(A) Includes any device used to house the "loop to lead-in splice" or to otherwise couple the loop with the lead-in electrical raceway;

(B) Is not required to be listed; and

(C) Must have a coupler that will create a waterproof bond with the electrical raceway, containing the lead-in conductor, or a direct buried lead-in conductor.

(c) Saw-cut induction detection loops:

(i) The loop conductor must be cross-linked polyethylene or EPR Type USE insulation and be a minimum of No. 18 AWG stranded;

(ii) The saw-cut groove must not cut into rebar installed within the roadway.

011 Support of raceways, cables, or boxes in suspended ceilings.

(3) NEC power limited, Class 2, and Class 3 cables must be secured in compliance with NEC 334.30 and must be secured to boxes in compliance with NEC 314.17.

(4) Telecommunications cables must be secured in a manner that will not cause damage to the cables and at intervals not exceeding five feet. Cables are considered adequately supported when run through holes in building structural elements or other supporting elements. Telecommunications cables may be fished into inaccessible hollow spaces of finished buildings. Clamps or fittings are not required where telecommunications cables enter boxes.

(5) Optical fiber cables must be secured in a manner that will not cause damage to the cables and at intervals not exceeding five feet. Cables are considered adequately supported when run through holes in building structural elements or other supporting elements. Optical fiber cables may be fished into inaccessible hollow spaces of finished buildings. Supports must allow a bending radius that will not cause damage to the cables.

(6) Where not restricted by the building code official or Article 300 NEC, the wires required in NEC 300.11(~~(A)~~) (B) may support raceways, cables, or boxes under the following conditions:

(a) Raceways and/or cables are not larger than three-quarter-inch trade size;

(b) No more than two raceways or cables are supported by a support wire. The two-cable limitation does not apply to telecommunications cables, Class 2 cables, or Class 3 cables on support wires installed exclusively for such cables. The support wire must be adequate to carry the cable(s) weight and all attached cables must be secured with approved fittings; or

(c) Raceways and cables are secured to the support wires by fittings designed and manufactured for the purpose.

In addition to (a), (b), and (c) of this subsection, the following conditions must be complied with:

(d) The support wires are minimum #12 AWG and are securely fastened to the structural ceiling and to the ceiling grid system; and

(e) The raceways or cables serve equipment that is located within the ceiling cavity or is mounted on or supported by the ceiling grid system. Telecommunications cables, Class 2 cables, or Class 3 cables supported as required

by this section, may pass through ceiling cavities without serving equipment mounted on or supported by the ceiling grid system.

017 Conductors in raceway.

(7) Cables will be permitted in all raceway systems if:

(a) The cable is appropriate for the environment; and

(b) The percentage fill does not exceed that allowed in NEC Chapter 9, Table 1.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-314 Wiring methods and materials—Outlet, device, pull and junction boxes.

001 Boxes and fittings.

(1) Conduit bodies, junction, pull, and outlet boxes must be installed so that the wiring contained in them is accessible without removing any part of the building structure, including insulation material.

023(H) Flexible cord connection of pendant boxes.

(2) The flexible cord and cord connection must comply with NEC 314.23(H) and the following:

(a) A suspended pendant box must not contain conduit "knockouts" and connection to a suspended box must utilize an integral threaded hub;

(b) The maximum length of the cord for a suspended pendant drop from a permanently installed junction box to a suitable tension take-up device above the pendant box must not exceed (~~(six)~~) 6 feet;

(c) The flexible cord must be supported at each end with an approved cord grip or strain relief connector fitting/device that will eliminate all stress on the conductor connections;

(d) The flexible cord must be a minimum #14 AWG copper;

(e) The flexible cord ampacity must be determined using NEC Table 400.5(A) column A; and

(f) The flexible cord must be hard or extra hard usage.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-334 Wiring methods and materials—Nonmetallic-sheathed cable.

010 Nonmetallic-sheathed cable.

(1) The building classification, for subsections (2), (3), and (4) of this section, will be as determined by the building official. For the purposes of this section, Type III, IV and V may be as defined in the International Building Code adopted in the state of Washington. The installer must provide the inspector documentation substantiating the type of building construction and finish material rating(s) prior to any electrical inspection.

(2) This section replaces NEC 334.10(2). In multifamily dwellings, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV, and V construction except as prohibited in NEC 334.12.

(3) This section replaces NEC 334.10(3). In all other structures, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV, and V construction

except as prohibited in NEC 334.12. All cable(s) must be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating as identified in listings of fire-rated assemblies.

(4) This section replaces NEC 334.10(4). Cable trays in structures of Types III, IV, and V construction, where the cable(s) is identified for the use, except as prohibited in NEC 334.12.

015 Exposed work.

(5) Where Type NMC cable is installed in shallow chases in plaster, masonry, concrete, adobe or similar material, the cable must be protected against nails or screws by:

(a) A steel plate at least (~~(1.59 mm (1/16 in.))~~) 1/16 inch thick and covered with plaster, adobe, or similar finish; or

(b) Being recessed in a chase at least (~~(6.985 cm (2 3/4 in.))~~) 2 3/4 inches deep, as measured from the finished surface, and covered with plaster, adobe, or similar finish. The cable(s) must be at least (~~(6.35 mm (2 1/2 in.))~~) 2 1/2 inches from the finished surface.

(6) The requirements for nonmetallic sheathed cable protection in NEC 334.15(C) do not apply in crawl spaces.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-394 Wiring methods and materials— Concealed knob-and-tube wiring.

001 Knob-and-tube wiring.

Article 394 NEC does not prohibit the installation of loose or rolled thermal insulating material in spaces containing existing knob-and-tube wiring provided that all the following conditions are met:

(1) The wiring must be surveyed by an appropriately licensed electrical contractor who must certify in writing to the department that the wiring is in good condition with no evidence of improper overcurrent protection, conductor insulation failure or deterioration, and with no improper connections or splices. The electrical inspector must inspect all repairs, alterations, or extensions to the electrical system.

(2) The insulation must meet Class I specifications as identified in the Uniform Building Code, with a flame spread factor of twenty-five or less as tested using ASTM E84-81a. Foam insulation may not be used with knob-and-tube wiring.

(3) All knob-and-tube circuits must have overcurrent protection in compliance with NEC Table (~~(310.16)~~) 310.15 (B)(16), 60 degree centigrade, Column C. Overcurrent protection must be either circuit breakers or Type S fuses.

NEW SECTION

WAC 296-46B-406R Equipment for general use— Receptacles.

012 Tamper-resistant receptacles.

In addition to the requirements of NEC 406.12, listed tamper-resistant receptacles are required in all psychiatric patient care facilities where accessible to psychiatric patients and children five years of age and under.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-410 Equipment for general use— Luminaires.

010 Luminaires.

(1) All luminaires within an enclosed shower area or within five feet of the waterline of a bathtub must be enclosed, unless specifically listed for such use; these luminaires, with exposed metal parts that are grounded, must be ground fault circuit interrupter protected.

042 Exposed luminaire (fixture) parts.

(2) Replacement luminaires that are directly wired or attached to boxes supplied by wiring methods that do not provide a ready means for grounding and that have exposed conductive parts will be permitted only where the luminaires are provided with ground-fault circuit-interrupter protection and marked "no equipment ground."

062 Flexible cord connection of electric discharge luminaires.

(3) A ground-type attachment plug cap and receptacle connection at the source junction box is not required when the flexible cord complies with NEC 410.62 and the following:

(a) Connection to a source junction box must utilize an approved cable connector or clamp;

(b) The maximum length of the cord for a suspended pendant drop from a permanently installed junction box to a suitable tension take-up device above the pendant luminaire must not exceed (~~(six)~~) 6 feet;

(c) The flexible cord must be supported at each end with an approved cord grip or strain relief connector fitting/device that will eliminate all stress on the conductor connections;

(d) The flexible cord must be a minimum #14 AWG copper;

(e) The flexible cord ampacity must be determined in NEC Table 400.5(A) column A;

(f) The flexible cord must be hard or extra hard usage; and

(g) A vertical flexible cord supplying electric discharge luminaires must be secured to the luminaire support as per NEC 334.30(A).

NEW SECTION

WAC 296-46B-440 Air conditioning and refrigerating equipment.

014 Disconnecting means.

In one- and two-family dwelling units, a disconnecting means is required for the indoor unit(s) of a split system HVAC/R system, unless the outside unit's disconnecting means is lockable, disconnects the indoor unit and an indoor disconnecting means is not required by the manufacturer.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-450 Equipment for general use—Transformers and transformer vaults.

027 Flammable-liquid or oil-filled transformers installed outdoors.

(1) Flammable-liquid or oil-filled transformers installed outdoors must meet the following requirements:

(a) A transformer installed adjacent to a building/structure with any combustibile surface may be located only in the shaded "Approved Transformer Area" shown in Figure 450-1;

"Approved Transformer Area" shown in Figure 450-1;

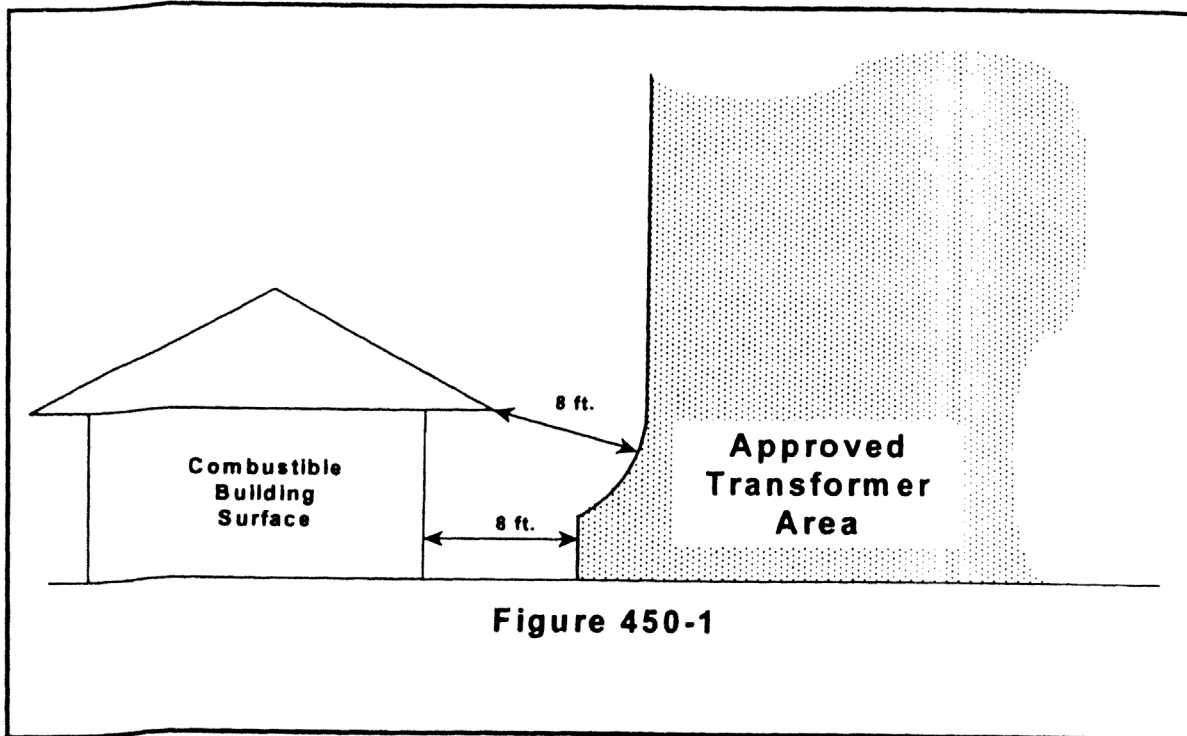
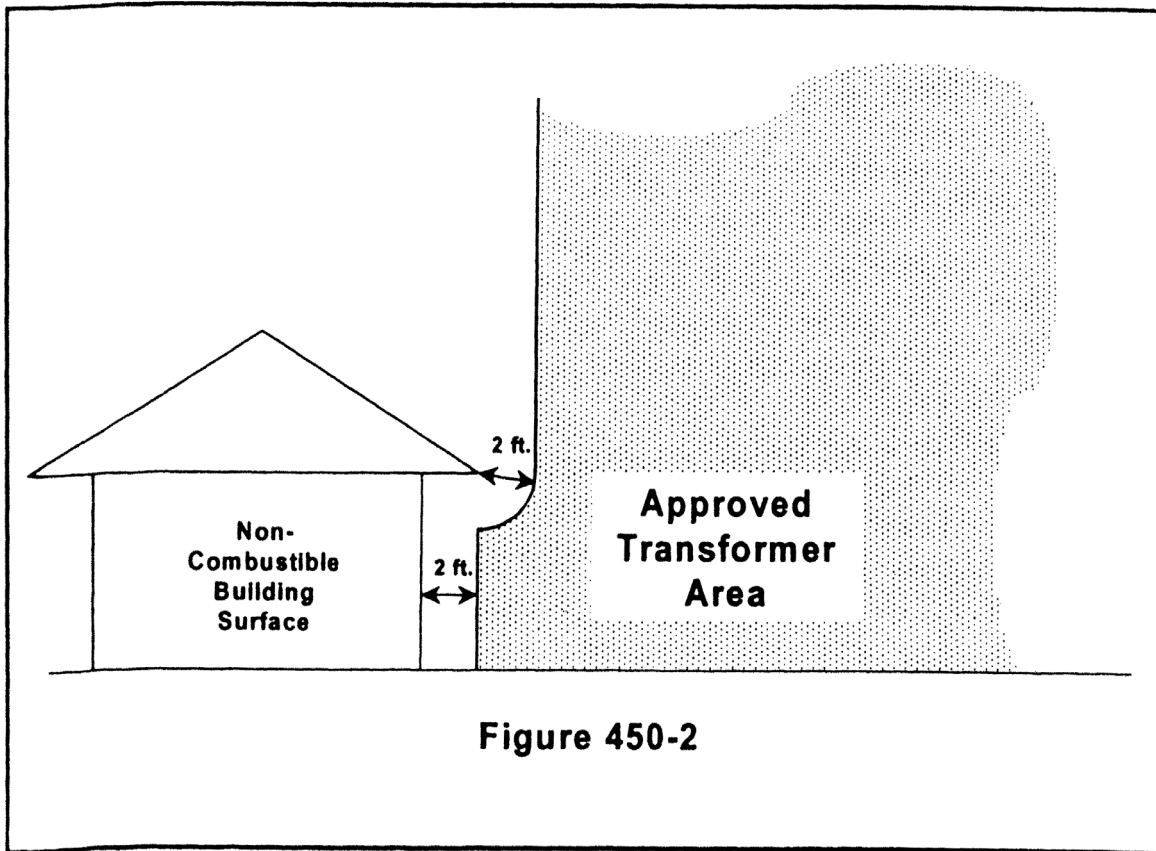


Figure 450-1

(b) A transformer installed adjacent to a building/structure with no combustible surface(s) may be located only in the shaded "Approved Transformer Area" shown in Figure 450-2;



(c) In an area in which a transformer is to be installed next to a nonhabitable structure, the transformer may be no closer than ~~((two))~~ 2 feet to the building/structure and must be outside a line extended vertically from the ends of the eaves or rooflines;

(d) A building/structure may have no doors, windows, stairways, or other openings closer than ~~((eight))~~ 8 feet to the transformer;

(e) The finished grade at the location of the transformer must be such that any oil leaking from the transformer will flow away from the building/structure and will not pool; and

(f) If transformers are installed in areas subject to traffic other than pedestrian traffic, they must be provided with adequate guarding.

(2) Enclosures for total underground flammable-liquid or oil-filled transformers must not be located within ~~((eight))~~ 8 feet of a doorway, operable window, stairways or fire escape. Adequate space must be maintained above the enclosure so that a boom may be used to lift the transformer from the enclosure.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-514 Special occupancies—Motor fuel dispensing facilities.

001 General.

(1) In addition to the scope included in NEC 514.1, Article 514 NEC must be complied with for all liquefied flammable gas storage or transfer facilities.

003 Classifications of locations.

(2) For the purposes of NEC 514.3 (D)(2), delete Exception No. 1 and No. 2 and replace with:

Dock, pier, or wharf sections that do not support fuel dispensers and may abut a section(s) that supports a fuel dispenser(s) are permitted to be unclassified where documented air space between the sections is provided and where flammable liquids or vapors cannot travel to these sections. See NEC 500.4(A) for documentation requirements.

011 Emergency disconnecting means - Dispensing and service stations.

(3) An emergency disconnecting means or operator must be provided to disconnect the pump or dispensing equipment serving gasoline, volatile flammable liquids, or liquefied flammable gases. The emergency disconnecting means or operator must disconnect all conductors of the circuit supplying all station dispensers and/or pumps (including the grounded conductor) simultaneously from the source(s) of supply.

(4) For installations with only one dispensing device, the emergency disconnecting means/operator may be used to satisfy subsection (3) of this section.

(5) For multicircuit installations, an electrically held normally open contactor operated by a push-button may serve as the disconnecting means to satisfy subsection (3) of this section. If a disconnecting pushbutton is used, the pushbutton may not function as the resetting mechanism for the electrically held contactor. The resetting means must be:

(a) Located at least (~~fifteen~~) 15 feet or out of sight from the disconnecting pushbutton;

(b) Installed behind a cover or guard; and

(c) Identified with an identification plate that is substantially black in color.

(6) The disconnecting means satisfying subsection (3) of this section must be labeled with an identification plate, with letters at least (~~one~~) 1 inch high, as the emergency disconnecting means. The disconnecting means or operator must be:

(a) Substantially red in color; and

(b) For attended facilities - Must be readily accessible and must be located outdoors and within sight of the pump or dispensing equipment it controls; or

(c) For unattended facilities - Must be readily accessible and must be located within sight, but at least (~~twenty~~) 20 feet from the pump or dispensing equipment it controls.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-517 Special occupancies—Health care facilities.

001 Health care facilities.

In health care facilities, the following methods must be used to determine adequate capacity and ratings of equipment providing electrical power for the essential electrical systems defined in Article 517 NEC:

(1) Systems in new facilities:

(a) Essential electrical system: The essential electrical system must consist of three branches known as:

(i) Life safety branch: The feeder conductors and equipment used to supply electrical power to the life safety branch must be determined by summation of the connected loads as determined by Article 220 NEC and may not be subjected to any reduction due to the diversity of the loads. Feeder and equipment will be subject to a one hundred twenty-five percent multiplier for continuous loads in accordance with Article 220 NEC.

(ii) Critical branch: The feeder conductors and equipment must be calculated in accordance with Article 220 NEC, including a level of diversity as determined by such article.

(iii) Equipment branch: The feeder conductors and equipment used to supply electrical power to the equipment branch of the essential electrical system must be calculated in accordance with Article 220 NEC, including a level of diversity as determined by such article.

(b) Generator sizing: The rating of the generator(s) supplying electrical power to the essential system of a health care facility must meet or exceed the summation of the loads determined in (a)(iii) of this subsection with no additional demand factors applied. Momentary X-ray loads may be ignored if the generator is rated at least three hundred percent of the largest momentary X-ray load connected.

(2) Existing essential systems in facilities to which additional load is to be added:

(a) Existing loads: The existing loads of the separate branches of the essential electrical system may be determined by WAC 296-46B-900 (3)(j).

(b) Added loads: Added loads to the separate branches of the essential electrical system must be determined by subsection (1) of this section.

(c) Generator sizing: The rating of the generator(s) supplying electrical power to the essential electrical system must meet or exceed the summation of the loads determined by (a) and (b) of this subsection with no additional demand factors applied.

013 Wiring methods.

(3) The last sentence of NEC 517.13(A) is modified to read: The metal raceway system, or metallic cable armor, or sheath assembly shall itself qualify as an equipment grounding conductor in accordance with 250.118 with the exception of 250.118 (10)(a).

017 Ground-fault protection.

(4) The applicability of NEC (~~(700.27)~~) 700.31 ground-fault protection of equipment, specified by NEC 517.26 for the life safety branch, will also apply to the NEC 517 essential electrical system's critical branch(es) and equipment branch(es).

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-553 Special occupancies—Floating buildings.

004 Floating buildings and similar facilities - Services and feeders.

(1) Where electrical power is provided, floating buildings and similar facilities in addition to complying with the appropriate sections of Article 553 NEC must have a readily accessible service rated disconnect located on the shoreline within sight of the shoreline connection of the dock, wharf or similar structure to which the floating building or similar facility is moored.

(2) Where shore power is provided, each floating building or similar facility must have a disconnecting means located within sight of each floating building or similar facility. The disconnecting means must be installed adjacent to but not in or on the floating building or similar facility.

(3) The second sentence of NEC 553.4 is amended to read: The overcurrent protective devices that supply the floating building shall have ground-fault protection not exceeding 30 mA.

007 Floating buildings and similar installations - Wiring methods.

(~~(3)~~) (4) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment may be used as a permanent wiring method when joining the structures indicated above and for any concealed or protected wiring on a sectionalized floating dock leading to a floating building or similar facility. The cable needs to be resistant only to environments it is normally exposed to on an ongoing basis.

~~((4))~~ (5) Conductors operating in excess of 600 volts, nominal may not be installed on floating portions of a floating building or similar facility.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-555 Special occupancies—Marinas and boatyards. (1) For the purposes of NEC 555.1, the scope of work includes private, noncommercial docking facilities.

(2) For the purposes of NEC 555.5, transformer terminations must be located a minimum of ~~((twelve))~~ 12 inches above the deck of a dock (datum plane requirements do not apply for this section).

(3) For the purposes of NEC 555.7, adjacent means within sight.

(4) For the purposes of NEC 555.9, all electrical connections must be installed a minimum of ~~((twelve))~~ 12 inches above the deck of a pier unless the connections are approved for wet locations (datum plane requirements do not apply for this section).

(5) For the purposes of NEC 555.10, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

(6) For the purposes of NEC 555.11, gasketed enclosures are only required for wet locations.

(7) For the purposes of NEC 555.13, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC 555.13 (B)(4)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats.

(d) For the purposes of NEC 555.13 (B)(5), the wiring methods of Chapter 3 NEC will be permitted.

(8) For the purposes of NEC 555.19, receptacles must be mounted not less than ~~((twelve))~~ 12 inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-600 Special equipment—Electric signs and outline lighting.

001 Electrical signs - General.

(1) All electrical signs and outline lighting, regardless of voltage, must be listed to the applicable ANSI UL Standard. Installations will be inspected for compliance with installation instructions and the NEC.

(2) Luminaires in outdoor awnings must be suitable for wet locations and be connected by a wiring method suitable for wet locations.

(3) Fluorescent luminaires must be located at least ~~((six))~~ 6 inches from the awning fabric. Incandescent lamps or luminaires must be located at least ~~((eighteen))~~ 18 inches from the awning fabric. A disconnecting means must be installed per Article 600 NEC.

(4) Listed awning signs must be installed in compliance with the manufacturer's instructions and the NEC.

(5) Retrofitting signs. When listed signs or listed outline lighting are retrofitted to an LED light source, a licensed (01) general electrical contractor or (04) sign contractor using properly certified individuals or properly supervised trainees may make the retrofit in place so long as all the retrofit components and retrofit kit are listed and installation instructions applicable to the sign for making the retrofit are available for the inspector's use at the time of the inspection and physical access is provided to allow the inspector access to all components of the retrofit kit.

004 Markings.

(6) In addition to the markings required by the NEC, retrofit signs and outline lighting shall be marked with a label, made of a background color contrasting to the listed product, in a location visible during servicing near the listed retrofit subassembly that states, "This equipment contains a retrofit subassembly that may present a risk of electrical hazard. Replace parts only with same type and rating." The label's font must be Arial size 16 bold. This label may be an identification plate as described in WAC 296-46B-100 or an adhesive label approved by the electrical inspector. This label is in addition to any labeling required by the manufacturer's instructions or the UL Standard used to manufacture the retrofit kit.

007 Grounding and bonding.

(7) Remote metal parts of a section sign or outline lighting system only supplied by a remote Class 2 power supply that is listed or is a recognized component in a listed section sign or outline lighting is not required to be bonded to an equipment grounding conductor.

010 Portable or mobile outdoor electrical signs.

(8) A GFCI receptacle outlet that is weatherproof with the supply cord connected must be installed within ~~((six))~~ 6 feet of each portable or mobile electrical sign.

(9) Extension cords are not permitted to supply portable outdoor signs.

(10) All portable outdoor electrical signs must be listed by a qualified electrical testing laboratory accredited by the department.

030 Neon tubing.

(11) NEC 600, Part II, Field-Installed Skeleton Tubing, will apply to the installation of all neon tubing and neon circuit conductors.

(12) Field-installed skeleton tubing is not required to be listed. Installations will be inspected for compliance with installation instructions and the NEC.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-680 Special equipment—Swimming pools, fountains and similar installations.

001 General.

(1) Package spa or hot tubs. Electrical heating, pumping, filtering, and/or control equipment installed within ~~((five))~~ 5 feet of a spa or hot tub must be listed or field evaluated as a package with the spa or hot tub.

(2) A factory assembled skid pack of electrical heating, pumping, filtering, and/or control equipment must be installed more than ~~((five))~~ 5 feet from a spa or hot tub and must be listed as a package unit.

(3) The maintenance disconnect and field installed, listed electrical equipment for a hot tub, spa, or swim spa must be located at least five feet from the hot tub, spa or swim spa. Field installed listed equipment must meet the following additional requirements:

(a) The heater is listed as a "spa heater or swimming pool heater";

(b) The pump is listed as a "spa pump" or "swimming pool/spa pump" (the pump may be combined with a filter assembly); and

(c) Other listed equipment such as panelboards, conduit, and wire are suitable for the environment and comply with the applicable codes.

(4) Field installed, listed electrical equipment for a swimming pool must be located at least ~~((five))~~ 5 feet from the swimming pool. Field installed listed equipment must meet the following additional requirements:

(a) The heater must be listed as a "swimming pool heater or a spa heater";

(b) The pump must be listed as a "swimming pool pump" or "spa pump" or "swimming pool/spa pump"; and

(c) Other equipment such as panelboards, conduit, and wire must be suitable for the environment and comply with the applicable codes.

The ~~((five-foot))~~ 5 foot separation may be reduced by the installation of a permanent barrier, such as a solid wall, fixed glass windows or doors, etc. The ~~((five-foot))~~ 5 foot separation will be determined by the shortest path or route that a cord can travel from the spa, hot tub, swim spa, or swimming pool to an object.

(5) The field assembly or installation of "recognized components" will not be permitted.

(6) Hydromassage bathtubs must be listed as a unit and bear a listing mark which reads "hydromassage bathtub."

(7) Manufacturers' instructions must be followed as part of the listing requirements.

(8) Electrical components which have failed and require replacement must be replaced with identical products unless the replacement part is no longer available; in which case, a like-in-kind product may be substituted provided the mechanical and grounding integrity of the equipment is maintained.

(9) Cut-away-type display models may not be sold for other than display purposes and are not expected to bear a listing mark.

~~((025 Feeders.~~

~~(10) NEC 680.25(A) is amended to read: A feeder between the service equipment and the remote panelboard is permitted to run in flexible metal conduit, an approved cable assembly that includes an equipment grounding conductor within its outer sheath (the equipment grounding conductor must comply with NEC 250.24 (A)(5)), rigid metal conduit, intermediate metal conduit, liquidtight flexible nonmetallic conduit, rigid polyvinyl chloride conduit, reinforced thermosetting resin conduit, electrical metallic tubing (when installed on or within a building or crawl space), and electrical nonmetallic tubing (when installed within a building or crawl space). Aluminum conduit is not permitted.))~~

040 Spas and hot tubs.

~~((11))~~ (10) NEC 680.42(C) will apply for interior and exterior wiring to outdoor installations of spas and hot tubs.

070 Hydromassage bathtubs.

~~((12))~~ (11) For hydromassage bathtubs, the ground fault circuit interrupter device must be identified as to use and not located in a building or tub cavity, crawlspace, or attic.

~~((13))~~ (12) For hydromassage bathtubs, all electrical equipment installed to support the bathtub (e.g., disconnecting means, motor, etc.) must be accessible at the same grade level as the tub or from a landing on the exterior of the building without the use of a ladder or other access device.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-700 Emergency systems.

001 Emergency systems - General.

(1) In all health or personal care facilities defined in this chapter, educational facilities, institutional facilities, hotels, motels, and places of assembly for one hundred or more persons, all exit and emergency lights must be installed in accordance with Article 700 NEC and located as required in standards adopted by the state building code council under chapter 19.27 RCW.

007 Signs.

(2) The sign(s) required in NEC 700.7 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5(~~(?))~~ feet of each other.

009 Emergency systems - Equipment identification.

(3) All exit and emergency lights, whether or not required by the NEC, must be installed in accordance with Article 700 NEC.

(4) All boxes and enclosures, for Article 700 NEC systems, larger than ~~((six))~~ 6 inches by ~~((six))~~ 6 inches, including transfer switches, generators, and power panels for emergency systems and circuits must be permanently identified with an identification plate that is substantially orange in color, except in existing health care facilities the existing nameplate identification color scheme can be retained for transfer switches, generators, and power panels for existing emergency systems that are not being replaced or modified. All other device and junction boxes for emergency systems and circuits must be substantially orange in color, both inside and outside.

~~(028)~~ 032 Coordination.

(5) The requirements for selective coordination described in NEC ~~((700.28))~~ 700.32 are not required where the emergency system was installed prior to June 1, 2006. For new emergency systems that are supplied from an existing emergency system installed prior to June 1, 2006, the new portion of the emergency system must comply with NEC ~~((700.28))~~ 700.32. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other overcurrent protective devices.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-701 Legally required standby systems.**007 Signs.**

(1) The sign(s) required in NEC 701.7 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5(⁽¹⁾) feet of each other.

027 Coordination.

(2) The requirements for selective coordination described in NEC 701.27 are not required where the legally required standby system was installed prior to June 1, 2006. For new legally required standby systems that are supplied from an existing legally required standby system installed prior to June 1, 2006, the new portion of the legally required standby system must comply with NEC ~~((701.18))~~ 701.27. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other overcurrent protective devices.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-702 Optional standby systems.**007 Signs.**

The sign(s) required in NEC 702.7 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within ~~((5))~~ 5 feet of each other.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-705 Interconnected electric power production sources. (1) For utility interactive systems, any person making interconnections between a power production source and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

031 Location of overcurrent protection.

(2) In addition to the requirements of NEC 705.31, electric power production source conductors connected to the supply side of the service disconnecting means must be installed using wiring methods specified for service conductors in WAC 296-46B-230(7).

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-900 Electrical plan review.~~**(Definition of occupancies.)**~~**Definition of occupancies.**

(1) Occupancies are defined as follows:

(a) Educational facility refers to a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes: Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

(b) Institutional facility refers to a building or portion of a building used primarily for detention or correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

(c) Health or personal care facility. Health or personal care facility refers to buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired children and youths, and renal hemodialysis clinics) and medical, dental, or chiropractic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated.

(i) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(ii) "Nursing home," "nursing home unit" or "long-term care unit" means a group of beds for the accommodation of patients who, because of chronic illness or physical infirmities, require skilled nursing care and related medical services but are not acutely ill and not in need of the highly technical or specialized services ordinarily a part of hospital care.

(iii) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more aged persons not related by blood or marriage to the operator. It must not include any home, institution, or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution, or section thereof.

(iv) "Enhanced service facility (ESF)" means a facility, or a portion of a facility, that provides treatment and services to persons for whom acute inpatient treatment is not medi-

cally necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

(v) "Private alcoholism hospital" means an institution, facility, building, or equivalent designed, organized, maintained, or operated to provide diagnosis, treatment, and care of individuals demonstrating signs or symptoms of alcoholism, including the complications of associated substance use and other medical diseases that can be appropriately treated and cared for in the facility and providing accommodations, medical services, or other necessary services over a continuous period of twenty-four hours or more for two or more individuals unrelated to the operator, provided that this chapter will not apply to any facility, agency, or other entity which is owned and operated by a public or governmental body.

(vi) "Private psychiatric hospital" means a privately owned and operated establishment or institution which: Provides accommodations and services over a continuous period of twenty-four hours or more, and is expressly and exclusively for observing, diagnosing, or caring for two or more individuals with signs or symptoms of mental illness who are not related to the licensee.

(vii) "Maternity home" means any home, place, hospital, or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: Provided, however, that this definition will not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

(viii) "Birth center" or "childbirth center" means a type of maternity home which is a house, building, or equivalent organized to provide facilities and staff to support a birth service provided that the birth service is limited to low-risk maternal clients during the intrapartum period.

(ix) "Ambulatory surgical facility" means a facility, not a part of a hospital, providing surgical treatment to patients not requiring inpatient care in a hospital.

(x) "Hospice care center" means any building, facility, place, or equivalent, organized, maintained, or operated specifically to provide beds, accommodations, facilities, or services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease which is expected to lead to death.

(xi) "Renal hemodialysis clinic" means a facility in a building or part of a building which is approved to furnish the full spectrum of diagnostic, therapeutic, or rehabilitative services required for the care of renal dialysis patients (including inpatient dialysis furnished directly or under arrangement). (NEC: Ambulatory Health Care Occupancy.)

(xii) "Medical, dental, and chiropractic clinic" means any clinic or physicians' office where patients are not regularly kept as bed patients for twenty-four hours or more. Electrical plan review is not required.

(xiii) "Residential treatment facility" means a facility licensed and operated twenty-four hours per day to provide

health care to persons receiving services for a mental disorder or substance abuse.

(xiv) "Group care facility" means a facility other than a foster-family home maintained or operated for the care of a group of children on a twenty-four-hour basis.

Plan review for educational, institutional or health care facilities/buildings.

(2) Plan review is a part of the electrical inspection process; its primary purpose is to determine:

(a) That service/feeder conductors are calculated and sized according to the proper NEC or WAC article or section;

(b) The classification of hazardous locations; and

(c) The proper design of emergency and standby systems.

(3) Electrical plan review.

(a) Electrical plan review is not required for:

(i) Low voltage systems;

(ii) Lighting specific projects that result in an electrical load reduction on each feeder involved in the project;

(iii) Heating and cooling specific retrofit projects that result in an electrical load reduction on each existing feeder involved in the project, provided there is not a corresponding increase in the available fault current in any feeder.

(iv) Stand-alone utility fed services that do not exceed 250 volts, 400 amperes where the project's distribution system does not include:

(A) Emergency systems other than listed unit equipment per NEC 700.12(F);

(B) An essential electrical system defined in NEC 517.2;

or

(C) A required fire pump system.

(v) Modifications to existing electrical installations where all of the following conditions are met:

(A) Service or distribution equipment involved is rated not more than 400 amperes and does not exceed 250 volts or for lighting circuits not exceeding 277 volts to ground;

(B) Does not involve emergency systems other than listed unit equipment per NEC 700.12(F);

(C) Does not involve branch circuits or feeders of an essential electrical system as defined in NEC 517.2; and

(D) Service ~~(and)~~ or feeder load calculations are increased by 5% or less.

(vi) Electric power production source(s) such as solar photovoltaic, fuel cell, or wind electric system(s) with a total rating of 9600 watts or less.

(vii) For installations ~~(outlined)~~ in (a)(ii), (iii), and (v) of this subsection to be considered, the following must be available to the electrical inspector before the work is initiated:

(A) A clear and adequate description of the project's scope;

(B) A load calculation(s);

(C) What the load changes are, providing both before and after panel schedules as needed; and

(D) Provide information showing that the service and feeder(s) supplying the panel(s) where the work is taking place has adequate capacity for any increased load and has code compliant overcurrent protection for that supply.

(b) Electrical plan review is required for all other new or altered electrical projects in educational, institutional, or health care occupancies defined in this chapter.

(c) If a review is required, the electrical plan must be submitted for review and approval before the electrical work is begun.

(d) Electrical plans.

(i) The plan must be submitted for plan review prior to beginning any electrical inspection. If a plan is rejected during the plan review process, no electrical inspection(s) may proceed until the plan is resubmitted and a conditional acceptance is granted.

(ii) The submitted plan will receive a preliminary review within seven business days after receipt by the department or city authorized to do electrical inspections.

(iii) If the submitted plan:

(A) Is rejected at the preliminary review, no inspection(s) will be made on the project.

(B) Receives conditional acceptance, the permit holder may request a preliminary inspection(s) in writing to the department or city authorized to do electrical inspections. The request must note that the preliminary inspection(s) is conditional and subject to any alterations required from the final plan review process.

(iv) Once the submitted plan has preliminary plan review approval, a copy of the submitted plan must be available on the job site for use by the electrical inspector.

(v) The final approved plan must be available on the job site, for use by the electrical inspector, after it is approved, but no later than prior to the final electrical inspection.

(vi) If the final approved plan requires changes from the conditionally accepted plan, alterations to the project may be required to make the project comply with the approved plan.

(vii) If the installer deviates from the service/feeder design shown on the final approved plan, a supplemental plan must be submitted for review before inspection can proceed. Load reductions or moving branch circuit locations within a panelboard do not require resubmission.

(e) All electrical plans for educational facilities, hospitals, and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW, and chapters 246-320, 180-29, and 388-97 WAC and stamped with the engineer's mark and signature.

(f) Refer plans for review to the Electrical Section, Department of Labor and Industries, P.O. Box 44460, Olympia, Washington 98504-4460 or the city authorized to do electrical inspections.

(g) Plans for projects within cities that perform electrical inspections must be submitted to that city for review.

(h) Plans to be reviewed must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include all switchboard and panelboard schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation, and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity

and ratings. The plans must be submitted with a plan review submittal form available from the department or city authorized to do electrical inspections. Fees must be calculated based on the date the plans are received by the department or city authorized to do electrical inspections.

(i) The department may perform the plan review for new or altered electrical installations of other types of construction when the owner or electrical contractor makes a voluntary request for review. A city authorized to do electrical inspections may require a plan review of any electrical system.

(j) For existing structures where additions or alterations to feeders and services are proposed, NEC 220.87(1) may be used. If NEC 220.87(1) is used, the following is required:

(i) The date of the measurements.

(ii) A statement attesting to the validity of the demand data, signed by a professional electrical engineer or the electrical administrator of the electrical contractor performing the work.

(iii) A diagram of the electrical system identifying the point(s) of measurement.

(iv) Building demand measured continuously on the highest-loaded phase of the feeder or service over a thirty-day period, with the demand peak clearly identified. Demand peak is defined as the maximum average demand over a fifteen-minute interval.

Notes to Tables 900-1 and 900-2.

1. A city authorized to do electrical inspections may require plan review on facility types not reviewed by the department.

**Table 900-1
Health or Personal Care Facilities**

Health or Personal Care Facility Type	Plan Review Required
Hospital	Yes
Nursing home unit or long-term care unit	Yes
Boarding home	Yes
Assisted living facility	Yes
Private alcoholism hospital	Yes
Private psychiatric hospital	Yes
Maternity home	Yes
Ambulatory surgery facility	Yes
Renal hemodialysis clinic	Yes
Residential treatment facility	Yes
Enhanced service facility	Yes
Adult residential rehabilitation center	Yes

Table 900-2

Educational and Institutional Facilities, Places of Assembly, or Other Facilities

Educational, Institutional, or Other Facility Types	Plan Review Required
Educational	Yes
Institutional	Yes

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-901 General—Electrical work permits and fees.

General.

(1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is obtained and posted per subsection (5) of this section;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions are provided for the inspectors' use.

(2) Except as allowed for annual permits and two-family dwellings, an electrical work permit is valid for only one specific job site address.

Permit - Responsibility for.

(3) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the original purchaser is replaced, another entity may request, in writing, written approval from the chief electrical inspector to take responsibility for the work of the original installing entity under the original permit. If permission is not granted the entity must obtain a new permit for the remaining work.

Two or more entities may never work under the same permit. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

(4) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(5) Except as allowed for Class B permits, where an electrical work permit is required, the work permit must be obtained and posted at the job site or the electrical work permit number must be conspicuously posted and identified as the electrical work permit number on or adjacent to the electrical service or feeder panel supplying power to the work prior to beginning any electrical work and at all times until the electrical inspection process is completed.

Exceptions:

(a) For an owner, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional permit system, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained and posted, per the city's requirements at the job site no later than the next business day after the work is begun.

(6) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

Permit - Requirements for.

(7) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The **like-in-kind replacement** of lamps; a single set of fuses; a single battery smaller than 150 amp hour; contactors, relays, timers, starters, circuit boards, or similar control components; one household appliance; circuit breakers; single-family residential luminaires; a maximum of five snap switches, dimmers, receptacle outlets, thermostats, heating elements, luminaire ballasts or drivers/power supplies for single LED luminaires with an exact same ballast or driver/power supply; component(s) of electric signs, outline lighting, or skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; one ten horsepower or smaller motor.

For the purposes of this section, "circuit breaker" means a circuit breaker that is used to provide overcurrent protection only for a branch circuit, as defined in NEC 100.

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

(v) The disconnection of electrical circuits from their overcurrent protection device for the specific purpose of removing the electrical wiring or equipment for disposal.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label. See WAC 296-46B-907(2) for provisional label requirements.

(c) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

(i) Low-voltage thermocouple derived circuits;

(ii) Low-voltage circuits for built-in residential vacuum systems;

(iii) Low-voltage circuits for underground landscape sprinkler systems;

(iv) Low-voltage circuits for underground landscape lighting; and

(v) Low-voltage circuits for residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(A) The power supplying the installation must be derived from a listed Class 2 power supply;

(B) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(C) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(D) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(8) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty stan-

dard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multifamily dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

Inspection and approval.

(9) Requests for inspections.

(a) Requests for inspections must be made no later than three (~~(business))~~ working days after (~~(completion of the))~~ an entity completes its electrical/telecommunications installation or one (~~(business))~~ working day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours (~~(or))~~ weekend inspections, or temporary installations that will be energized for less than 48 hours must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(10) Inspections will not be made until all permit fees are paid in full.

Permit - Duration/refunds.

(11) Electrical work permits will expire one year after the date of purchase unless permission is granted by the chief electrical inspector or when the permit is closed or completed by the inspector. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permit fee items, within the department's jurisdiction, where the electrical installation has begun or an inspection requested for that work; or

(c) The first twenty-five dollars of each permit purchase - Application fee.

All refund requests must be made using the Request for Refund application form.

Permit - Annual telecommunications.

(12) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

Permit - Annual electrical.

(13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a plant or building location. This type of permit does not include new or increased service or new square footage.

Permit - Temporary construction project installations.

(14) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

Posting of corrections.

(15) Electrical installations found to be not in compliance with approved standards must be corrected within fifteen calendar days of notification by the department as required in RCW 19.28.101(3). The notifications will be posted electronically on the electrical permit inspection results. A printed copy of the correction notification will be posted by the inspector at the job site for permits not purchased electronically.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-903 Equipment standards.**General.**

(1) The standard(s) used, as the basis of electrical product certification, field evaluation, or department approval must be determined by the department to provide an adequate level of safety or define an adequate level of safety performance. Except for the reference of construction requirements to ensure the product can be installed in accordance with the National Electrical Code, field evaluations, by an approved laboratory, must not use the National Electrical Code as standard for product evaluation.

(2) Generally, standards will be:

(a) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the electrical products safety field. A standard is used to control the quality and safety of a product;

(b) Compatible with and be maintained current with periodic revisions of applicable national codes and installation standards; and

(c) Approved by the department. The department will evaluate the proposed standard to determine that it provides an adequate level of safety.

(3) All ANSI safety designated electrical product standards may be deemed acceptable for their intended use without further qualification.

(4) If the product safety standard is not ANSI, the standard must be reviewed and approved by the department as an appropriate electrical product safety standard as a part of the field evaluation or department inspection process.

Industrial control panel and industrial utilization equipment inspection.

(5) Specific definitions for this section:

(a) (~~"Department evaluation" means a review in accordance with subsection (6)(b) of this section.~~

~~(b))~~ "Engineering evaluation" means a review in accordance with subsection (6)(c) of this section.

~~((c))~~ (b) "Food processing plants" include buildings or facilities used in a manufacturing process, but do not include:

(i) Municipal or other government facilities;
 (ii) Educational facilities or portions thereof;
 (iii) Institutional facilities or portions thereof;
 (iv) Restaurants;
 (v) Farming, ranching, or dairy farming operations;
 (vi) Residential uses; or
 (vii) Other installations not used for direct manufacturing purposes.

~~((c))~~ (c) In RCW ~~((19.28.904))~~ 19.28.010, "industrial control panel" means a factory or user wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices used in the manufacturing process to control industrial utilization equipment. The panel may include disconnecting means and motor branch circuit protective devices. Industrial control panels include only those used in a manufacturing process in a food processing or industrial plant.

~~((d))~~ (d) "Industrial plants" include buildings or facilities used in a manufacturing process or a manufacturing training facility (e.g., educational shop area in an educational or institutional facility), but do not include:

(i) Municipal or other government facilities;
 (ii) Other educational facilities or portions thereof;
 (iii) Other institutional facilities or portions thereof;
 (iv) Restaurants;
 (v) Farming, ranching, or dairy farming operations;
 (vi) Residential uses; or
 (vii) Other installations not used for direct manufacturing purposes.

~~((e))~~ (e) "Industrial utilization equipment" means equipment directly used in a manufacturing process in a food processing or industrial plant, in particular the processing, treatment, moving, or packaging of a material. Industrial utilization equipment does not include: Cold storage, warehousing, or similar storage equipment.

~~((f))~~ (f) "Manufacturing process" means to make or process a raw material or part into a finished product for sale using industrial utilization equipment. A manufacturing process does not include the storage of a product for future distribution (e.g., cold storage, warehousing, and similar storage activity).

~~((h))~~ (g) "Normal department inspection" is a part of the department electrical inspection process included with the general wiring inspection of a building, structure, or other electrical installation. Normal department inspection will only be made for equipment solely using listed or field evaluated components and wired to the requirements of the NEC. Fees for the normal department inspections required under this chapter are included in the electrical work permit fee calculated for the installation and are not a separate inspection fee. However, inspection time associated with such equipment is subject to the progress inspection rates in Part C of this chapter.

~~((i))~~ (h) For the purposes of this section, "panel" means a single box or enclosure containing the components comprising an industrial control panel. A panel does not include any wiring methods connecting multiple panels or connecting a panel(s) and other electrical equipment.

(6) Industrial control panels and industrial utilization equipment will be determined to meet the minimum electrical safety standards for installations by:

(a) Listing or field evaluation of the entire panel or equipment;

(b) Normal department inspection for compliance with codes and rules adopted under this chapter; or

(c) An engineering evaluation review where an engineer, accredited by the department, shows the equipment to be in compliance with an appropriate industrial equipment standard(s).

(i) See WAC 296-46B-997 for the requirements to become an accredited engineer.

(ii) The engineer may review equipment upon request by the equipment owner or the equipment manufacturer.

(iii) The equipment may be reviewed for compliance with the standard(s) before the equipment is located in Washington.

(iv) Appropriate standards are:

(A) NEMA;

(B) ANSI;

(C) NFPA 79;

(D) UL 508A;

(E) International Electrotechnical Commission 60204;

or

(F) Their equivalent.

(v) In cases where equipment has been previously reviewed and approved by an accredited engineer or the department and found to meet an appropriate standard(s), the equipment information will be placed on a "reviewed and approved industrial utilization equipment list" established and maintained by the reviewing engineer. The list may be used by a reviewing engineer to aid in evaluating other like equipment. Because standards change over time, equipment will be removed from the list three years after the last successful review. The list will contain the following information:

(A) Equipment manufacturer name;

(B) Model and serial numbers;

(C) Voltage, full load current; phasing; and asymmetrical fault current rating of the equipment;

(D) Accessory items approved for use with the equipment;

(E) Standard(s) to which the equipment was built;

(F) Application of use for the equipment;

(G) Original reviewing engineer's name; and

(H) Date of the original review approval.

(vi) If the engineer uses the "reviewed and approved industrial utilization equipment list," the engineer will visually determine that the equipment being reviewed is the exact same model as equipment on the list.

(vii) Before the engineer's approval label can be applied, the engineer must visually inspect the equipment on site to determine that the equipment is in factory original good condition, has not been modified electrically, and the equipment use is appropriate to the standard(s).

(viii) When the review is completed and the equipment is eligible for approval, the engineer must personally affix a permanent label to the equipment showing:

(A) Engineer's name;

- (B) Date of approval;
 - (C) Equipment serial number;
 - (D) Equipment voltage, full load current, phasing, and fault interrupting rating; and
 - (E) The following statement: "This equipment meets appropriate standards for industrial utilization equipment."
- (7) The department may authorize, on a case-by-case basis, use of the industrial control panel or equipment, for a period not to exceed six months or as approved by the chief electrical inspector after use is begun, before its final inspection, listing, field evaluation, or engineering evaluation is complete.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-907 Provisional permits.

Provisional electrical work permit - Use/duration/refunds.

- (1) Only licensed electrical or telecommunications contractors can use provisional electrical work permits.
- (2) If a provisional electrical work permit label is used, the following requirements must be met:
 - (a) Prior to beginning the work, the certified electrician or telecommunications worker performing the installation must affix the provisional electrical work permit label to the building, structure or on the cover of the panelboard, overcurrent device, or telecommunications equipment supplying the circuit or equipment.
 - (b) The job site and contractor portion of the label must be completely filled out.
 - (c) The label must be filled in using sunlight and weather resistant ink.
 - (d) The contractor must return the contractor's portion of the label to the department of labor and industries, electrical section office having jurisdiction for the inspection, within two working days after the job site portion of the label is affixed. Either receipt by department of labor and industries or postmark to a valid department of labor and industries electrical address is acceptable for meeting this requirement.
- (3) Refunds are not available for provisional electrical work permit labels.
- (4) Provisional electrical work permit labels will be sold in blocks of twenty.
- (5) Any contractor purchasing a provisional electrical work permit label may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.
- (6) An electrical work permit must be obtained within two working days after posting the provisional work permit label. See WAC (~~(296-46B-907(2)(d))~~) 296-46B-901(7)(b).

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-908 Class B permits.

Class B electrical work permit - Use.

- (1) The Class B basic electrical random inspection process (Class B process) may only be used by:

- (a) Licensed electrical/telecommunication contractors; or
- (b) Health care, commercial, or industrial facilities using an employee(s) who is an appropriately certified electrician(s) after requesting, in writing, and receiving permission from the chief electrical inspector.

Each entity doing work must use a separate label.

(2) (~~(Before beginning the work:))~~ The Class B random inspection process is only available if the label is validated and the label or label number is posted before beginning the work.

(a) For Class B labels obtained after February 28, 2013:

(i) Prior to, or immediately upon posting the Class B label/number, the purchaser must use the department's online Class B system to enter the job site information for an unused Class B label obtained by the purchaser. If the posting occurs on a weekend or a federal/state holiday, the purchaser must use the online system to enter the information no later than the first business day after posting the label/number;

(ii) The person identified as the installer on the Class B label must post the Class B label or label number, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system; or

(B) Purchaser's equipment, or on the equipment conductors if the equipment is not in place.

(iii) The Class B label is valid immediately upon the purchaser completing the job site information in the department's online Class B system, and posting of the Class B label or label number per (a)(ii) of this subsection.

(b) For Class B labels obtained before March 1, 2013:

(i) The purchaser must fully enter the job site information on the job site and contractor portions of the Class B label.

(ii) The person identified as the installer on the Class B label must post the completed job site copy, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system;

(B) Purchaser's equipment, or on the conductors if the equipment is not available.

(iii) The purchaser must return the contractor copy to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(iv) The Class B label is valid immediately upon posting on the job site.

(3) Class B labels will be sold in blocks and are nonrefundable and nontransferable.

(4) Class B label installations will be inspected on a random basis as determined by the department.

(5) A progress inspection fee is required for any inspection required when a correction(s) is issued as a result of the inspection of a Class B label.

(6) Any entity using the Class B process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(7) A separate label is required for each line item listed below in subsection (10) of this section. For example, if the work includes an item under subsection (10)(a) and (b)(i) of this section, two labels are required.

(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.

(9) All Class B work must be completed within fifteen days after the label is validated. If the work is not completed, another Class B may be posted.

Except that, in a one- or two-family residential structure, a label is valid for ninety days after the label is validated, so long as all work described on the label is performed by the purchaser.

(10) Class B work includes the following:

(a) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:

(i) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(ii) The extension does not supply more than two outlets as defined by the NEC.

(b) Single like-in-kind replacement of:

(i) A motor larger than 10 horsepower; or

(ii) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(iii) An electric/gas/oil furnace not exceeding 240 volts and 100 amps and associated Class 2 low voltage wiring when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(iv) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit, heat pump unit, or refrigeration unit not exceeding 240 volts, 40 minimum circuit amps and associated Class 2 low voltage wiring when the unit is connected to an existing branch circuit; or

(v) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 40 amps; or

(vi) A single, line-voltage flexible supply whip associated with (b)(i), (iii), or (iv) of this subsection, not over six feet in length, provided there are no modifications to the branch circuit/feeder load being supplied by the whip. May be done on the same Class B label with the replacement unit if done at the same time.

(c) The following low voltage systems:

(i) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

(ii) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not

for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(iii) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems where the installation does not exceed twenty devices or five thousand square feet. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(iv) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470 where the installation does not exceed twenty devices or five thousand square feet;

(d) The replacement of not more than ten standard receptacles with GFCI or AFCI receptacles;

(e) The conversion of not more than ten snap switches to dimmers or occupancy sensors for the use of controlling a luminaire(s) conversion;

(f) The like-in-kind replacement of a maximum of twenty: Paddle fans, luminaires not exceeding 277 volts and 20 amperes; snap switches, dimmers, receptacle outlets, line voltage thermostats, heating elements, ((Ø)) luminaire ballasts, or drivers/power supplies for single LED luminaires;

(g) The replacement of not more than two luminaires with paddle fans if a listed fan box has been previously installed to support the luminaires;

(h) The replacement of not more than four batteries rated not larger than 150 amp hours each that supply power to a single unit of equipment (e.g., uninterruptable power supply, photovoltaic storage system, control panel, etc.);

(i) The installation or repair of equipment powered by a stand-alone solar photovoltaic source where the:

(i) Electrical equipment requires no field assembly except for the attachment and electrical connection of the solar photovoltaic source to the equipment, the installation and attachment to a grounding electrode, and the placement of the equipment on a pad, pole, or other structure;

(ii) Solar photovoltaic source and the equipment operates at less than 15 volts DC;

(iii) Solar photovoltaic source is the only source of external power; and

(iv) Equipment and the solar photovoltaic source are appropriately labeled as a single unit. The label must be by an approved electrical testing laboratory or for equipment used for traffic control labeled according to WAC 296-46B-010(21).

(j) The installation or replacement of a single electric sign on an existing single 120-volt, 20-amp maximum branch circuit.

(11) Class B basic electrical work does not include any work in:

(a) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or

(b) Areas regulated by NEC 517 or 680; or

(c) Any work where electrical plan review is required; or

(d) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-915 Civil penalty schedule.

Notes: Each day that a violation occurs on a job site may be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of ((a)) serious noncompliance or a serious violation of the provisions of chapter 19.28 RCW or as described in WAC 296-46B-990, the department may double the penalty amount, up to ten thousand dollars shown in subsections (1) through (13) of this section.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:

(a) That convey or utilize electrical current without having a valid electrical contractor's license((-); or

(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.

First offense:	\$250
Each offense thereafter:	\$500

(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.

(a) Failing to visibly display a certificate (must possess a valid, active certificate).

First offense:	\$50
Each offense thereafter:	\$100

(b) Performing electrical work while not possessing a valid certificate or working outside the scope of a certificate.

First offense:	\$250
Each offense thereafter:	\$500

(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense:	\$250
Each offense thereafter:	\$500

(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense:	\$250
Each offense thereafter:	\$500

(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.

First offense:	\$50
Second offense:	\$250
Each offense thereafter:	\$500

(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.

First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$2,000

Definition:

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

(9) Covering or concealing installations prior to inspection.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(10) Failing to make corrections within fifteen days of notification by the department.

Exception:

Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(11) Failing to get an inspection or obtain an electrical/telecommunications work permit or post a provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.

Exception:

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

Standard/provisional permit offenses:

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

Class B offenses:

Failure to post a Class B label or number for Class B eligible work:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

For other Class B offenses:

First offense:	\$100
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Second offense:	\$250
Each offense thereafter:	\$1,000
(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.	
(a) Failing to be a member of the firm or a supervisory employee and must be available during working hours to carry out the duties of an administrator or master electrician.	
First offense:	\$1,000
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.	
First offense:	\$100
Second offense:	\$250
Third offense:	\$1,000
Each offense thereafter:	\$3,000
(c) Failing to ensure that the proper electrical safety procedures are used.	
First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(d) Failing to ensure that inspections are obtained and that all electrical labels, permits, and certificates required to perform electrical work are used.	
Standard/provisional permit offenses:	
First offense:	\$250
Each offense thereafter:	\$500
Class B offenses:	
First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000
(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).	
First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000
(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.	
Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.	
First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.	
First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$3,000
(13) <u>Causing or failing to correct a serious violation.</u>	
<u>A serious violation is a violation of chapter 19.28 RCW or 296-46B WAC that creates a hazard of fire or a danger to life safety.</u>	
First offense:	\$1,000
Second offense:	\$3,000

<u>Each offense thereafter:</u>	\$5,000
(14) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.	
RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.	
First offense:	\$250
Each offense thereafter:	\$500
All other chapter 19.28 RCW provisions and the rules developed pursuant to them.	
First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-925 Electrical/telecommunications contractor's license.

General.

(1) The department will issue an electrical/telecommunications contractor's license that will expire twenty-four months following the date of issue to a person, firm, partnership, corporation or other entity that complies with requirements for such license in chapter 19.28 RCW. An electrical/telecommunications contractor's license will not be issued to or renewed for a person, firm, or partnership unless the Social Security number, date of birth, and legal address of each member(s) (see WAC 296-46B-100 definition for member), are submitted with the application. The department may issue an electrical/telecommunications contractor's license for a period greater or less than twenty-four months for the purpose of equalizing the number of electrical contractor's licenses that expire each month. The department may prorate the electrical/telecommunications contractor's license fee according to the license period.

The applicant, upon application and renewal, must provide the department with the Social Security number, date of birth, and legal address of each member(s).

(2) Combination specialty contractor's license. The department may issue a combination specialty contractor's license to a firm that qualifies for more than one specialty electrical contractor's license. The assigned administrator must be certified in all specialties applicable to the combination specialty contractor's license. The license will plainly indicate the specialty licenses' codes included in the combination license. An administrator assigned to a telecommunications contractor must be certified as a telecommunications administrator. A combination license will not be issued for telecommunications **(09)**.

(3) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

(4) The department may deny application, renewal, ~~((or))~~ change of assignment of administrator/master electrician, reinstatement, or issuance of an electrical/telecommunications contractor's license if a firm, an owner, partner, member, or corporate officer owes money as a result of an outstanding final judgment(s) ~~((to the department))~~ under chapter 19.28 RCW.

Electrical/telecommunications contractor bond, cash or securities deposit.

(5) Bond, cash, or securities deposit.

(a) The electrical/telecommunications contractor may furnish the department with a cash or security deposit to meet the bond requirements in lieu of posting a bond. A cash or security deposit assigned to the department for bond requirements will be held in place for one year after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as an electrical/telecommunications contractor. Upon written request, the cash or security deposit will then be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

(b) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

Telecommunications contractor insurance.

(6) To obtain a telecommunications contractor's license, the applicant must provide the department with an original certificate of insurance naming the department of labor and industries, electrical section as the certificate holder. Insurance coverage must be no less than twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person. The insurance will be considered a continuing obligation unless canceled by the insurance company. The insurance company must notify the department in writing ten days prior to the effective date of said cancellation or failure to renew.

(7) The telecommunications contractor may furnish the department with an assigned account to meet the insurance requirements in lieu of a certificate of insurance. An account assigned to the department for insurance requirements will be held in place for three years after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as a telecommunications contractor. Upon written request, the account then will be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

Electrical/telecommunications contractor exemptions.

(8) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

Low-voltage thermocouple derived circuits and low-voltage circuits for:

- (a) Built-in residential vacuum systems;
- (b) Underground landscape sprinkler systems;
- (c) Underground landscape lighting; and
- (d) Residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(e) The power supplying the installation must be derived from a listed Class 2 power supply;

(f) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(g) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(h) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(9) Firms who clean and/or replace lamps in luminaires are not included in the requirements for licensing in chapter 19.28 RCW. This exemption does not apply to electric signs as defined in the NEC.

(10) Firms who install listed plug and cord connected utilization equipment are not included in the requirements for licensing in chapter 19.28 RCW. The plug and cord must be a single listed unit consisting of a molded plug and cord and not exceeding 250 volt 60 ampere single phase. The plug and cord can be field installed per the manufacturer's instructions and the product listing requirements. The utilization equipment must be a single manufactured unit, including the plug and cord, that does not require any electrical field assembly except for the installation of the plug and cord and is allowed to be plug and cord connected by the NEC. Firms who perform field electrical servicing, maintaining, or repairing of (~~plug-in~~) plug and cord connected utilization equipment (~~or~~) other than household appliances are not included in this exemption.

(11) Firms regulated by the Federal Communications Commission or the utilities and transportation commission, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(12) Unregulated firms, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(13) Leaseholders. For electrical installations, maintenance, or alterations to existing buildings only, any person, firm, partnership, corporation, or other entity holding a valid, signed lease from the property owner authorizing the leaseholder to perform electrical work, on the property the leaseholder occupies, will be allowed to purchase an electrical permit(s) and do electrical work on or within the property described in the lease. The lessee and/or his or her regularly employed employees must perform the electrical installation, maintenance and alteration.

The lessee who performs the electrical maintenance or installation work must be the sole occupant of the property or space. Property owners or leaseholders cannot perform electrical work on new buildings for rent, sale, or lease, without the proper electrical licensing and certification. Refer to

RCW 19.28.261 for exemptions from licensing and certification.

(14) Assisting a householder. A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

(15) Volunteering to do electrical work. There are no exceptions from the electrical contractor's license or electrician certification requirements to allow persons to perform volunteer electrical work for anyone other than a householder or a nonprofit organization as allowed by RCW 19.28.091(7). For the purpose of this section, volunteer means that there is no remuneration or receiving of goods or services in return for electrical installations performed.

(16) Farms or place of business. See RCW 19.28.261 for licensing/certification exemptions allowed for the owner(s) of a farm or other place of business and for the employees of the owner.

(17) The licensing and certification requirements of chapter 19.28 RCW do not apply to persons or firms who remove electrical wiring and/or equipment for the purpose of disposal when all conductors, raceways, and equipment to be disposed of have been physically separated from the source of power by a properly certified electrician employed by a licensed electrical contractor, or person(s) meeting the exemptions listed in RCW 19.28.261. Removal of a component or only a portion of an equipment unit is considered electrical maintenance and does not qualify for this exemption.

Exemptions - Electrical utility and electrical utility's contractor.

(18) Electrical utility exemptions.

(a) Utility system exemption - RCW 19.28.010(1) and 19.28.091(1).

(i) Neither a serving electrical utility nor a contractor or subcontractor employed by the serving electrical utility is required to have an electrical contractor's license for work on the "utility system" or on service connections or on meters or other apparatus used to measure the consumption of electricity.

(ii) Exemption from inspection. The work of a serving electrical utility and its contractor(s) on the work exempted by NEC 90.2 (b)(5), 1981 edition, is not subject to inspection.

(b) Street/area lighting exemption - RCW 19.28.091 (2)(a).

(i) On:

(A) Publicly owned streets, parks, athletic/play fields, beaches, and similar areas where the public has general, clear, and unrestricted access; or

(B) Outside area lighting installed on a utility owned pole(s) that is used to support the utility's electric distribution wiring or equipment that supplies a private property owner's property, the serving electrical utility is considered to be an owner and is not required to have an electrical contractor's license or electrical permit to install or work on wiring or

equipment, owned by the utility and used in the lighting of those streets/areas.

(ii) On other privately or publicly owned property (e.g., private streets, parking lots, businesses, schools, etc.), the serving utility is not required to have an electrical contractor's license or electrical permit to install or work on outside street/area lighting where the light(s) is supplied directly from the utility system and installed according to the NESC or NEC.

This work is considered to be utility type work.

An electric utility is not allowed to install or work on street/area lighting:

(A) When the area is privately or publicly owned and the public does not have general, clear, and otherwise unrestricted access such as: Industrial property, residential property, or other property where the public's access is restricted in any manner.

(B) Where the lighting is supplied from a source of power derived from a customer-owned electrical system.

(C) Where the lighting or wiring is attached to a building or other customer-owned structure.

(D) If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

(c) Customer-owned equipment exemption - RCW 19.28.091 (2)(b). A serving electrical utility is not required to have an electrical contractor's license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(i) The utility has not solicited such work; and

(ii) Such equipment:

(A) Is located outside a building or structure; and

(B) The work performed is ahead of the secondary side of the customer's transformer(s) which supplies power at the customer's utilization voltage.

If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

This work is considered to be utility type work.

The owner will provide the electrical work permit and be responsible for requesting inspections and for ensuring the work is installed per chapter 19.28 RCW and this chapter.

Exemptions - Electrical utility telecommunications transition equipment installations, maintenance and repair.

(19) No license, inspection or other permit will be required by the department of any electric utility or, of any person, firm, partnership or corporation or other entity employed or retained by an electric utility or its contractor, because of work in connection with the installation, maintenance, or repair of telecommunications transition equipment located ahead of the utility's telecommunications network demarcation point on the outside of a building or other structure when the work is performed by a qualified person consistent with the requirements of the National Electric Code (NEC) except as provided in (a) and (b) of this subsection:

(a) The following exceptions to the NEC will be permitted:

(i) An additional service disconnect supplying power to the transition equipment can be connected on the supply side

of the main service disconnect supplying general power to the building;

(ii) Service entrance disconnects may be separated when clearly labeled;

(iii) The service disconnect used for supplying power to the transition equipment must be connected to the grounding electrode system using:

(A) #8 AWG copper or larger grounding electrode conductor if protected from physical damage; or

(B) #6 AWG copper or larger grounding electrode conductor if not protected from physical damage;

(iv) Use of equipment or materials that have been listed/field evaluated by a recognized independent testing laboratory or the department;

(v) Low-voltage circuits do not require a separate disconnecting means and may be grounded to the transition equipment grounding system;

(vi) Any other variance to the NEC must be approved by the department.

(b) A variance recommended by a joint utility standards group composed of representatives of both public and private utilities or certified by a professional engineer will be approved by the department unless the recommendation is inconsistent with meeting equivalent objectives for public safety.

(c) For the purposes of this section, a qualified worker is employed by a utility or its contractor and is familiar with the construction or operation of such lines and/or equipment that concerns his/her position and who is proficient with respect to the safety hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected or is in a recognized training or apprenticeship course and is supervised by a journey level person.

(d) Although the utility is responsible for inspection and approval of the installation, including the selection of material and equipment, the department reserves the right to audit worker qualifications and inspect such installations semiannually for conformance with the requirements of (a), (b) and (c) of this subsection but will not collect a permit fee for such inspection or audit.

(e) If a utility fails to meet the requirements of this section, the department may require the utility to develop and submit a remedial action plan and schedule to attain compliance with this section which may be enforced by the department.

(f) This exemption will be in addition to any other exemption provided in chapter 19.28 RCW, this chapter or other applicable law.

Exemptions - Independent electrical power production equipment exemption.

(20) An independent electrical power production entity is not required to have an electrical contractor's license to work on electrical equipment used to produce or transmit electrical power if:

(a) The entity is:

(i) The owner or operator of the generating facility is regulated by the Federal Energy Regulatory Commission (FERC);

(ii) A municipal utility, or other form of governmental electric utility, or by an electrical cooperative or mutual corporation; or

(iii) The owner or operator of the generating facility is an independent electrical power producer and the facility generates electrical power only for sale to one or more:

(A) Electrical utilities regulated by FERC, municipal utility, or other form of governmental utility, or to an electric cooperative or mutual corporation; and

(B) The electrical power generated by the facility is not used for self-generation or any other on- or off-site function other than sale to one or more utilities regulated by FERC or by one or more state public utilities commissions, or to a PUD, municipal utility, or other form of governmental electric utility, or to an electric cooperative or mutual corporation.

(b) The entity must supply the chief electrical inspector a valid master business license issued by the department of licensing, state of Washington so that the entity's status as a revenue generating business can be confirmed.

(c) The entity has entered into an agreement to sell electricity to a utility or to a third party; and

(d) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises to the point of interconnection with a utility system.

(e) The electrical power production facility's generation capacity exceeds 100 KVA.

(f) Notwithstanding that a generating facility may be granted an exemption pursuant to this section, the facility will be subject to all the requirements of chapter 19.28 RCW if the facility at any time in the future ceases to comply with the requirements for exemption. All site facilities not exclusively and directly required to generate and/or distribute the electrical power generated on the site are subject to all the licensing and inspection requirements of chapter 19.28 RCW. All facility services, feeders, and circuits not exclusively and directly required to generate and/or distribute the electrical power (e.g., lights, outlets, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection. Facility circuits supplied to equipment required for the function of generation equipment (e.g., block heaters, power supplies, wind generator tower circuits, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection up to and including the equipment termination point.

(g) The generation equipment must not be mounted on or in any building or structure not required for generation of power (e.g., schools, offices, residences, apartment buildings, hospitals, etc.).

Exemptions - Telegraph and telephone utility and telegraph and telephone utility's contractor.

(21) Telegraph and telephone utility exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.151. For the purposes of this exemption, "building or buildings used exclusively for that purpose" may mean any separate building or space of a building where the space is separated from the

remainder of the building by a two-hour fire wall. The telecommunications or telegraph equipment within such a space must supply telephone or telegraph service to other customer's buildings (i.e., telecommunications or telegraph equipment cannot solely supply the building containing the telephone/telegraph space).

Exemptions - Manufacturers of electrical/telecommunications products.

(22) Manufacturers of electrical/telecommunications systems products will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing:

(a) Provided the product:

(i) Has not been previously energized;

(ii) Has been recalled by the Consumer Product Safety Commission;

(iii) Is within the manufacturer's written warranty period, a period not to exceed one year from date of original installation of the new product; or

(iv) The manufacturer is working under the written request and supervision of an appropriately licensed electrical contractor.

(b) Except for the replacement of individual components, as allowed above, this exemption does not include the initial installation, removal, or replacement of the electrical product. Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring.

(c) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory.

(d) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

Premanufactured electric power generation equipment assemblies and control gear.

(23) Premanufactured electric power generation equipment assemblies and control gear.

(a) Manufacturers of premanufactured electric power generation equipment assemblies and control gear will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing, provided:

(i) For transfer equipment, the product has not been previously energized or is within the manufacturer's written warranty period;

(ii) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring;

(iii) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory; or

(iv) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

(b) Premanufactured electric power generation equipment assemblies are made up of reciprocating internal combustion engines and the associated control gear equipment. Control gear equipment includes control logic, metering, and annunciation for the operation and the quality of power being generated by the reciprocating internal combustion engine and does not have the function of distribution of power.

(c) Modifications of a transfer switch must not include changes to the original intended configuration or changes or contact with externally field-connected components.

(d) For the purposes of this subsection, the following work on premanufactured electric power generation equipment assemblies is not exempt from the requirements of chapter 19.28 RCW:

(i) Installation or connection of conduit or wiring between the power generation unit, transfer switch, control gear;

(ii) Installation of the transfer switch;

(iii) Connections between the power generation unit, transfer switch, control gear, and utility's transmission or distribution systems;

(iv) Connections between the power generation unit, transfer switch, control gear, and any building or structure;

(v) Test connections with any part of:

(A) The utility's transmission or distribution system; or

(B) The building or structure.

(24) The installation, maintenance, or repair of a medical device deemed in compliance with chapter 19.28 RCW is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28-101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

(25) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

(26) Nothing in this section will alter or amend any other exemptions from or requirement for licensure or inspection, chapter 19.28 RCW or this chapter.

Photovoltaic equipment.

(27) See WAC 296-46B-690 for specific exemptions related to photovoltaic installations.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-935 Administrator certificate.

General.

(1) The department will deny application, renewal, change of assignment, ~~((☞))~~ reinstatement, or issuance of an

administrator or master electrician certificate if an individual owes money as a result of an outstanding final judgment(s) ~~((to the department))~~ under chapter 19.28 RCW.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

Qualifying for examination.

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

Original - Administrator certificates.

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

Combination - Specialty administrator certificate.

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators.

Renewal - Administrator certificate.

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The adminis-

trator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) ~~((Provide accurate evidence on the renewal form that the individual has completed))~~ Complete the continuing education requirements described in WAC 296-46B-970. ((If an individual files inaccurate or false evidence of continuing education information when renewing a certificate, the individual's certificate may be suspended or revoked.)) Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended administrator's certificate can be activated, the holder must pass the appropriate administrator examination in accordance with RCW 19.28.211(2).

(13) An individual may not renew a revoked administrator's certificate.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-940 Electrician/certificate of competency required.

General.

(1) The department will deny application, renewal, ~~((or))~~ reinstatement, or issuance of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) ~~((to the department))~~ under chapter 19.28 RCW.

(2) The scope of work for electricians is described in WAC 296-46B-920.

Electrician - Certificate of competency required.

(3) To work in the electrical construction trade, an individual must possess, wear, and visibly display on the front of the upper body, a current valid:

(a) Master journey level electrician certificate of competency issued by the department;

(b) Journey level electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department; or

(e) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journey level electrician, journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The certificate must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The certificate must be immediately available for examination at all times.

When working as a certified electrician, the electrician must not display a training certificate.

When supervising a trainee(s), the supervising electrician's certificate must be appropriate for the work being performed by the trainee(s).

Any person working as an electrician or trainee must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

(a) General journey level **(01)**;

(b) Specialties:

(i) Residential **(02)**;

(ii) Pump and irrigation **(03)**;

(iii) Domestic pump **(03A)**;

(iv) Signs **(04)**;

(v) Limited energy system **(06)**;

(vi) HVAC/refrigeration **(06A)**;

(vii) HVAC/refrigeration - Restricted **(06B)**;

(viii) Nonresidential maintenance **(07)**;

(ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;

(x) Residential maintenance **(07B)**;

(xi) Restricted nonresidential maintenance **(07C)**;

(xii) Appliance repair **(07D)**;

(xiii) Equipment repair **(07E)**; and

(xiv) Door, gate, and similar systems **(10)**.

Original certificates of competency.

(5) The department will issue an original certificate of competency to master, journey level, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b) and chapter 19.28 RCW; and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) and (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(6) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

Renewal - Master electrician, journey level, and specialty electrician certificates of competency.

(7) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(8) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(10) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) ~~((Provide accurate evidence on the renewal form that the individual has completed))~~ Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. ~~((If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.))~~

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew a certificate of com-

petency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended certificate of competency can be activated, the holder must pass the appropriate electrician or master electrician competency examination in accordance with RCW 19.28.211(2).

(13) An individual may not renew a revoked certificate of competency.

Exemptions - Lineworker.

(14) When performing the work described and allowed in WAC 296-46B-925 (~~((+7))~~) (18)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineworker is exempt from the requirements of chapter 19.28 RCW.

(15) When performing the work described and allowed in WAC 296-46B-925 (~~((+7))~~) (18)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineworker must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineworker in WAC 296-46B-100.

Exemptions - Plumbers.

(16) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-942 Training certificate required.

General.

(1) To work in the electrical construction trade as an electrical trainee, an individual must possess, wear, and visibly display a current valid electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journey level electrician, journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The trainee must meet all the requirements of WAC 296-46B-940 related to visibly displaying a current certificate and having a valid photo identification on his/her person.

(2) ~~((A))~~ An active training certificate is required for all individuals throughout the individual's enrollment and matriculation in an approved construction electrician training school program described in RCW 19.28.191. A training cer-

tificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current journey level certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work; or

(c) Is not working in exempt status as allowed by chapter 19.28 RCW.

(3) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

Original training certificates.

(4) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC 296-46B-909.

All applicants for an electrical training certificate must be at least sixteen years of age. The original training certificate will be valid for two years. If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

Specialty specific - Zero percent and seventy-five percent supervision modified training certificates.

(5) For specialties as allowed in Table 945-1 (i.e., specialties with seven hundred twenty minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate, the individual must submit a complete application for a seventy-five percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-46B-909.

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

Renewal of training certificates.

(6) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for two years.

(7) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC 296-46B-909.

(8) All applicants for training certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) ~~((Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in))~~ Complete the approved basic trainee classes required by WAC 296-46B-970. Basic trainee classes are only valid when all the requirements of WAC 296-46B-970 are completed. ~~((If an individual files inaccurate or false evidence of basic trainee class information when renewing a training certificate, the individual's training certificate may be suspended.))~~

(d) Within thirty days after renewing an electrical training certificate, the individual, if not enrolled in a department approved apprenticeship program, must submit a completed, signed, and notarized affidavit(s) of experience for all hours of experience gained since the individual's last training certificate was effective.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within twenty days after the trainee requests the affidavit. See WAC 296-46B-942(12). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

(i) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;

(ii) The correct electrical category the individual worked in; and

(iii) The actual number of hours worked in each category under the proper supervision of a Washington certified, master journey level electrician, journey level electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be submitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's com-

pletion of the required experience hours without cost to the individual.

(9) An individual who has not completed the required hours of basic trainee class education can renew a training certificate if the individual applies for renewal before the training certificate expires and pays the appropriate renewal fee. However, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to current status upon validation, by the department, of the required basic trainee class education.

(10) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the basic trainee class education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(11) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment under chapter 19.28 RCW.

(12) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW when the individual renews an electrical training certificate, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master journey level electrician, journey level electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the applicant and the training director are the only authorized signatures the department will accept on affidavits of experience.

(13) The individual and their employer(s) and/or apprenticeship training director(s) must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

(14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 and 296-46B-990 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

Trainees without supervision present on the job site.

(15) When the supervising electrician is found to not be present on the job site, the trainee may be given a form by the inspector that must be fully completed and returned or post-marked within twenty-four hours to the inspector. The supervising electrician must sign the statement for the trainee if appropriate supervision was provided. If the supervising electrician fails or refuses to assist the trainee in completing the form, the trainee must return the form with a signed and dated statement stating the supervising electrician's name and saying that the supervising electrician refused to assist.

Trainees seeking a journey level electrician certificate - Working with no supervision.

(16) Trainee seeking a general (01) journey level electrician certificate of competency. After review by the department, a trainee may be issued a six-month, nonrenewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

(a) Has submitted a complete application for an unsupervised electrical training certificate;

(b) Has worked over seven thousand hours properly supervised not to include more than four thousand of specialty experience;

(c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;

(d) Has paid all appropriate training certificate fees listed in WAC 296-46B-909; ~~(and)~~

(e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified journey level or specialty electrician in the appropriate specialty; and

(f) Has not previously failed a journey level electrician certificate of competency examination (see WAC 296-46B-960(11)).

Trainees seeking certain specialty electrician certificates - Working with reduced or no supervision.

(17) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (4) of this section.

(18) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-family dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-970 Continuing education and classroom education requirements. (1) DEFINITIONS - For purposes of this section.

"Applicant" means the entity submitting an application for review.

"Application" means a submittal made by an applicant seeking instructor or class approval.

"Calendar day" means each day of the week, including weekends and holidays.

"Class" means continuing education or basic trainee class.

"Currently adopted code," for this section means the code adopted in WAC 296-46B-010(1) or any more recently published National Electric Code.

"Date of notification" means the date of a request for additional information from the department or the approval/denial letter sent to the applicant by the department.

"Examination" is any examination required by this section. Each examination must be unique and must provide randomized questions, except for classroom training. Each examination question bank must be at least two times larger than the number of questions in any individual examination. Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor. No more than twenty percent of an examination's questions may have a true/false answer. Competency is demonstrated by scoring at least seventy-five percent on the examination.

"Individual" means a master electrician, administrator or electrician seeking credit for continuing education or a trainee seeking credit for basic trainee class for renewal or certification.

"Instructor" means an individual who is authorized to instruct an approved continuing education or basic trainee class.

"Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval, course length, or instructor qualifications, the department may revoke the class and/or instructor approval and/or reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for department classes are automatically approved.

(c) Instructors who meet the minimum requirements using subsection (5)(d)(iv) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic trainee class that have similar class content given during the same class session). Credit will not be granted for a class that is not approved per this section.

(e) Electrical administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the electrician's prior certificate period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing education.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(f) Training certificates: To be eligible for renewal of a training certificate, the individual must have completed:

(i) At least forty-eight hours of approved basic trainee classes. The individual cannot use a basic trainee class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(ii) Equivalent electrical training classes taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191 (1)(h).

Equivalent classes must be submitted to and approved by the chief electrical inspector thirty calendar days prior to offering the class.

(g) A continuing or basic trainee class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal/certification requirements.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The department will review the application for completeness and conformance with the requirements in this section.

~~((ii) If the application is incomplete, notify the applicant within seven working days of the status of the review and if additional information is required.~~

~~(iii) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.)~~

(b) The department will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Application process:

(i) The applicant must submit a complete application to the department at least thirty calendar days prior to offering or instructing a class.

(ii) The department will only consider material included with the application when reviewing an application.

(iii) All applications must include:

(A) Applicant's name, address, contact name, email address, and telephone number;

(B) All required fees;

(e) Review process:

(i) When the application is received:

(A) The department must review the application for completeness within seven working days after receipt.

(B) If the application is incomplete, the department must, within two working days, notify the applicant of the status of the review and what additional information is required.

- The applicant must provide any additional information requested by the department within five working days after the date of notification.

- The department will deny the application if the additional required information is not received within the five working days after the date of notification for additional information.

(C) The department must complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information and within two working days notify the applicant of the approval/denial in writing or electronically.

(ii) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(iii) A notification of approval:

(A) For classes must include:

- Applicant's name and telephone number;

- Sponsor's name and telephone number;

- Sponsor number;

- Class title;

- Class number;

- Number of hours approved for the class. The department may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

- Effective date for this class;

- Expiration date of class;

- Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry);

- Type of class (i.e., classroom, correspondence, internet); and

- Whether the class is open to the public.

(B) For instructors, must include:

- Applicant's name and telephone number;
- Instructor's name and telephone number;
- Effective date for the approval; and
- Expiration date of the approval.

(iv) The applicant may request a review, by the electrical board, of the department's denial or modification of the application. The applicant must submit a written request for review to the Secretary of the Electrical Board - Chief Electrical Inspector - Within twenty days of notification of the denial/modification. The request must include a review fee of one hundred nine dollars and fifty cents. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class applications must include:

(i) Sponsor's name, address, contact name, email address, telephone number, and sponsor's number (if a class was previously approved);

(ii) Class title;

(iii) Number of education hours requested for the class;

(iv) Category of class for which approval is sought (e.g., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry);

(v) Statement that all requirements of this section will be complied with;

(vi) Statement of whether the class is open to the public;

(vii) Class syllabus (e.g., presentation method(s), description of the training, specific NEC/RCW/WAC articles taught, theory subjects, time allowed for various subject matter components, examination question samples, etc.) describing how the class meets the minimum requirements, described below, for the type of class being offered;

(viii) The applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section;

(ix) List of resources (e.g., texts, references, etc.);

(b) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(c) Minimum requirements:

(i) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic trainee class is four hours that may be delivered in multiple classroom components of not less than two hours each.

(B) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.)

(C) Class length must be based on the following:

- Classroom instruction will be based on the total hours the individual is in the classroom. A continuing education class may be divided into multiple components so long as each component is not less than two hours in length and all

components are completed within a one-month period. A basic trainee class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a two-month period.

- Distance learning continuing education classes (i.e., correspondence and internet continuing education classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting.

(ii) Class content:

(A) Industry-related classes must be based on:

- Codes or rules included in the currently adopted National Electrical Code (see definition of currently adopted), the electrical law/rule;

- Electrical theory based on currently published documents that are readily available for retail purchase; and/or

- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace electrical safety such as *NFPA 70E - Handbook for Electrical Safety in the Workplace*. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the currently adopted (see definition) National Electrical Code and must specify the code articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic trainee classes must be classroom instruction only and based upon basic electrical theory, currently adopted (see definition for currently adopted) National Electrical Code, and/or use of the electrical laws or rules. Correspondence and internet classes are not allowed. All basic trainee classes must include an appropriate written competency examination(s) to ensure the participant mastered the basic concepts of the class. The examination must consist of at least five questions per two hours of class credit.

(E) For all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(F) The sponsor of any distance learning class (e.g., correspondence/internet continuing education) must provide the following additional information with the application:

- How the sponsor will provide an orientation session with the instructor or an affiliated representative of the sponsor.

- The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material.

- In the case of internet based continuing education classes, describe how the class software addresses automatic shutdown after a period of inactivity.

- How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.

- The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.

- The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.

- The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.

- The application must demonstrate how the sponsor determined the number of clock hours requested.

- The application must demonstrate how mastery of the material is evaluated (e.g., describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction).

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Except first-aid training, all instructors must be approved per this section.

(b) The instructor application will include:

(i) Instructor's name, address, telephone number, email address;

(ii) Copies of credentials or other information showing conformance with the instruction minimum qualifications.

(c) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(d) Minimum requirements:

The application must show that the instructor meets one of the following:

(i) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(ii) Is currently an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(iii) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(iv) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education; or

(v) Is an electrical engineer registered under chapter 18.43 RCW; or

(vi) Subject matter experts approved by the chief electrical inspector who can demonstrate appropriate knowledge of, and experience in the electrical construction trade and working as an electrical/electronic trainer.

(6) FORMS:

(a) The department will develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the department's form when submitting an application for review.

(7) CLASS ATTENDANCE:

(a) The department is not responsible for providing verification of an individual's continuing education or basic trainee classroom training history with the class sponsor;

(b) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate online course attendance/completion roster for each class given. Class attendance will only be verified based on the online attendance/completion roster provided by the sponsor.

(A) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, and date of completion.

(ii) Individuals will not be granted credit for a class unless the sponsor's online attendance/completion roster shows the individual successfully completed the class.

(c) For classes approved under chapter 18.106 RCW for the pumping industry, a class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (b) of this section.

(8) Noncompliance with this section by a course sponsor or instructor.

(a) Before a course sponsor or instructor is revoked or suspended for noncompliance with this section, the course sponsor or instructor will be given written notice of the department's intention to suspend or revoke. The notification will describe the allegations and provide the necessary procedures to request a hearing before the electrical board as described in RCW 19.28.341.

(b) The department may also file a civil penalty action under chapter 19.28 RCW for fraudulent, inaccurate, or material misrepresentation activity.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-971 Training schools. (1) The department must evaluate and approve training school programs in the electrical trade as regulated by chapter 19.28 RCW for equivalency to hours of supervised work experience. Approved training programs must be from a Washington state public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(2) The minimum total hours for an electrical technical training program must be determined per RCW 19.28.191.

(3) Training school programs must be approved before their graduates may request credit for equivalent work experience hours toward journey level or specialty electrician certification. Until December 31, 2003, existing electrical training programs, in effect after January 1, 2000, may apply for retroactive approval of their program to determine the number of hours that will be credited for the program graduates. After December 31, 2003, all training programs must be approved by the department prior to beginning instruction.

(4) Training schools must submit the curriculum of each journey level or specific specialty electrical training program to the department for approval. The curriculum must include a detailed description of each course that is included in the total training hours required by RCW 19.28.191. The curriculum must be reviewed by the department whenever significant changes in program content or course length are implemented or at an interval not to exceed three years. After department review, the program may be renewed. In evaluating the relevance of the curriculum, the department will consider the following criteria:

(a) Scope of work for the appropriate electrician certification.

(b) Understanding whole systems related to and integrated with electrical equipment installation, maintenance, troubleshooting, and appliance repair (e.g., refrigeration, pumps, hydraulics, thermodynamics, compressed air, and similar systems).

(c) Courses not directly related to electrical technical instruction or specific scope of work, but required to complete the specific training program (i.e., mathematics, technical writing, business, safety, first aid, ergonomics, etc.), must not exceed ten percent of the total student/instructor contact time of the program.

(5) Within thirty days after beginning a program, the program sponsor must supply the department with a roster of individuals enrolled in the program. The roster must show each student's name, date of enrollment, Washington training or electrician certificate number, and the training program number. Within thirty days after each graduation cycle, approved training school programs must provide the department with a roster of individuals that have successfully completed the program. The roster must show each student's name, date of completion, Washington training or electrician certificate number, and the training program title. ~~((An individual must provide a copy of the certificate of completion or proof of graduation from the electrical training program when making application to the department for an electrician examination.))~~

(6) All school training activities involving electrical work or appliance repair done outside of in-school lab facilities must be done under a valid Washington electrical contractor's license. All students performing such work must have a valid training certificate and work under a supervising journey level or specialty electrician in a ratio, per RCW 19.28.161, in compliance with RCW 19.28.161.

(7) Individuals in a two-year electrical construction trade training program for journey level electrician must obtain the additional two years of work experience required in new

industrial or commercial installation prior to the beginning, or after the completion, of the technical school program.

All student electrical training hours obtained when working for contractors or other employers in intern programs arranged by the school must be evaluated as part of the training program hours. Additional work experience credit gained in an intern program is not allowed.

This does not prohibit trainees in a training program for specialty electricians from having concurrent employment and obtaining additional specialty work experience while attending school. All such concurrent work must be documented in an affidavit of experience per WAC 296-46B-942(8).

The following supervision requirements must be met when working as an intern or student:

(a) Intern when working for contractors or other employers as a:

(i) General electrician, there must be not more than one noncertified individual for every certified master journey level electrician or journey level electrician.

(ii) Specialty electrician, there must be not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician.

(b) Student when working for a public community or technical college, or not-for-profit nationally accredited trade or technical school licensed by the work force training and education coordinating board under chapter 28C.10 RCW as a journey level or specialty electrician in the training program, the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program. All such work will be considered to be an integral part of the training program and work experience credit will not be allowed except as a part of the program.

When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(i) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(ii) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

The public community or technical colleges, or not-for-profit nationally accredited trade or technical schools must be an appropriately licensed electrical contractor when performing work outside the classroom.

(8) The department will use the criteria in this section to evaluate the hours of credit that may be allowed for United States armed forces experience and training in the electrical construction, electrical maintenance, and appliance repair trades. See WAC 296-46B-945.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-980 Enforcement—Installations, licensing, and certification requirements. (1) The department inspects the electrical worksites of individuals, employers, and employees with respect to the methods and installation requirements of chapter 19.28 RCW and this chapter. The department's electrical inspectors and electrical auditors make electrical work inspections. The department's electrical inspectors/auditors verify that all required electrical work permits or labels are obtained prior to beginning any electrical work which requires an inspection. The department's electrical inspectors, electrical auditors, and compliance officers make electrical licensing/certification inspections.

(2) The department ensures that individuals, employers, and employees comply with the electrical licensing and certification requirements of chapter 19.28 RCW and this chapter. To do this, inspections are made by the department's electrical inspectors/auditors and compliance officers.

Compliance officers or electrical inspectors/auditors determine whether:

(a) Each person or entity advertising to do electrical work or doing electrical work on an electrical worksite has a proper license or certificate;

(b) The ratio, per RCW 19.28.161, of certified journey level/specialty electricians to the certified trainees on the job site is correct; and

(c) Each certified trainee is directly supervised by an individual who possesses an appropriate certificate of competency for the type of electrical work being performed.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws.

General.

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

Suspension or revocation - Of an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate.

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as a master electrician, journey level electrician, specialty electrician, electrical technician, or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

(d) The license or certificate holder incompletely or inaccurately reported continuing or basic trainee class education units on an application for renewal; or

(e) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) ~~((Failure))~~ Causing or failing to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing or basic trainee class education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license or certificate is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

Confiscation - Of an electrical contractor's license, administrator certificate, electrician certificate of competency, or training certificate.

(5) The department may confiscate a license or certificate that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-995 Electrical board—Appeal rights and hearings.

General.

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW (~~the~~), Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW (~~the~~), Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised.*"

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "email," if the member has provided an email address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board will set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may occur by U.S. mail, facsimile or by electronic mail and will be determined by the board at the hearing; the members' votes will be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. Twenty copies of filings and documents must be submitted by ordinary mail, certified or registered mail, or by personal delivery. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

(10) All hearings before the board as a whole will be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.

(11) All notices of appeal, with a certified check payable to the department in the ~~((sum of two hundred dollars))~~ amount specified in subsection (12), (14), (15), or (17) of this section if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before the regularly scheduled board meeting at which the hearing would occur. A separate ~~((two hundred dollar))~~ appeal fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5)(a) - Designated administrator not available, RCW 19.28.-061 (5)(d) - Designated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5)(e) - Designated administrator fails to ensure corrections are made would require ~~((a six hundred dollar appeal fee))~~ three of the applicable appeal amounts; one for each specific violation type). The total appeal fee for each entity seeking an appeal hearing is one thousand dollars maximum for all violation types. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs, testimony, or documents for the board's consideration at least forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting.

Appeals

(12) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal will be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or ~~((by certified mail, return receipt requested,))~~ using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars.

(13) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.

(14) Appeals of suspension, revocation, or nonrenewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The ~~((notice of))~~ appeal ~~((, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license,))~~ must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or ~~((by certified mail, return receipt requested))~~ using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars or, for appeals of non-renewal due to outstanding final judgments owed to the department, the amount shall be two hundred dollars or ten percent of the outstanding penalty amount, whichever is less, but in no event less than one hundred dollars.

(15) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs, testimony, or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(16) Appeals of a continuing or basic trainee class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)(iv) to the superior court per RCW 34.05.542(3).

(17) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or ~~((by certified mail, return receipt requested))~~ using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(18) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

(19) If appeal(s) according to subsections (12), (13), (15), and (16) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

(20) Appeals - General requirements.

(a) Appeals according to subsection ~~((s))~~ (12), (15), or (16) of this section must specify the contentions of the appellant, and must for subsection (13) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board will not grant a hearing de novo.

(b) In appeals under subsections (13), (14), (15), and (16) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

Appearance and practice before board.

(21) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

(22) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-997 Engineer approval. (1) This section describes the methods required to obtain recognition and accreditation of professional engineers registered under chapter 18.43 RCW to approve industrial utilization equipment. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) Industrial utilization equipment is considered to be safe when it is certified by an engineer accredited by the department.

(a) The department may declare industrial utilization equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares industrial utilization equipment unsafe, the department will notify the product owner and the certifying engineer in writing.

Accreditation - General.

(3) The department's chief electrical inspector's office reviews requests for accreditation. Applicants must submit

supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of an engineer will be valid for the period of three years.

(5) On-site inspection of an engineer's facilities.

(a) On-site inspection of the facility(ies) may be required during the initial application process or the renewal process. Representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all engineers who certify industrial utilization equipment offered for sale in the state of Washington must be accredited by the department.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The engineer must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period of three years or notify the renewing engineer of the department's reason(s) of refusal following receipt of the completed form and renewal fee.

(9) The department accepts or denies engineer accreditation for engineers seeking to evaluate industrial utilization equipment within the state. Accreditation is determined when an engineer provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the engineer.

(a) Accreditation is subject to review when deemed necessary by the department. The engineer must pay all costs associated with on-site review.

(b) Every accredited engineer must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. An engineer must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of industrial utilization equipment items approved;

(ii) Organizational structure of the engineer's company;

(iii) Statement of ownership of the engineer's company; and

(iv) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter.

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of the engineer.

(10) The engineer will be approved to certify industrial utilization equipment.

Suspension or revocation.

(11) The department may suspend, revoke, or refuse to renew the department's accreditation of any engineer found to be in noncompliance with requirements of this chapter, the laws of the state of Washington, or submitting false information.

(12) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of an engineer.

(13) An engineer, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. An engineer, whose accreditation has been revoked, may reapply for accreditation no sooner than two years after the date of revocation of accreditation.

Business structure, practices, and personnel.

(14) The engineer must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with owners, manufacturers, suppliers, installers, or vendors of products covered under the engineer's certification or evaluation programs.

The engineer must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the engineer.

(15) The engineer must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond to and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the engineer's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(16) Engineers accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited; or

(c) Change in independent status.

(17) The engineer must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Verification and maintenance of facilities and/or equipment; or

(d) Sample selection as applicable for product certifications, and for component testing as necessary for evaluations.

The plan must demonstrate that the engineer has adequate facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washing-

ton. These elements must be contained in the engineer's operations control manual.

(18) The engineer must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The engineer's quality control system must include a quality control or engineer's operations control manual;

(b) The quality control or engineer's operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the engineer's certification and/or evaluation program(s); and

(c) The engineer must have a current copy of the quality control or engineer operations control manual available for the engineer's use.

(19) The engineer must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought.

(20) The engineer must:

(a) Provide adequate safeguards protecting the engineer's status from the influence or control of manufacturers, vendors, owners, or installers of electrical products certified or tested by the engineer; and

(b) Develop and maintain an adequate training program assuring that the engineer will be able to perform tasks properly and uniformly.

Recordkeeping and reporting - General.

(21) The engineer must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each piece of industrial utilization equipment. The engineer must retain these records for a minimum of three years.

(22) The engineer must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

(23) See WAC 296-46B-906 for fee information. The engineer's evaluation report must include:

(a) Name and address of the engineer;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, ~~((16th))~~ 17th Edition, ~~((Feb. 1993))~~ Jan. 1999, Revision ~~((Oct. 9, 1997))~~ March 15, 2013);

(e) Description of the overall product evaluated to include full nameplate data and equipment type;

(f) A statement as to whether or not the results comply with the requirements of the standard;

(g) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(h) The engineer's stamp; and

(i) Any condition of acceptability or restrictions on use/relocation.

(24) Within ten calendar days after affixing the evaluation mark, the engineer must submit a copy of the evaluation report to their(=

~~(a) Local electrical inspection office submitted electronically in a format approved by the department; and~~
~~(b))~~ client submitted in any format acceptable to the client and engineer.

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-999 Electrical testing laboratory requirements.

General.

(1) This section describes the methods required to obtain recognition and accreditation of electrical product(s) certification and/or field evaluation laboratories by the state of Washington. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) An electrical product is considered to be safe when it is either certified by a laboratory accredited by the department or labeled with a field evaluation mark by a laboratory accredited by the department.

(a) The department may declare electrical equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares an electrical product unsafe, the department will:

(i) Notify the product manufacturer and the appropriate testing laboratory in writing;

(ii) Notify the general public by:

(A) Report to the Consumer Product Safety Commission;

(B) A published article in the *Electrical Currents*;

(C) Internet web site posting; and/or

(D) News release.

Accreditation - General.

(3) The department's chief electrical inspector's office reviews requests for accreditation or evaluation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of a NRTL will be valid for the period of the laboratory's current OSHA NRTL accreditation. The accreditation of a non-NRTL will be valid for the period of five years from the date of the department's accreditation.

(5) On-site inspection of a laboratory.

(a) On-site inspection of the laboratory may be required during the initial application process or the renewal process.

Technically qualified representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) On-site inspection is not required for NRTL-recognized laboratories requesting approval as certification laboratories using standards for which NRTL recognition has been approved.

(c) The department may waive on-site inspection for:

(i) Laboratories recognized or accredited by another state determined to provide an accreditation program acceptable to the department; or

(ii) NRTL-recognized laboratories requesting approval as certification laboratories for using other standards for which NRTL recognition has not been approved.

(d) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all laboratories which certify and/or field evaluate electrical products offered for sale in the state of Washington must be accredited by the department. A NRTL requesting approval as a certification laboratory will be approved for accreditation by the department upon completion of the application process.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The laboratory must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period specified in subsection (4) of this section or notify the renewing laboratory of the department's reason(s) of refusal following receipt of the completed form and renewal fee. Accreditation may be renewed or refused for one or more electrical product category(ies).

(9) The department accepts or denies laboratory accreditation for all laboratories within the state. Accreditation is determined when a laboratory provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the laboratory.

(a) Accreditation is subject to review when deemed necessary by the department. The laboratory must pay all costs associated with on-site review.

(b) Every accredited laboratory must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. A non-NRTL accredited laboratory must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of factory inspections;

(ii) Organizational structure of the laboratory;

(iii) Statement of ownership of the laboratory;

(iv) Laboratory equipment verification;

(v) Client accreditation programs;

(vi) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter; or

(vii) Assessment of recordkeeping (i.e., certification/evaluation plans, certification/evaluation reports).

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of a laboratory.

(10) The laboratory will be approved to certify only those categories identified and authorized by the department. The department will approve and list electrical product category(ies) the laboratory is qualified to certify or evaluate. The accreditation letter will indicate the electrical product category(ies) for which accreditation is issued.

(11) The department may exclude specific electrical products from acceptance. When required, the laboratory must provide evidence, acceptable to the department, that the laboratory is qualified to certify or field evaluate the specific electrical product. Laboratory recognition as an NRTL for the standard(s) used to certify or field evaluate an electrical product will be acceptable evidence. The standards used for certification or field evaluation must be determined by the department to be acceptable and applicable to the electrical product being certified or field evaluated.

If a laboratory chooses to add additional standards prior to its expiration date, it must submit a Request Approval for Additional Standards form to the chief electrical inspector.

Suspension or revocation.

(12) Any laboratory failing to comply with the requirements of this chapter or submitting false information may have accreditation revoked or suspended for one or more electrical product category(ies).

(13) The department may suspend, revoke, or refuse to renew the accreditation of any laboratory found to be in non-compliance with this chapter or the laws of the state of Washington.

(14) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of a laboratory.

(15) The laboratory must immediately notify all manufacturers whose products are covered by the accreditation that such products manufactured subsequent to the departmental revocation and offered for sale in the state of Washington can no longer bear the laboratory's label that identified it as a certified product in the state of Washington. A laboratory, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. A laboratory, whose accreditation has been revoked, may reapply for accreditation no sooner than one year after the date of revocation of accreditation.

Business structure, practices, and personnel.

(16) The laboratory must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with manufacturers, suppliers, installers, or vendors of products covered under its certification or evaluation programs.

The laboratory must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the laboratory.

(17) The laboratory must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the laboratory's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(18) Laboratories accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited;

(c) Changes in principal officers, key supervisory and responsible personnel in the company including the director of testing and engineering services, director of follow-up services, and the laboratory supervisor; or

(d) Change in independent status.

(19) The laboratory must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Adequate personnel to perform the certification or evaluation;

(d) Verification and maintenance of facilities and/or equipment; or

(e) Sample selection as applicable for product certifications, and for component testing as necessary for field evaluations.

The plan must demonstrate that the laboratory has adequate personnel, facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the laboratory operations control manual.

(20) The laboratory must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The laboratory's quality control system must include a quality control or laboratory operations control manual;

(b) The quality control or laboratory operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the laboratory's certification and/or evaluation program(s); and

(c) The laboratory must have a current copy of its quality control or laboratory operations control manual available in the laboratory for use by laboratory personnel.

(21) Competent personnel who must have training, technical knowledge, and experience adequate to perform the

tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought must staff the laboratory.

(22) The laboratory must:

(a) Provide adequate safeguards protecting the employment status of personnel from the influence or control of manufacturers, vendors, or installers of electrical products certified or tested by the laboratory;

(b) Develop and maintain a job description for each technical position category;

(c) Ensure the competency of its staff to perform assigned tasks through individual yearly observation and/or examination by a person(s) qualified by the person who has technical responsibility for the laboratory;

(d) Develop and maintain records of the results and dates of the observation or examination of personnel performance;

(e) Maintain information on the training, technical knowledge, and experience of personnel; and

(f) Develop and maintain an adequate training program assuring that new or untrained personnel will be able to perform assigned tasks properly and uniformly.

Recordkeeping and reporting - General.

(23) The laboratory must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each program for which accreditation is sought. The laboratory must retain these records for a minimum of three years.

(24) The laboratory must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

Recordkeeping and reporting - Certification.

(25) Certification reports must contain, as applicable:

(a) Name and address of the laboratory;

(b) Pertinent data and identification of tests or inspections;

(c) Name of client;

(d) Appropriate product title;

(e) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, ~~((16th))~~ 17th Edition, ~~((Feb. 1993))~~ Jan. 1999, Revision ~~((Oct. 9, 1997))~~ March 15, 2013);

(f) Description and identification of the sample including, as necessary, where and how the sample was selected;

(g) Identification of the test, inspection, or procedure as specified for certification or evaluation by the standard;

(h) Known deviations, additions to, or exclusions from evaluation and certification activities in order to be appropriate for new or innovative products not contemplated by the standard;

(i) Measurements, examinations, derived results, and identification of test anomalies;

(j) A statement as to whether or not the results comply with the requirements of the standard;

(k) Name, contact information, and signature of person(s) having responsibility for the report;

(l) Raw data, calculations, tables, graphs, sketches, and/or photographs generated during certification or evaluation must be maintained if not included in the report;

(m) Control forms documenting the receipt, handling, storage, shipping, and testing of samples;

(n) Laboratory records of its quality control checks and audits for monitoring its test work associated with its certification programs, including:

(i) Records of products assurance (follow-up) test results; and

(ii) Records of detected errors and discrepancies and actions taken subsequent to such detection.

(o) Record of written complaints and disposition thereof; and

(p) A statement that records required by these criteria will be maintained for a minimum of three years after cessation of the certification or evaluation.

Recordkeeping and reporting - Field evaluation.

(26) The evaluation report must include:

(a) Name and address of the laboratory;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, ~~((16th))~~ 17th Edition, ~~((Feb. 1993))~~ Jan. 1999, Revision ~~((Oct. 9, 1997))~~ March 15, 2013);

(e) Description and identification of the nonlisted and nonlabeled component(s) requiring evaluation by applicable standard(s);

(f) Description of the overall product evaluated to include full nameplate data and equipment type;

(g) A statement as to whether or not the results comply with the requirements of the standard;

(h) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(i) Signature of person(s) having responsibility for the report;

(j) Any condition of acceptability or restrictions on use/relocation;

(k) Serial number(s) of the field evaluation label(s) applied must be included with the equipment identification; and

(l) Date the equipment label was affixed.

(27) Within thirty calendar days after affixing the evaluation mark, the laboratory must submit a copy of the evaluation report to their(~~(=~~

~~(a) Local electrical inspection office submitted electronically in a format approved by the department; and~~

~~(b))~~ client submitted in any format acceptable to the client and testing laboratory.

Facilities and equipment.

(28) The laboratory must provide adequate evidence of the calibration, verification, and maintenance of the facilities and equipment specified for each certification or evaluation.

(29) Verification and maintenance of facilities and equipment must include as applicable, but not be limited to:

(a) Equipment description;

(b) Name of manufacturer;

(c) Model, style, serial number, or other identification;

- (d) Equipment variables subject to calibration and verification;
- (e) Statement of the equipment's allowable error and tolerances of readings;
- (f) Calibration or verification procedure and schedule;
- (g) Dates and results of last calibrations or verifications;
- (h) Specified maintenance practices;
- (i) Calibration and/or verification of equipment used;
- (j) Name and contact information of personnel or outside contractor providing the calibration or verification service; and
- (k) Traceability to National Institute of Standards and Technology or other equivalent standard reference authority.

Standards.

(30) The laboratory must have copies available, for laboratory personnel use, of applicable standards and other documents referred to or used in performing each certification or test for which approval is sought.

(31) If a laboratory desires to use a standard other than an ANSI standard, the department will evaluate the proposed standard to determine that it provides an adequate level of safety. The National Electrical Code, NFPA 70, will not be allowed to be the primary standard used to evaluate a product.

Product certification.

(32) The electrical product certification program must contain test procedure(s), standard(s) used, certification agreement(s), method(s) of identification of products, follow-up inspection, and other laboratory procedures and authority necessary to ensure that the product complies with the standards (requirements) established by the program.

(33) All components of certified or tested products must be labeled or evaluated for compliance with all standards and conditions of use applicable to such components.

(34) The laboratory must publish an *Annual Product Directory* identifying products that are authorized to bear the laboratory's certification mark. The products directory must briefly describe the program, the products covered, the name of the manufacturer or vendor of the certified products, and the identification of the published standards or the compiled requirements on which the program is based. The product directory must be available to the public. Supplemental up-to-date information must be available to the public at the office of the laboratory during normal business hours.

Certification laboratory/manufacturer - Agreement.

(35) Measures to provide for manufacturer compliance with the provisions of the product standard and laboratory control of the use of the certification mark must be embodied in an agreement between the manufacturer and the certification laboratory. The certification agreement must:

- (a) Require the manufacturer to provide information and assistance as needed by the laboratory to conduct the necessary product conformity and production assurance evaluation;
- (b) Allow the laboratory's representative(s) access to the manufacturer's facilities during working hours for inspection and may allow audit activities without prior notice;

(c) Restrict the manufacturer's application of certification marks to products that comply with requirements of the product standard;

(d) Secure the manufacturer's agreement to the publication of notice by the certification laboratory for any product already available in the marketplace that does not meet the safety standard;

(e) Require reevaluation of products whenever the standard covering the product is revised;

(f) Require the laboratory to notify the manufacturer's personnel responsible for and authorized to institute product recall in the case of a hazard;

(g) Provide for control of certification marks by the laboratory;

(h) Require that the laboratory provide the manufacturer with a report of original product evaluation. The report must document conformity with applicable product standards by test results and other data; and

(i) Require the identification of the manufacturer(s) of the product and the location(s) where the product is produced.

Certification mark.

(36) The laboratory owns the certification mark.

(37) The certification mark must be registered as a certification mark with the United States Patent and Trademark Office.

(38) The certification mark must:

(a) Not be readily transferable from one product to another;

(b) Be directly applied to each unit of production in the form of labels or markings suitable for the environment and use of the product. When the physical size of the unit does not permit individual marking, markings may be attached to the smallest package in which the unit is marketed;

(c) Include the name or other appropriate identification of the certification laboratory;

(d) Include the product category; and

(e) The laboratory must have a system of controls and records for all marks. The records must include marks removed or otherwise voided. See WAC 296-46B-999(25).

(39) The certification mark may be applied to the product prior to authorizing the use of a certification mark on a product. The laboratory must:

(a) Determine by examination and/or tests that representative samples of the product comply with the requirements (standards). Components of certified products must comply with the applicable safety requirements (standards) or be listed. Evaluation of the product design must be made on representative production samples or on prototype product samples with subsequent verification that factory productions are the same as the prototype;

(b) Determine that the manufacturer has the necessary facilities, test equipment, and control procedures to ensure that continuing production of the product complies with the requirements; and

(c) If the certification mark is not applied at the manufacturing facility, the laboratory must provide prior notification to the department of its intent to affix the certification mark in the field.

Certification laboratory product - Assurance/follow up.

(40) To verify continued product acceptability, the laboratory must develop and maintain a factory follow-up inspection program and manual to determine continued compliance of certified products with the applicable standard.

(41) The follow-up inspection file must include the:

(a) Conditions governing the use of the certification mark on products;

(b) Identification of the products authorized for certification;

(c) Identification of manufacturer and plant location at which manufacture and certification are authorized;

(d) Description, specifications, and requirements applicable to the product;

(e) Description of processes needed for control purposes;

(f) Description of the manufacturer's quality assurance program when used as part of the follow-up program;

(g) Description of inspections and tests to be conducted by the manufacturer and the laboratory; and

(h) Description of follow-up tests to be conducted in the laboratory.

(42) Follow-up procedures and activities must include:

(a) Periodic inspections at the factory with testing at the factory or certification laboratory of representative samples selected from production and, if appropriate, from the market;

(b) Periodic auditing or surveillance of the manufacturer's quality assurance program through the witnessing of manufacturer's tests, review of the manufacturer's records, and verification of the manufacturer's produced data;

(c) Investigation of alleged field failures upon department request; and

(d) Procedures for control of the use of the certification mark by:

(i) Keeping records of the release and use of certification marks;

(ii) Removal of marks from noncomplying products;

(iii) Return or destruction of unused marks when the authority to use the marks is terminated; and

(iv) Legal action.

(43) The frequency of laboratory follow-up inspections must not be less than four times per year during production, unless adequate data is provided to the department to justify less frequent inspections. If there is no production during the year, at least one follow-up inspection is to be completed. The frequency of follow-up inspections must be sufficient to provide a reasonable check on the method(s) the manufacturer exercises to assure that the product bearing the certification mark complies with the applicable standards.

Field evaluation - Requirements.

(44) The field evaluation laboratory may perform evaluations on any products or product categories previously approved by the department. NRTL recognition may be accepted by the department as a basis for approval to perform field evaluations. Since OSHA does not review or recognize laboratories for field evaluation purposes, laboratories seeking accreditation from the department for field evaluation may be required to provide additional justification of capability such as, but not limited to: Recordkeeping, employee

standards and proficiency, equipment requirements, and other requirements described in this chapter.

(45) The scope of a field evaluation will depend on the status of the item to be evaluated as follows:

(a) A new piece of equipment must have a complete evaluation of all components and the assembly as provided by the manufacturer. For example: An industrial machine with a control panel, remote motors, sensors, controls, and other utilization equipment; and

(b) A product that has been modified internally or by an addition need have only those portions evaluated that were affected by the modification. For example: A switchboard with multiple sections that has a section added would only need the new section, the one section immediately adjacent, and any control modifications evaluated.

(46) Each unit that receives a field evaluation mark applied by the field evaluation laboratory must have sufficient inspections and/or testing completed to ensure it is in essential conformance with the applicable product standard(s).

(47) The laboratory may perform the preliminary evaluation in the manufacturer's facility. Final evaluation and acceptance of the product must be made on-site at the location of final installation, unless waived by the department.

Field evaluation mark.

(48) Only laboratory personnel may apply the field evaluation mark after final acceptance of the product. The field evaluation label must be applied on-site at the location of the final installation, unless waived by the department.

(49) The field evaluation laboratory must have a system of controls and records for all field evaluation marks it applies. The records must include labels removed or otherwise voided.

(50) A field evaluated product may be relocated or fed from a different power source if not prohibited by the field evaluation mark or the field evaluation report.

(51) The field evaluation mark must:

(a) Not be readily transferable from one product to another;

(b) Be directly applied by the laboratory personnel to each unit of production in the form of labels or markings suitable for the environment and use of the product;

(c) Include the name or other appropriate identification of the certification laboratory;

(d) Include a unique evaluation laboratory reference number; and

(e) Include a reference to the evaluation report or other notation if there are any limitations of use noted within the report.

(52) The field evaluation laboratory must have a system of controls and records for all field evaluation marks it applies. The records must include labels removed or otherwise voided. See subsection (26) of this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-46B-424 Fixed electric space heating equipment.

WSR 17-06-061
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 28, 2017, 2:53 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 246-811-280 chemical dependency professional (CDP) continuing education requirements for suicide assessment training standards. Proposing amending CDP continuing education requirements for suicide assessment training standards to align with recent changes in RCW 43.70.442.

Hearing Location(s): Department of Health, Town Center Building #2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on April 28, 2017, at 10:00 a.m.

Date of Intended Adoption: May 5, 2017.

Submit Written Comments to: Brad Burnham, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by April 28, 2017.

Assistance for Persons with Disabilities: Contact Brad Burnham by April 21, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1424 (2015), entitled "An act relating to suicide prevention," requires CDPs to complete a training program in suicide assessment, treatment, and management that has been reviewed and approved by the department of health (department). The department lists such trainings on its model list of trainings. This requirement will become effective July 1, 2017.

Reasons Supporting Proposal: The bill and this rule making are in response to the serious public health issue of suicide. Suicide is the second leading cause of death in our youth and young adults (ages ten to thirty-four). There are nearly twice as many suicides as homicides of youth ages ten to twenty-four. Two of the strongest predictors of suicide are mental illness and substance abuse.

Statutory Authority for Adoption: RCW 18.205.060 and 43.70.442.

Statute Being Implemented: RCW 18.205.060.

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, Implementation, and Enforcement: Brad Burnham, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

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

February 28, 2017

John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

WAC 246-811-280 Suicide assessment training standards. ~~((A-qualifying))~~ (1) A CDP must complete a training in suicide assessment, including screening and referral ~~((must:~~

~~((4)))~~ The training must be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions.

(a) Until July 1, 2017, the training must be approved by the American Foundation for Suicide Prevention; the Suicide Prevention Resource Center; an industry-recognized organization or an institution of higher learning listed in WAC 246-811-200; or an association which approves training programs based on observation and experiment or best available practices.

(b) Beginning July 1, 2017, the training must be on the department's model list for training programs in suicide assessment, treatment and management. The model list is developed in accordance with rules adopted by the department that establish minimum standards for training programs. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~(2) ((Be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions.~~

~~((3)))~~ A certified chemical dependency professional who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

~~((4)))~~ (3) A certified chemical dependency professional who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

WSR 17-06-067
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 15-06—Filed February 28, 2017, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-002.

Title of Rule and Other Identifying Information: Ecology is proposing amendments related to implementation of the Shoreline Management Act (SMA), chapter 90.58 RCW, specifically: Chapter 173-18 WAC, Shoreline Management Act—Streams and rivers constituting shorelines of the state; chapter 173-20 WAC, Shoreline Management Act—Lakes constituting shorelines of the state; chapter 173-22 WAC, Adoption of designations of shorelands and wetlands associated with shorelines of the state; chapter 173-26 WAC, State master program approval/amendment procedures and master program guidelines; and chapter 173-27 WAC, Shoreline management permit and enforcement procedures.

Hearing Location(s): Ecology will be holding four separate hearings statewide on the proposed SMA rule making: Hearing dates, times, and locations: Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on April 5, 2017, at 1:30 p.m. (ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing); at the Department of Ecology, 3190 160th Avenue S.E., Bellevue, WA 98008, on April 6, 2017, at 10:00 a.m. (ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing); at the Spokane Public Library, Shadle Branch, 2111 West Wellesley Avenue, Spokane, WA 99205, on April 11, 2017, at 1:30 p.m. (ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing); and at the Department of Ecology, 1250 West Alder Street, Union Gap, WA 98903-0009, on April 13, 2017, at 10:00 a.m. (ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing).

Date of Intended Adoption: August 2, 2017.

Submit Written Comments to: Fran Sant, Department of Ecology, SEA Program, P.O. Box 47600, Olympia, WA 98504-7600, email smarulemaking@ecy.wa.gov, by May 15, 2017.

Assistance for Persons with Disabilities: Contact shorelands and environmental assistance program by April 1, 2017, at (360) 407-6600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to adopt amendments to chapters 173-18, 173-20, 173-22, 173-26 and 173-27 WAC. These rule changes include:

1. Clarifying the process to comply with the periodic review requirement per SMA, RCW 90.58.080 as the first round of shoreline master program (SMP) reviews will be due to ecology June 2019;

2. Simplify the process for approving minor updates to SMPs;

3. Housekeeping amendments to include the following:

- Update the list of shorelines of the state to be consistent with SMP updates;

- Ensure consistency with amendments to statute since the last rule revision;
- Capture any administrative updates since the last rule revision.

Reasons Supporting Proposal:

- Defining procedures for local governments to conduct mandatory SMP periodic reviews will ensure a thorough public process and reduce the likelihood of appeals on procedural grounds.
- Creating a new optional SMP approval process will speed improvements to SMPs.
- Adopting "housekeeping" amendments to keep ecology rules current with recent statutory amendments ensures the rule is a relevant and dependable information source.

Statutory Authority for Adoption: SMA, chapter 90.58 RCW.

Statute Being Implemented: Chapter 90.58 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Gates, Department of Ecology, Lacey, Washington, (360) 407-6522; Implementation: Fran Sant, Department of Ecology, Lacey, Washington, (360) 407-6004; and Enforcement: Brian Lynn, Department of Ecology, Lacey, Washington, (360) 407-6224.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments meet the criteria of exemption from analysis under RCW 19.85.030 which requires an agency to prepare a small business economic impact statement (SBEIS) "if the proposed rule will impose more than minor costs on businesses in an industry." The proposed amendments to ecology's SMA rules do not impose any costs on businesses because it only applies to local jurisdictions. Therefore, ecology is not required to prepare an SBEIS.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Fran Sant, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6004, email smarulemaking@ecy.wa.gov.

Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-18-040 Streams and rivers. The following provisions of this chapter delimit the streams and rivers which constitute shorelines of the state as follows:

(1) Streams which constitute shorelines.

(a) Western Washington. Streams in Western Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said stream or river: Provided, that the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

(b) Eastern Washington. Streams in Eastern Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said stream or river: Provided, that the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

(2) Rivers which constitute shorelines of statewide significance.

(a) Western Washington. Any rivers west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more. Provided, that the river falls at said point within the jurisdiction of chapter 90.58 RCW.

(b) Eastern Washington. Either of the following points on rivers in Eastern Washington, whichever is farther upstream;

(i) The point at which the mean annual flow exceeds two hundred cubic feet per second; or

(ii) The lowest extremity of the first three hundred square miles of drainage area east of the crest of the Cascade Range; provided that either of said points which is utilized is within the jurisdiction of chapter 90.58 RCW.

(3) Until superseded as provided in WAC 173-18-044, rivers constituting shorelines of the state are listed in WAC 173-18-050 through 173-18-430. Other data related to these lists.

(a) Wherever a river of statewide significance falls within a county, it is followed by an asterisk.

(b) The following provisions set forth the name of the quadrangle maps where the stream or river is shown. The quadrangle in which the shoreline delimitation begins and the first quadrangle downstream from the county line is underlined. The quadrangle in which the shoreline of statewide significance begins is followed by an asterisk. The size, in minutes, of all quadrangle maps is designated.

(c) Where quadrangle maps are unavailable, photomaps have been used as indicated.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-18-044 Review and update of designations.

Each local government master program shall include a list of streams constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)((4)). When such master program is approved by the department, subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-050 Adams County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Cow Creek*	<u>Karakul Hills</u> * 7 1/2 Marengo 7 1/2 Benge 15 Ritzville S.E. 7 1/2	From mouth of Lugenbeal Creek (Sec.15, T19N, R37E) downstream thru Hallin and Cow lakes, thru Finnel Lake to mouth on Palouse River (Sec.27, T15N, R37E). This stream has a 300 square mile drainage area ending at mouth of Lugenbeal Creek.
(2) Palouse River*	<u>La-Crosse</u> 15 Benge 15 Starbuck 15	From Whitman County line (Sec.24, T16N, R38E) along county line downstream to Franklin County line (Sec.5, T15N, R37E), right shore only. This stream has over 300 sq. miles of drainage area.
(3) Roek Creek*	<u>Revera</u> 7 1/2	From Whitman County line (Sec.12, T18N, R38E) downstream back to Whitman County line (Sec.24 & 25, same township). This stream has over 300 square miles of drainage area.))

Streams and rivers and portions thereof which constitute shorelines of the state within Adams County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-070 Benton County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Columbia River (Cont.)*	<u>Priest Rapids</u> 15 Richland 15 Eltopia 15	From the Yakima County line (Sec.7, T13N, R24E) downstream right bank only, to Hanford works boundary (Sec.9, same township), plus the right bank within Richland city limits (T10N, R28E; T9N, R28E; T9N, R29E). This stream has over 200 cfs - MAF at Yakima County line.
(2) Glade Creek*	<u>Blalock Island</u> * 7 1/2	From mouth of East Fork Glade Creek (Sec.6, T5N, R25E) downstream to mouth on Columbia River (Sec.28, same township). This stream has a 300 square mile drainage area ending at East Branch Glade Creek.

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(3) Yakima River (Cont.)*	Prosser 7 1/2 Whitstran 7 1/2 Corral Canyon 15 Richland 15 Badger Mtn. 7 1/2 Eltopia 7 1/2	From Benton-Yakima County line (Sec. 7, T8N, R24E) down stream to mouth on Columbia River (Sec. 19, T9N, R29E). The flow exceeds 200 cfs MAF at Benton-Yakima County line.)

Streams and rivers and portions thereof which constitute shorelines of the state within Benton County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-18-130 Douglas County. ((Streams:)) Streams and rivers and portions thereof which constitute shorelines of the state within Douglas County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-190 Island County. Streams

((Island County has no 20 cfs streams but has shorelines. Island County has no 1,000 cfs MAF rivers of statewide significance.)) None.

AMENDATORY SECTION (Amending WSR 90-06-068, filed 3/6/90, effective 4/6/90)

WAC 173-18-200 Jefferson County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big Quileene River	Mt. Walker 7 1/2 Quileene 7 1/2	From the Olympic National Forest boundary (Sec. 27, T27N, R2W) downstream to mouth at Quileene Bay (Sec. 19, T27N, R1W).
(2) Bogachiel River*	Indian Pass* 7 1/2 Anderson Creek 7 1/2 Reade Hill 7 1/2	From the Olympic National Forest boundary (Sec. 4, T27N, R12W) downstream to the Clallam County line (Sec. 2, T27N, R13W). The flow exceeds 1,000 cfs MAF at Olympic National Park boundary.
(3) Cedar Creek	Destruction Island 15	From the confluence of Cedar Creek and the South Fork of Cedar Creek (Sec. 34, T26N, R13W) downstream to the Olympic National Park boundary (Sec. 33, T26N, R13W).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(4) Chimacum Creek	Port Townsend S. 7 1/2	From the confluence of Chimacum Creek and unnamed creek in Chimacum Valley (Sec. 11, T29N, R1W) downstream to mouth at Bay of Port Townsend (Sec. 35, T30N, R1W) near Irondale.
(5) Christmas Creek	Salmon River 15	From an approximate point near the center of (NE 1/4 of Sec. 2, T25N, R12W) downstream to mouth at Clearwater River (Sec. 22, T25N, R12W).
(6) Clearwater River*	Kloochman Rock 15 Salmon River* 15 Destruction Island 15	From the confluence of Clearwater River and unnamed creek (Sec. 25, T26N, R10W) downstream (excluding federal lands) to Quinault Indian Reservation (Sec. 29, T24N, R12W). The 1,000 cfs MAF point begins at mouth of Miller Creek (Sec. 27, T25N, R12W).
(7) Dosewallips River	Brinnon 7 1/2	From the Olympic National Forest boundary between (Sec. 25, T26N, R3W) and (Sec. 30, T26N, R2W) downstream to mouth at Dabob Bay near Brinnon (Sec. 2, T25N, R2W).
(8) Duckabush River	Brinnon 7 1/2	From the Olympic National Forest boundary between (Sec. 17 & 18, T25N, R2W) downstream to mouth at Hood Canal (Sec. 21, T25N, R2W).
(9) Fulton Creek	Brinnon 7 1/2 Holly 7 1/2	From the confluence of Fulton Creek and the South Fork of Fulton Creek (Sec. 30, T25N, R2W) downstream to mouth at Hood Canal (Sec. 31, T25N, R2W).
(10) Goodman Creek	Forks 15 LaPush 15	From the confluence of Goodman Creek and unnamed creek (Sec. 23, T27N, R13W) downstream to Olympic National Park boundary (Sec. 23, T27N, R14W).
(11) Hoh River*	Spruce Mt.* 15 Forks 15 Destruction Island 15	From the Olympic National Park boundary (Sec. 29, T27N, R10W) downstream to Hoh Indian Reservation boundary (Sec. 20, T26N, R13W). The 1,000 cfs MAF point starts at the Olympic National Park boundary.

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(12) Hoh River (S. Fk.)	<u>Mt. Tom 15</u>	From the Olympic National Park boundary (Sec.2, T26N, R10W) downstream to the Olympic National Forest boundary (Sec.29, T27N, R10W).	(21) Mosquito Creek	<u>Forks 15</u>	From the intersection of north line of (Sec.5, T26N, R13W) and Mosquito Creek, downstream to Olympic National Park boundary (Sec.36, T27N, R14W).
(13) Hurst Creek	<u>Destruction Island 15</u>	From an approximate point near the north line of (SE1/4 of NW1/4 of NE1/4 of Sec.17, T24N, R12W) downstream to mouth at the Clearwater River (Sec.19, T24N, R12W).	(22) Nolan Creek	<u>Destruction Island 15 Forks 15</u>	From an approximate point on the north line of (NE1/4 of SW1/4 of Sec.21, T26N, R12W) downstream to mouth at Hoh River (Sec.23, T26N, R13W).
(14) Kalaloch Creek	<u>Destruction Island 15</u>	From the confluence of Kalaloch Creek and West Fork Kalaloch Creek (Sec.17, T25N, R13W) downstream to the Olympic National Park boundary (Sec.3, T24N, R13W).	(23) Owl Creek	<u>Spruce Mt. 15</u>	From an approximate point near the center of the north line of (SW1/4 of NE1/4 of Sec.8, T26N, R10W) downstream to mouth at Hoh River (Sec.35, T27N, R11W).
(15) Little Quileene River	<u>Mt. Walker 7 1/2 Quileene 7 1/2</u>	From the Olympic National Forest boundary (Sec.33, T28N, R2W) downstream to mouth at Quileene Bay (Sec.18, T27N, R1W).	(24) Salmon River	<u>Salmon River 15</u>	From the Olympic National Forest boundary (Sec.36, T24N, R11W) downstream back to said boundary (Sec.35) coming out of Indian Reservation (Sec.36, T24N, R12W) returning to Indian Reservation and coming out again (Sec.35, T24N, R12W) downstream to Olympic National Forest boundary (same section).
(16) Maple Creek	<u>Spruce Mt. 15</u>	From the confluence of Maple Creek and Dry Creek (Sec.3, T26N, R11W) downstream to Hoh River (Sec.35, T27N, R11W).	(25) Shale Creek	<u>Salmon River 15 Destruction Island 15</u>	From an approximate point near the NE corner of the (SE1/4 of SW1/4 of Sec.26, T25N, R12W) downstream to mouth at Clearwater River (Sec.28, T25N, R12W).
(17) Matheny Creek	<u>Salmon River 15</u>	From the Olympic National Forest boundary (Sec.24, T24N, R11W) downstream to the Olympic National Park boundary (Sec.22, T24N, R11W).	(26) Snahapish River	<u>Salmon River 15</u>	From the intersection of Snahapish River and unimproved road (Sec.21, T26N, R11W) downstream to mouth at Clearwater River (Sec.19, T25N, R11W).
(18) Miller Creek	<u>Destruction Island 15 Salmon River 15</u>	From the confluence of Miller Creek and unnamed creek (Sec.17, T25N, R12W) downstream to mouth at Clearwater River (Sec.27, T25N, R12W).	(27) Snow Creek	<u>Uncas 7 1/2</u>	From the confluence of Snow Creek and unnamed creek from Crocker Lake (Sec.2, T28N, R2W) downstream to mouth at Port Discovery (Sec.24, T29N, R2W).
(19) Miller Creek (E. Fk.)	<u>Salmon River 15</u>	From the confluence of the East Fork Miller Creek and unnamed creek (Sec.15, T25N, R12W) downstream to mouth at Miller Creek (Sec.27, T25N, R12W).	(28) Solleks River	<u>Kloochman Rock 15 Salmon River 15</u>	From the confluence of Solleks River and unnamed creek (Sec.2, T25N, R10W) downstream to mouth at Clearwater River (Sec.10, T25N, R11W).
(20) Minter Creek	<u>Forks 15</u>	From the intersection of the north line of (Sec.30, T27N, R13W) and Minter Creek, downstream to Goodman Creek (Sec.24, T27N, R14W).			

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(29) Stequaleho Creek	<u>Salmon River 15</u>	From the confluence of the Stequaleho Creek and unnamed creek (Sec.19, T25N, R10W) downstream to mouth at Clearwater River (Sec.16, T25N, R11W).
(30) Winfield Creek	<u>Spruce Mt. 15</u>	From the confluence of Winfield Creek and unnamed creek (Sec.1, T26N, R12W) downstream to mouth at the Hoh River (Sec.27, T27N, R12W).
(31) Quinault River*	<u>Mt. Christie* 15</u> <u>Klloochman Rock 15</u>	From east section line (Sec.33, T24N, R8W) downstream to Jefferson/Grays Harbor County line (Sec.1, T23N, R9W). Exclude federal land. The flow is over 1000 cfs MAF at east section line (Sec.33, T24N, R8W).))

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(5) Curley Creek	<u>Bremerton East 7 1/2</u>	From an approximate point (NE1/4 of NE1/4 of Sec.8, T23N, R2E) downstream to mouth at Yukon Harbor (Sec.33, T24N, R2E).
(6) Tahuya River	<u>Wildcat Lake 7 1/2</u>	From the confluence of the Tahuya River and unnamed creek (Sec.25, T24N, R2W) downstream to Mason County line (Sec.1, T23N, R2W).
(7) Union River	<u>Wildcat Lake 7 1/2</u> <u>Belfair 7 1/2</u>	From the confluence of Union River and East Fork Union River (Sec.10, T23N, R1W) downstream to Mason Co. line (Sec.9, T23N, R1W).))

Streams and rivers and portions thereof which constitute shorelines of the state within Kitsap County are designated in the shoreline master programs of the county and the cities therein.

Streams and rivers and portions thereof which constitute shorelines of the state within Jefferson County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 77-15, filed 9/1/77)

WAC 173-18-230 Kittitas County. ((Streams

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-220 Kitsap County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big Beef Creek	<u>Wildcat Lake 7 1/2</u> <u>Seabeck 7 1/2</u>	From the confluence of Big Beef Creek and unnamed creek (Sec.34, T25N, R1W) downstream to mouth at Big Beef Harbor (Sec.15, same township).
(2) Black Jack Creek	<u>Bremerton West 7 1/2</u>	From the confluence of Black Jack Creek and unnamed creek (Sec.11, T23N, R1E) downstream to mouth at Sinclair Inlet (Sec.25, T24N, R1E).
(3) Burley Creek	<u>Burley 7 1/2</u>	From the confluence of Burley Creek and unnamed creek (Sec.12, T22N, R1E) downstream to mouth at Burley Lagoon (same section).
(4) Chico Creek	<u>Bremerton West 7 1/2</u>	From the confluence of Chico Creek and Dickerson Creek (Sec.8, T24N, R1E) downstream to mouth in Chico Bay on Dyes Inlet (Sec.5, same township).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big Creek	<u>Easton 15</u>	From the Wenatchee National Forest boundary (Sec.35, T20N, R13E) downstream (excluding federal lands) to mouth at Yakima River (Sec.21, T20N, R14E).
(2) Cabin Creek	<u>Lester 15</u> <u>Easton 15</u>	From Wenatchee National Forest boundary (Sec.19, T20N, R13E) downstream to mouth on Yakima River (Sec.9, T20N, R13E).
(3) Cle Elum River*	<u>Kachess Lake* 15</u> <u>Easton 15</u> <u>Cle Elum 15</u>	From the Wenatchee National Forest boundary crossing Cle Elum Lake (Sec.33, 34 & 35, T21N, R14E) downstream to mouth at Yakima River (Sec.32, T20N, R15E). The stream flow exceeds 200 cfs MAF at Wenatchee National Forest boundary.
(5) Columbia River (Cont.)*	<u>Rock Island Dam* 7 1/2</u> <u>West Bar 7 1/2</u> <u>Babeock Ridge 7 1/2</u> <u>Cape Horn S.E. 7 1/2</u> <u>Evergreen 7 1/2</u> <u>Vantage 7 1/2</u> <u>Beverly 7 1/2</u> <u>Priest Rapids 7 1/2</u>	From the Chelan Co. line on the Columbia River (Sec.5, T20N, R22E) downstream along the Douglas and Kittitas Co. line to Yakima Co. (Sec.32, T15N, R23E). The stream flow exceeds 200 cfs MAF at Chelan Co. line.

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(6) Kachess River*	<u>Kachess Lake</u> * 15	From the Wenatchee National Forest (Sec.3, T20N, R13E) downstream through Lake-Easton State Park and to mouth at Yakima River (same section). The flow exceeds 200 cfs MAF at Wenatchee National Forest boundary.	(15) Teanaway River (N. Fk.)	<u>Mt. Stuart</u> 15	From the Wenatchee National Forest boundary (Sec.4, T21N, R16E) downstream (excluding all federal lands) to the Teanaway River (Sec.6, T20N, R16E).
(7) Little Creek	<u>Easton</u> 15	From the Wenatchee National Forest boundary (Sec.33, T20N, R14E) (excluding all federal lands) downstream to mouth at Yakima River (Sec.22, T20N, R14E).	(16) Teanaway River (W. Fk.)	<u>Kachess Lake</u> 15 <u>Mt. Stuart</u> 15	From the Wenatchee National Forest boundary (Sec.30, T21N, R15E) downstream (excluding all federal lands) to the Teanaway River (Sec.6, T20N, R16E).
(8) Log Creek	<u>Lester</u> 15	From confluence of Log Creek and unnamed creek (NW1/4, SW1/4 Sec.31, T20N, R13E) downstream to mouth on Cabin Creek (Sec.19, T20N, R13E).	(17) Wilson Creek*	<u>Ellensburg So.*</u> 7 1/2 <u>Kittitas</u> 7 1/2	From mouth at Naneum Creek (Sec.30, T17N, R19E) downstream to mouth on Yakima River (Sec.31, T17N, R19E). This stream has over 300 sq-miles of drainage area ending at mouth of Cherry Creek (Sec.31, T17N, R19E).
(9) Manastash Creek	<u>Yakima</u> (AMS) <u>Ellensburg</u> 15 <u>Ellensburg S.</u> 7 1/2	From confluence of North and South Forks Manastash Creek (Sec.17, T17N, R17E) downstream to mouth on Yakima River (Sec.4, T17N, R18E).	(18) Yakima River*	<u>Snoqualmie Pass*</u> 15 <u>Kachess</u> 15 <u>Easton</u> 15 <u>Cle Elum</u> 15 <u>Thorp</u> 7 1/2 <u>Ellensburg North</u> 7 1/2 <u>Ellensburg South</u> 7 1/2 <u>Wymer</u> 7 1/2 <u>Pamona</u> 7 1/2 <u>Kittitas</u> 7 1/2	From the Wenatchee National Forest boundary (Sec.15, T21N, R12E) downstream (excluding all federal lands) to the Yakima Co. line (Sec.33, T15N, R19E). The stream flow exceeds 200 cfs MAF at Wenatchee National Forest boundary.
(10) Manastash Creek (South Fork)	<u>Cle Elum</u> 15 <u>Ellensburg</u> 15 <u>Manastash Lake</u> 7 1/2	From the Wenatchee National Forest boundary (Sec.31, T18N, R16E) downstream to mouth at Manastash Creek (Sec.17, T17N, R17E).	(19) Little Naches River*	<u>Lester</u> 15 <u>Easton</u> 15* <u>Cliffdell</u> 7 1/2	From confluence of North Fork & Middle Fork of Little Naches River (Sec.31, T19N, R12E) downstream left bank to mouth of Naches River (Sec.4, T17N, R14E). Exclude federal lands. The 200 cfs MAF point begins at confluence with Crow Creek (Sec.30, T18N, R14E).)
(11) Swauk Creek	<u>Thorp</u> 15	From the Wenatchee National Forest boundary (Sec.10, T20N, R17E) downstream (excluding all federal lands) to mouth at Yakima River (Sec.20, T19N, R17E).			
(12) Taneum Creek	<u>Cle Elum</u> 15 <u>Thorp</u> 7 1/2	From Wenatchee National Forest boundary (Sec.30, T19N, R16E) downstream (excluding all federal lands) to mouth on Yakima River (Sec.33, T19N, R17E).			
(13) Teanaway River*	<u>Mt. Stuart</u> * 15 <u>Cle Elum</u> 15	From the confluence of the Middle Fork and the West Fork Teanaway River (Sec.6, T20N, R16E) downstream to Yakima River (Sec.3, T19N, R16E). The 200 cfs MAF point begins at confluence of West Fork & North Fork Teanaway River (Sec.6, T20N, R16E).			
(14) Teanaway River (M. Fk.)	<u>Mt. Stuart</u> 15	From the Wenatchee National Forest boundary (Sec.15, T21N, R15E) downstream to mouth at Teanaway River (Sec.6, T20N, R16E).			

Streams and rivers and portions thereof which constitute shorelines of the state within Kittitas County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-320 San Juan County. Streams. ((San Juan County has no 20 cfs streams but has shorelines. No rivers of statewide significance.)) None.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-18-430 Yakima County. ((Streams.)) Streams and rivers and portions thereof which constitute shorelines of the state within Yakima County are designated

in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-20-044 Review and update of designations.

Each local government master program shall include a list of lakes constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)((4)). When such master program is approved by the department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.

AMENDATORY SECTION (Amending Order DE 76-16, filed 5/3/76)

WAC 173-20-050 Lakes coming under purview of chapter 90.58 RCW—Adams County lakes.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T15N-R29E	4-SW1/4	Rodeo Lk.	60.0	R
(2)	T15N-R29E	32-B	Linda Lk.	99.2	R
(3)	T16N-R28E	3-A/B	Black Lks.-Upper	24.8	R
(4)	T16N-R29E	16-N	Thread Lk.	29.4	R
(5)	T16N-R29E	29-N	Unnamed Lk.	21.7	R
(6)	T16N-R29E	31-G	Owl Lk.	20.6	R
(7)	T17N-R38E	9-NE1/4	Twelve Mile Lk.	44.8	R
(8)	T17N-R38E	9/16	Twelve Mile Slough	211.2	R
(9)	T19N-R36E	36	Finnel Lk.	30.9	R
(10)	T19N-R37E	15-SW1/4	Hallin Lk.	33.3	R
(11)	T19N-R37E	21-N1/2	Cow Lk.	226.0	R
(12)	T19N-R38E	3-W1/2	Green Lk.	79.7	R
(13)	T19N-R38E	10-M/Na	Unnamed Lk.	26.1	R
(14)	T20N-R37E	1-W1/2	Fourth-of-July Lk.	74.4 Adams Co. 35.9 Lincoln Co.	R
			110.3 Total		R
(15)	T20N-R38E	12	Pines Lk. (Alkali Lk)	120.8	R
(16)	T20N-R38E	29	Palm Lk.	88.3	R))

Lakes which constitute shorelines of the state within Adams County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-060 Lakes coming under purview of chapter 90.58 RCW—Adams County lakes of statewide significance.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T20N-R37E	12	Sprague Lk.	1202.9 Adams Co. 637.7 Lincoln Co.	R))
			1840.6 Total		R))

Lakes which constitute shorelines of statewide significance within Adams County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-090 Lakes coming under purview of chapter 90.58 RCW—Benton County lakes.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T6N-R31E	5-SW1/4	Mound Pond	34.8	R
(2)	T6N-R31E	7-NE1/4	Yellepit Pond	36.3	R))

Lakes which constitute shorelines of the state within Benton County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 76-16, filed 5/3/76)

WAC 173-20-320 Lakes coming under purview of chapter 90.58 RCW—Island County lakes.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T29N-R2E	24-N1/2	Unnamed Lk.	26.8	R
(2)	T29N-R3E	6-D	Goss Lk.	55.1	R
(3)	T29N-R3E	7-A	Lone Lk.	92.1	R
(4)	T29N-R3E	26	Deer Lk.	82.1	R
(5)	T31N-R1E	6-S1/2	Unnamed Lk.	25.0	R
(6)	T31N-R1E	22	Crockett Lake	500.0	R
(7)	T32N-R3E	30-N	Kristoferson Lk.	25.0	D,R
(8)	T33N-R2E	18-N1/2	Unnamed Lk.	50.0	R
(9)	T34N-R1E	35-NW1/4	Cranberry Lk.	128.1	R))

Lakes which constitute shorelines of the state within Island County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-340 Lakes coming under purview of chapter 90.58 RCW—Jefferson County lakes.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T27N-R1W	1-A/H	Wahl Lk.	22.0	R
(2)	T28N-R1W	6-K/L	Peterson Lk.	22.7	R
(3)	T28N-R1W	18-N1/2	Tarboo Lk.	21.6	R
(4)	T28N-R1W	26-K	Sandy Shore Lk.	36.2	R
(5)	T28N-R2W	12-NW1/4	Crocker Lk.	65.3	R
(6)	T28N-R2W	26-J	Leland Lk.	99.3	R
(7)	T28N-R2W	33-A/B	Lords Lk. (Res.)	56.0	PS,R
(8)	T29N-R1W	9-E1/2	Anderson Lk.	58.7	R
(9)	T29N-R1W	28-L/P	Gibbs Lk.	36.8	R

((Location	Section	Name	Area (Acres)	Use
(10) T30N-R1W	11-D/E	Kah-Tai Lagoon	62.0	R
(11) T30N-R1W	16-H/J	Unnamed Lk.	21.6	R))

Lakes which constitute shorelines of the state within Jefferson County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending WSR 81-13-013, filed 6/11/81)

WAC 173-20-380 Lakes coming under purview of chapter 90.58 RCW—Kitsap County lakes.

((Location	Section	Name	Area (Acres)	Use
(1) T22N-R1W	2-E1/2	Wye Lk.	37.9	R
(2) T22N-R1W	2-E1/2	Carney Lake	18.7 Kitsap Co. 20.5 Pierce Co. <hr/> 39.2 Total	R
(3) T24N-R1E	8-N	Kitsap Lk.	238.4	R
(4) T24N-R1W	2-H	Wildcat Lk.	111.6	R
(5) T24N-R1W	26-M	Union River Res.	93.0	PS
(6) T24N-R1W	31-L	Panther Lk.	74.1 Kitsap Co. 30.0 Mason Co. <hr/> 104.1 Total	R
(7) T24N-R1W	32-C	Mission Lk.	87.7	R
(8) T24N-R1W	35-Q/R	Twin Lks. (Res.)	21.7	PS
(9) T24N-R1W	35-Q/R	Tiger Lk.		
(10) T22N-R1E	10-K/L	Horseshoe Lk.	40.3	R
(11) T23N-R2E	8-E	Long Lk.	314.0	R
(12) T25N-R1E	3-S1/2	Island Lk.	42.7	R
(13) T27N-R2E	21-M	Miller Lk.	25.7	R
(14) T24N-R1W	5	William Symington		R
(15) T24N-R1W	17	Tahuya Lk.		R
(16) T24N-R2W	23&26	Three Fingers Pond & Holland Ponds	30.8	R
(17) T28N-R2E	21	Buck Lk.	22.0	R
(18) T24N-R2W		Morgan Marsh	95.0	R))

Lakes which constitute shorelines of the state within Kitsap County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-400 Lakes coming under purview of chapter 90.58 RCW—Kittitas County lakes.

((Location	Section	Name	Area (Acres)	Use
(1) T17N-R15E	3-A	Manastash Lk.	23.5	R
(2) T20N-R13E	11-F	Easton Lk.	237.6	R,I

((Location	Section	Name	Area (Acres)	Use
(3) T21N-R11E	3-L	Lost Lk.	144.8	R
(4) T21N-R12E	15-NW1/4	Unnamed Lks.	60.0	R
(5) T22N-R13E	2	Cooper Lk.	119.7	R
(6) T23N-R14E	3-NE1/4	Tuequala Lk.	63.0	R))

Lakes which constitute shorelines of the state within Kittitas County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-410 Lakes coming under purview of chapter 90.58 RCW—Kittitas County lakes of statewide significance.

((Location	Section	Name	Area (Acres)	Use
(1) T15N-R23E	32	Priest Rapids-Dam Res.	2080.0 Kittitas Co. 4540.0 Grant Co. 1080.0 Yakima Co. <hr/> 7700.0 Total	R,R
(2) T16N-R23E	17	Wanapum Dam Res.	6308.0 Kittitas Co. 6748.0 Grant Co. 1184.0 Douglas Co. 440.0 Chelan Co. <hr/> 14680.0 Total	
(3) T20N-R14E	10-A	Cle Elum Lk. (Res.)	4810.0	R,I
(4) T21N-R11E	12-H	Keechelus Lk.	2560.0	R,I
(5) T21N-R13E	34-N/P	Kachess Lk.	4540.0	R,I))

Lakes which constitute shorelines of statewide significance within Kittitas County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-15, filed 6/30/72)

WAC 173-22-010 Purpose. Pursuant to RCW 90.58-030 (2)((~~F~~)) (d), the department of ecology herein designates the ((~~wetland areas~~)) shorelands associated with the streams, lakes, and tidal waters which are subject to the provisions of chapter 90.58 RCW.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-22-040 Shoreland area designation criteria. The following criteria contain the standards for the department's designation of shoreland areas associated with shorelines of the state which are subject to the jurisdiction of chapter 90.58 RCW:

- (1) Tidal waters. The shoreland area shall include:
 - (a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark; and

(b) Those wetlands which are in proximity to and either influence or are influenced by the tidal water. This influence includes but is not limited to one or more of the following: Periodic tidal inundation; hydraulic continuity; formation by tidally influenced geohydraulic processes; or a surface connection through a culvert or tide gate;

(2) Lakes. The shoreland area shall include:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark; and

(b) Those wetlands which are in proximity to and either influence or are influenced by the lake. This influence includes but is not limited to one or more of the following: Periodic inundation or hydraulic continuity;

(3) Streams. The shoreland area shall include the greater of:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark;

(b) Those flood plains which extend landward two hundred feet as measured on a horizontal plane from the floodway: Provided, that local government may, at its discretion, include all or a larger portion of the one hundred-year flood plain within the associated shorelands. Designation of this shoreland area shall be in accordance with chapter 173-26 WAC, the state master program. If the applicable master program does not designate the shoreland area for a stream, it shall be designated under the rules which applied at the time of adoption by the department;

(c) Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a flood plain; or hydraulic continuity; and

(d) Those lands within a river delta flood plain except for those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-22-050 Review and update of designations.

Each local government master program shall include a map of shorelands constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)(d). ~~((When such master program is approved by the department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.))~~

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-22-055 Conflicts between designations and criteria. In the event that any of the shoreland designations ~~((shown on the maps adopted in WAC 173-22-060 or))~~ in a shoreline master program ~~((approved under WAC 173-22-050,))~~ conflict with the criteria set forth in this chapter the cri-

teria shall control. The boundary of the designated shoreland areas shall be governed by the criteria set forth in WAC 173-22-040 except that the local government must amend the local master program to reflect the new designation within three years of the discovery of the discrepancy.

AMENDATORY SECTION (Amending WSR 97-04-076, filed 2/5/97, effective 3/8/97)

WAC 173-22-070 Lands within federal boundaries.

~~((In addition to those designations contained in the appendix,))~~ Those nonfederal lands lying within the exterior boundaries of federal lands and those federal lands leased ~~((by the federal government))~~ to other persons, which ~~((lands))~~ fall within the definition of shorelands ~~((contained herein))~~, shall ~~((also))~~ be subject to the jurisdiction of chapter 90.58 RCW. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of chapter 90.58 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 173-22-060 Shoreline designation maps until superseded.
- WAC 173-22-0602 Adams County.
- WAC 173-22-0604 Asotin County.
- WAC 173-22-0606 Benton County.
- WAC 173-22-0608 Chelan County.
- WAC 173-22-0610 Clallam County.
- WAC 173-22-0612 Clark County.
- WAC 173-22-0614 Columbia County.
- WAC 173-22-0616 Cowlitz County.
- WAC 173-22-0618 Douglas County.
- WAC 173-22-0620 Ferry County.
- WAC 173-22-0622 Franklin County.
- WAC 173-22-0624 Garfield County.
- WAC 173-22-0626 Grant County.
- WAC 173-22-0628 Grays Harbor County.
- WAC 173-22-0630 Island County.
- WAC 173-22-0632 Jefferson County.
- WAC 173-22-0634 King County.
- WAC 173-22-0636 Kitsap County.
- WAC 173-22-0638 Kittitas County.
- WAC 173-22-0640 Klickitat County.
- WAC 173-22-0642 Lewis County.
- WAC 173-22-0644 Lincoln County.
- WAC 173-22-0646 Mason County.
- WAC 173-22-0648 Okanogan County.

WAC 173-22-0650 Pacific County.
 WAC 173-22-0652 Pend Oreille County.
 WAC 173-22-0654 Pierce County.
 WAC 173-22-0656 San Juan County.
 WAC 173-22-0658 Skagit County.
 WAC 173-22-0660 Skamania County.
 WAC 173-22-0662 Snohomish County.
 WAC 173-22-0664 Spokane County.
 WAC 173-22-0666 Stevens County.
 WAC 173-22-0668 Thurston County.
 WAC 173-22-0670 Wahkiakum County.
 WAC 173-22-0672 Walla Walla County.
 WAC 173-22-0674 Whatcom County.
 WAC 173-22-0676 Whitman County.
 WAC 173-22-0678 Yakima County.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-020 Definitions. In addition to the definitions and concepts set forth in RCW 90.58.030, as amended, and the other implementing rules for the Washington State Shoreline Management Act, as used herein, the following words and phrases shall have the following meanings:

(1) "Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.

(2) "Adoption by rule" means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

(3)(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products

including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

(i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;

(ii) Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

(iii) Farm residences and associated equipment, lands, and facilities; and

(iv) Roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agricultural activities are conducted (~~as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program~~).

(4) "Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

(5) "Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

(6) "Aquaculture" means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

(7) "Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

(8) "Critical areas" as defined under chapter 36.70A RCW includes the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable waters;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(9) "Department" means the state department of ecology.

(10) "Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivi-

sion ordinances, and binding site plan ordinances together with any amendments thereto.

(11) "Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

(12) "Drift cell," "drift sector," or "littoral cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift.

(13) "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

(14) "Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

(15) "Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

(16) "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

(17) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

(18) "Floating on-water residence" means any floating structure other than a floating home, as defined by this chapter:

(a) That is designed or used primarily as a residence on the water and has detachable utilities; and

(b) Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

(19) "Flood plain" is synonymous with one hundred-year flood plain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

~~((18))~~ (20) "Floodway" means the area, as identified in a master program, that either:

(a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or

(b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

~~((19))~~ (21) "Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

~~((20))~~ (22) "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

~~((21))~~ (23) "Guidelines" means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

~~((22))~~ (24) "Local government" means any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

~~((23))~~ (25) "Marine" means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

~~((24))~~ (26)(a) "Master program" or "shoreline master program" shall mean the comprehensive use plan for a described area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020 and the applicable guidelines. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(b) "Comprehensive master program update" means a master program adopted for compliance with RCW 90.58.080(2) that fully achieves the procedural and substantive requirements of the department's shoreline master program guidelines effective January 17, 2004, as now or hereafter amended;

(c) ~~((Limited))~~ Master program amendment" means ~~((a master program))~~ an amendment that ~~((addresses specific procedural and/or substantive topics and which))~~ is not intended to meet the complete requirements of a comprehensive master program update. Master program amendments include locally initiated amendments to address specific procedural and/or substantive topics as well as amendments adopted to meet the periodic review requirements of RCW 90.58.080(4).

~~((25))~~ (27) "May" means the action is acceptable, provided it conforms to the provisions of this chapter.

~~((26))~~ (28) "Must" means a mandate; the action is required.

~~((27))~~ (29) "Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

~~((28))~~ (30) "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

- Comparatively high fish or wildlife density;
- Comparatively high fish or wildlife species diversity;
- Fish spawning habitat;
- Important wildlife habitat;
- Important fish or wildlife seasonal range;
- Important fish or wildlife movement corridor;
- Rearing and foraging habitat;
- Important marine mammal haul-out;
- Refugia habitat;
- Limited availability;
- High vulnerability to habitat alteration;
- Unique or dependent species; or
- Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine

shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

~~((29))~~ (31) "Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

(a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

~~((30))~~ (32) "Provisions" means policies, regulations, standards, guideline criteria or environment designations.

~~((31))~~ (33) "Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

~~((32))~~ (34) "Shall" means a mandate; the action must be done.

~~((33))~~ (35) "Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

~~((34))~~ (36) "Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

~~((35))~~ (37) "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

~~((36))~~ (38) "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by

clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~((37))~~ (39) "State master program" means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

~~((38))~~ (40) "Substantially degrade" means to cause significant ecological impact.

~~((39))~~ (41) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

~~((40))~~ (42) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~((41))~~ (43) "Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

~~((42))~~ (44) "Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

~~((43))~~ (45) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-030 Master programs required—State master program contents. ~~((1))~~ Chapter 90.58 RCW requires all local governments with shorelines of the state

within their boundaries to develop and administer a shoreline master program. The state master program is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department, together with any changes pursuant to WAC 173-26-040. Local governments which are required to develop and administer shoreline master programs are listed in WAC 173-26-080.

~~((2) All shoreline master programs adopted by reference in chapter 173-19 WAC existing as of the effective date of this chapter, remain in full force and effect and continue to be considered part of the state master program, as defined herein.)~~

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-060 State master program—Records maintained by department. The department shall maintain records for all master programs currently in effect and subsequent amendments thereto. Master program records shall be organized consistent with the state master program register and shall be available for public viewing and inspection during normal business hours at the headquarters of the department.

Records of master programs no longer in effect will be relocated in accordance with the records retention schedule approved by the state records committee.

Such records should be maintained in two groups of files as follows:

(1) Shoreline master program working files corresponding to each proposed master program or amendment containing, where applicable:

(a) Initial submittal from local government per WAC 173-26-110;

~~(b) ((Record of notice to the public, interested parties, agencies and tribes;~~

~~(c) Staff reports, analysis and recommendations;~~

~~(d) Pertinent correspondence between local government and the department;~~

~~(e))~~ The department's letter denying, approving as submitted or approving alternatives together with findings and conclusions and amended text and/or maps;

~~((f))~~ (c) Documents related to any appeal of the department's action on the amendment;

~~((g))~~ (d) Supplemental materials including:

(i) Interested party mailing list;

(ii) Comment letters and exhibits from federal, state, local, and tribal agencies;

(iii) Comment letters and exhibits from the general public;

(iv) ~~((Recorded tapes))~~ Recordings and/or a summary of hearing oral testimony;

(v) A concise explanatory statement, if adopted by rule.

(2) State master program files, containing the master program currently in effect, with all text and map amendments incorporated, constituting the official state master program approved document of record.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-080 Master programs required of local governments. The following local governments, listed alphabetically by county, are required to develop and administer a shoreline master program:

Adams County.

Asotin County.

Asotin, city of.
Clarkston, city of.

Benton County.

Benton City, city of.
Kennewick, city of.
Prosser, city of.
Richland, city of.
West Richland, city of.

Chelan County.

Cashmere, city of.
Chelan, city of.
Entiat, town of.
Leavenworth, city of.
Wenatchee, city of.

Clallam County.

Forks, city of.
Port Angeles, city of.
Sequim, city of.

Clark County.

Battle Ground, city of.
Camas, city of.
LaCenter, ~~((town))~~ city of.
Ridgefield, ~~((town))~~ city of.
Vancouver, city of.
Washougal, city of.
Woodland, city of.

Columbia County.

Dayton, city of.
Starbuck, town of.

Cowlitz County.

Castle Rock, city of.
Kalama, city of.
Kelso, city of.
Longview, city of.
Woodland, city of.

Douglas County.

Bridgeport, town of.
Coulee Dam, city of.
East Wenatchee, city of.
Rock Island, town of.

Ferry County.

Republic, town of.

Franklin County.

Mesa, town of.
Pasco, city of.

Garfield County.

~~((Pomeroy, city of.))~~

Grant County.

Coulee City, city of.
Coulee Dam, city of.
Electric City, city of.
Grand Coulee, city of.
Krupp, town of.
Moses Lake, city of.
Soap Lake, city of.
Wilson Creek, town of.

Grays Harbor County.

Aberdeen, city of.
Cosmopolis, city of.
Elma, city of.
Hoquiam, city of.
McCleary, town of.
Montesano, city of.
Ocean Shores, city of.
Westport, city of.

Island County.

Coupeville, town of.
Langley, city of.
Oak Harbor, city of.

Jefferson County.

Port Townsend, city of.

King County.

Auburn, city of.
Beaux Arts Village, town of.
Bellevue, city of.
Black Diamond, city of.
Bothell, city of.
Burien, city of.
Carnation, town of.
Covington, city of.
Des Moines, city of.
Duvall, city of.
Enumclaw, city of.
Federal Way, city of.
Hunts Point, town of.
Issaquah, city of.
Kenmore, city of.
Kent, city of.
Kirkland, city of.
Lake Forest Park, city of.
Maple Valley, city of.
Medina, city of.
Mercer Island, city of.
Milton, city of.
Normandy Park, city of.
North Bend, city of.
Pacific, city of.
Redmond, city of.
Renton, city of.
Sammamish, city of.
Sea-Tac, city of.
Seattle, city of.

- Shoreline, city of.
 Skykomish, town of.
 Snoqualmie, city of.
 Tukwila, city of.
 Woodinville, city of.
 Yarrow Point, town of.
- Kitsap County.
 Bremerton, city of.
 Port Orchard, city of.
 Poulsbo, city of.
 Bainbridge Island, city of.
- Kittitas County.
 Cle Elum, city of.
 Ellensburg, city of.
 South Cle Elum, town of.
- Klickitat County.
 Bingen, town of.
 Goldendale, city of.
 White Salmon, town of.
- Lewis County.
 Centralia, city of.
 Chehalis, city of.
 Morton, city of.
 Napavine, city of.
 Pe Ell, town of.
 Toledo, city of.
 Vader, city of.
 Winlock, city of.
- Lincoln County.
 Odessa, town of.
 Reardan, town of.
 ((Sprague, city of.))
- Mason County.
 Shelton, city of.
- Okanogan County.
 Brewster, town of.
 Conconully, town of.
 Coulee Dam, city of.
 Elmer City, town of.
 Okanogan, city of.
 Omak, city of.
 Oroville, town of.
 Pateros, town of.
 Riverside, town of.
 Tonasket, town of.
 Twisp, town of.
 Winthrop, town of.
- Pacific County.
 Ilwaco, town of.
 Long Beach, town of.
 Raymond, city of.
 South Bend, city of.
- Pend Oreille County.
 Cusick, town of.
 Lone, town of.
- Metaline, town of.
 Metaline Falls, town of.
 Newport, city of.
- Pierce County.
 Bonney Lake, city of.
 Buckley, city of.
 Dupont, city of.
 Eatonville, town of.
 Fife, city of.
 Gig Harbor, city of.
 Lakewood, city of.
 Milton, city of.
 Orting, city of.
 Pacific, city of.
 Puyallup, city of.
 Roy, city of.
 Ruston, town of.
 South Prairie, town of.
 Steilacoom, town of.
 Sumner, city of.
 Tacoma, city of.
 University Place, city of.
 Wilkeson, town of.
- San Juan County.
 Friday Harbor, town of.
- Skagit County.
 Anacortes, city of.
 Burlington, city of.
 Concrete, town of.
 Hamilton, town of.
 La Conner, town of.
 Lyman, town of.
 Mount Vernon, city of.
 Sedro Woolley, city of.
- Skamania County.
 North Bonneville, city of.
 Stevenson, town of.
- Snohomish County.
 Arlington, city of.
 Bothell, city of.
 Brier, city of.
 Darrington, town of.
 Edmonds, city of.
 Everett, city of.
 Gold Bar, town of.
 Granite Falls, town of.
 Index, town of.
 Lake Stevens, city of.
 Lynnwood, city of.
 Marysville, city of.
 Monroe, city of.
 Mountlake Terrace, city of.
 Mukilteo, city of.
 Snohomish, city of.
 Stanwood, city of.
 Sultan, town of.
 Woodway, town of.

- Spokane County.
 - Latah, town of.
 - Liberty Lake, town of.
 - Medical Lake, town of.
 - Millwood, town of.
 - Rockford, town of.
 - Spokane, city of.
 - Spokane Valley, city of.
 - Waverly, town of.
- Stevens County.
 - Chewelah, city of.
 - Kettle Falls, city of.
 - Marcus, town of.
 - Northport, town of.
- Thurston County.
 - Bucoda, town of.
 - Lacey, city of.
 - Olympia, city of.
 - Tenino, town of.
 - Tumwater, city of.
- Wahkiakum County.
 - Cathlamet, town of.
- Walla Walla County.
 - Prescott, city of.
 - Waitsburg, town of.
 - Walla Walla, city of.
- Whatcom County.
 - Bellingham, city of.
 - Blaine, city of.
 - Everson, city of.
 - Ferndale, city of.
 - Lynden, city of.
 - Nooksack, city of.
 - Sumas, city of.
- Whitman County.
 - Albion, town of.
 - Colfax, city of.
 - Malden, town of.
 - Palouse, city of.
 - Pullman, city of.
 - Rosalia, town of.
 - Tekoa, city of.
- Yakima County.
 - Grandview, city of.
 - Granger, town of.
 - Mabton, city of.
 - Naches, town of.
 - Selah, city of.
 - Toppenish, city of.
 - Union Gap, city of.
 - Wapato, city of.
 - Yakima, city of.
 - Zillah, city of.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-090 Locally initiated review—Periodic review—Public involvement (~~encouraged—Amendment of comprehensive plans, development regulations and master programs~~) **and approval procedures.** (1) Locally initiated master program review.

(a) Each local government should ~~((periodically))~~ review ~~((a))~~ its shoreline master program ~~((under its jurisdiction))~~ and make amendments ~~((to the master program))~~ deemed necessary to reflect changing local circumstances, new information or improved data. ~~((Each local government shall also review any master program under its jurisdiction and make amendments to the master program necessary to comply with the requirements of RCW 90.58.080 and any applicable guidelines issued by the department. When the amendment is consistent with chapter 90.58 RCW and its applicable guidelines, it may be approved by local government and the department or adopted by rule when appropriate by the department.~~

~~In developing master programs and amendments thereto,))~~ Local governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise.

(b) At the discretion of local governments, amendments to address changing local circumstances, new information or improved data may be combined with statutorily mandated periodic reviews.

(2) Periodic review requirements.

(a) Following the comprehensive updates required by RCW 90.58.080(2), each local government shall conduct a review of their master program at least once every eight years on a schedule established in the act. Following the review, local governments shall, if necessary, revise their master programs. This review and revision is referred to in this section as the periodic review.

(b) Deadlines for periodic review. Local governments must take action to review, and if necessary, revise their master programs according to the schedule established in RCW 90.58.080 (4)(b). Deadlines for completion of periodic review are as follows:

Table WAC 173-26-090.1

Deadlines for Completion of Periodic Review

<u>Reviews must be completed on or before June 30th of:</u>	<u>Affected counties and the cities and towns within:</u>
<u>2019/2027*</u>	<u>King, Pierce, Snohomish.</u>
<u>2020/2028*</u>	<u>Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom.</u>
<u>2021/2029*</u>	<u>Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima.</u>

Reviews must be completed on or before June 30th of: 2022/2030*

Affected counties and the cities and towns within:

Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman.

*And every eight years *thereafter*.

(c) Taking legislative action.

(i) The periodic review must be accomplished through legislative action. Legislative action means the adoption of a resolution, motion, or ordinance following notice and a public hearing including, at a minimum, findings that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor. Legislative findings that no revisions are needed are referred to in this section as "findings of adequacy."

(ii) Legislative action includes two components. It includes a review of the shoreline master program and it includes the adoption of either findings of adequacy or any amendments necessary to bring the program into compliance with the requirements of the act.

(iii) Legislative actions concluding the periodic review must be followed by department approval.

(d) The required minimum scope of review.

(i) The purpose and scope of the periodic review as established by the act is:

(A) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(B) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(ii) The review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations. The review ensures that shoreline master programs do not fall out of compliance over time through inaction.

(iii) The minimum scope of review is narrow compared to the comprehensive updates required by RCW 90.58.080 (2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. The comprehensive updates were based on an inventory and analysis of shoreline characteristics and a long-term assessment of shoreline protection. Everything in existing master programs was subject to review. By contrast, the presumption during the periodic reviews is that each master program was affirmatively approved in its entirety for consistency with the act and implementing rules that were in effect at the time of the department's review. The periodic review addresses changes

in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review. There is no minimum requirement to redo shoreline inventory and characterization reports or restoration plans.

(3) Procedures for conducting periodic reviews.

(a) Public participation program.

(i) In conducting the periodic review, the department and local governments, pursuant to RCW 90.58.130, shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program. Local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-104.

(ii) Counties and cities (~~planning under chapter 36.70A RCW,~~) shall establish and broadly disseminate to the public a public participation program identifying procedures whereby (~~proposed amendments~~) review of the (~~comprehensive plan and development regulations relating to shorelines of the state~~) shoreline master program will be considered by the local governing body consistent with RCW (~~36.70A-130~~) 36.70A.140. Such procedures shall provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments.

The public participation program should include a schedule for the periodic review and identify when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on the scope of the review and proposed changes to the master program. Counties and cities may adjust the public participation program to best meet the intent of the participation requirement.

(b) Review and analysis to determine need for revisions.

(i) Review amendments to the act and shoreline master program guidelines.

Local governments must review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule amendments to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable changes to the act and master program guidelines.

(ii) Review relevant comprehensive plans and regulations.

Local governments must review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them.

WAC 173-26-191 (1)(e) and 173-26-211(3) provide guidance on determining internal consistency. It is the responsibility of the local government to assure consistency between the master program and other elements of the com-

prehensive plan and development regulations. Local governments should document the consistency analysis to support proposed changes.

(iii) Optional review and analysis of changed local circumstances. Local governments may consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data as described under subsection (1) of this section. Local governments should consider whether the significance of the changed circumstances warrants amendments. The decision as to whether a changed local circumstance warrants a master program amendment rests with the local government. It is not necessary to update a comprehensive inventory and characterization to make that determination.

(c) Take legislative action.

(i) At the end of the review process, counties and cities must take legislative action declaring the review process complete.

(ii) The notice of hearing for legislative actions that are intended to address the periodic review process must state that the actions to be considered are part of the periodic review process under RCW 90.58.080(4).

(iii) The findings for any legislative action on the periodic review process must state that the action is intended to satisfy the requirements of RCW 90.58.080(4).

(iv) A local government that determines after review that amendments are not needed shall adopt a resolution, motion, or ordinance declaring findings of adequacy. Findings of adequacy are a local written determination that no revisions to a shoreline master program are needed to comply with the requirements of RCW 90.58.080(4).

(d) Submittal to the department.

(i) A local government that determines amendments are needed shall submit the amendments to the department consistent with WAC 173-26-110.

(ii) A local government that determines amendments are not needed shall submit the following in lieu of the requirements of WAC 173-26-110:

(A) A resolution or ordinance declaring findings of adequacy.

(B) Evidence of compliance with applicable public notice and consultation requirements.

(C) Copies of all public, agency and tribal comments received during any applicable public comment periods, or where no comments have been received, a statement to that effect.

(D) A completed checklist demonstrating review elements have been considered, and are either inapplicable or have already been addressed through previous locally initiated amendments prior to the scheduled periodic review.

(e) State process for approving periodic reviews.

(i) The department must issue a formal approval of any amendment or findings of adequacy. Department approval is necessary to affirmatively conclude the periodic review process, to confirm that state review of local action has occurred, and to establish a definitive appeal window consistent with RCW 90.58.190.

(ii) Where the local government final action includes master program amendments, local governments and the

department shall follow applicable adoption procedures described in WAC 173-26-120.

(iii) Where the local government final action is to adopt findings of adequacy, the department shall follow applicable adoption procedures described in WAC 173-26-120. The department shall review the findings of adequacy solely for consistency with RCW 90.58.080(4) and this section.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-100 Standard local process for approving/amending shoreline master programs. This section establishes local procedures for approving new master programs and preparing comprehensive master program updates required by RCW 90.58.080(2). A local government that proposes master program amendments may follow these procedures or the optional joint review process outlined in WAC 173-26-104.

Prior to submittal of a new or amended master program to the department, local government shall solicit public and agency comment during the drafting of proposed new or amended master programs. The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal. Recognizing that the department must approve all master programs before they become effective, early and continuous consultation with the department is encouraged during the drafting of new or amended master programs. For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented that ~~((insure))~~ ensure early and continuous public participation consistent with WAC ~~((365-195-600))~~ 365-196-600.

At a minimum, local government shall:

(1) Conduct at least one public hearing to consider the draft proposal;

(2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(a) Reference to the authority(s) under which the action(s) is proposed;

(b) A statement or summary of the proposed changes to the master program;

(c) The date, time, and location of the hearing, and the manner in which interested persons may present their views; and

(d) Reference to the availability of the draft proposal for public ~~((inspection at the local government office or upon request))~~ review;

(3) Consult with and solicit the comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should

include adjacent local governments with jurisdiction over common shorelines of the state;

(4) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions;

(5) Solicit comments on the draft proposal from the department prior to local approval. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of ~~((community, trade, and economic development))~~ commerce of its intent to adopt shoreline policies or regulations, ~~((at least sixty days prior to final local approval;))~~ pursuant to RCW 36.70A.106;

(6) Comply with chapter 43.21C RCW, the State Environmental Policy Act; and

(7) Approve the proposal and submit for final agency approval as outlined in WAC 173-26-110.

NEW SECTION

WAC 173-26-104 Optional joint review process for amending shoreline master programs. This section establishes an optional joint review process a local government may elect to use for master program amendments other than comprehensive updates. The process combines the local and state public comment periods required by RCW 90.58.090. Recognizing that the optional review process requires close coordination in conducting a joint public review, early and continuous consultation with the department is required during the drafting of amendments. The department and local government should work collaboratively to address local interests while ensuring proposed amendments are consistent with the policy of RCW 90.58.020 and applicable guidelines.

(1) Local government solicits early public and agency feedback.

(a) Prior to commencing the amendment process, local governments shall notify the department of intent to develop an amendment under the optional joint review process.

The department will provide shoreline master program amendment checklists to help local governments identify issues to address for comprehensive updates, periodic reviews, and other amendments. The checklists will not create new or additional requirements beyond the provisions of this chapter. The checklists are intended to aid in the preparation and review of master program updates and amendments.

(b) Prior to submittal of a master program amendment to the department, local government shall solicit public and agency comment during the drafting of proposed amendments.

(i) The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal.

(ii) Local government shall make all reasonable effort to consult with and solicit comments of any persons, groups, federal, state, regional, or local agency, and tribes, having

interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state, where applicable.

(iii) For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented to ensure early and continuous public participation consistent with WAC 365-196-600.

(c) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions.

(2) Local government and ecology conduct joint public comment period.

At a minimum, local governments and the department shall conduct the following steps:

(a) Local governments planning under the Growth Management Act shall notify the department of commerce of its intent to adopt shoreline policies or regulations, pursuant to RCW 36.70A.106.

(b) Local governments shall comply with chapter 43.21C RCW, the State Environmental Policy Act.

(c) Local governments and the department will provide a formal public comment period.

(i) Provide a public comment period of at least thirty days. The local government will provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the proposal. The department will provide notice to the state interested parties list of persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter.

(ii) Conduct at least one joint local/state public hearing to consider the draft proposal. The local government will publish notice of the joint local/state hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(A) Reference to the authority(s) under which the action(s) is proposed;

(B) The date, time, and location of the hearing, and the manner in which interested persons may present their views;

(C) A statement or summary of the proposed changes to the master program; and

(D) Reference to the availability of the draft proposal for public review.

(d) Local governments shall make available to the public and shall accept comment on the following materials:

(i) Amended text clearly identifying the proposed changes;

(ii) Any amended environment designation map(s), showing both existing and proposed designations, with justification for changes;

(iii) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal; and

(iv) An initial submittal checklist and other supporting material indicating how the proposed amendment is consistent with the policy of RCW 90.58.020 and applicable guidelines.

(e) Local governments shall prepare a response to public comments.

(i) Within thirty days after the close of the joint public comment period, the local government shall document the submitted comments and prepare a written response to the public comments. The response may identify changes to the proposed amendment in response to public comments. Any proposed changes shall be evaluated by the local government for consistency with the policy of RCW 90.58.020 and applicable guidelines.

(ii) A local government may request additional time to prepare responses. Such requests will be accompanied by estimates of additional time needed.

(3) Local government obtains initial determination from the department.

(a) After conducting the joint public comment period, and prior to local government adoption, the local government shall submit the proposed amendment to the department for initial review. In addition to providing the public comment record of materials, initial submittal shall include:

(i) Documentation of all public comments received during the comment period;

(ii) Local jurisdiction responses to public comments;

(iii) Description of any proposed amendments as a result of the public testimony, findings supporting the consistency of the proposed amendments with the policy of RCW 90.58.020 and applicable guidelines;

(iv) Updated text and map amendments.

(b) The department shall provide the local government an initial determination of whether or not the proposal is consistent with the policy of RCW 90.58.020 and applicable guidelines.

(i) The department will provide the initial determination within thirty days of submittal. For complex proposals, the department may indicate to the local government that a longer review period of up to forty-five days is needed.

(ii) If the department's initial determination is that the proposal is consistent with applicable laws and rules, the department will provide a written statement of initial concurrence.

(iii) If the department concludes that the proposal is not consistent with applicable laws and rules, the department will provide a written statement describing the specific areas of concern.

(4) Approve the proposal. After receiving the initial determination from the department, the local government adopts the amendment through resolution or ordinance and submits it for final agency approval as outlined in WAC 173-26-110.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-110 Submittal to department of proposed master programs/amendments. A master program or amendment proposed by local government shall be submitted

to the department for its review and formal action. Submittals may be in digital format. A complete submittal shall include ~~((two copies of))~~ the following, where applicable:

(1) Documentation (i.e., signed resolution or ordinance) that the proposal has been approved by the local government;

(2) If the proposal includes text amending a master program document of record, it shall be submitted in a form that can replace or be easily incorporated within the existing document. Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the master program are clearly identifiable;

(3) Amended environment designation map(s), showing both existing and proposed designations, together with corresponding boundaries described in text for each change of environment. All proposals for changes in environment designation and redesignation shall provide written justification for such based on existing development patterns, the biophysical capabilities and limitations of the shoreline being considered, and the goals and aspirations of the local citizenry as reflected in the locally adopted comprehensive land use plan;

(4) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal, staff reports, records of the hearing, and/or other materials which document the necessity for the proposed changes to the master program;

(5) Evidence of compliance with chapter 43.21C RCW, the State Environmental Policy Act, specific to the proposal;

(6) Evidence of compliance with the public notice and consultation requirements of either WAC 173-26-100 or 173-26-104;

(7) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process or, where no comments have been received, a comment to that effect.

(8) A summary of amendments made in response to comments received.

(9) A copy of the applicable master program submittal checklist;

(a) For comprehensive master program updates, a checklist completed in accordance with WAC 173-26-201 ~~((2))~~ ~~and~~ (3)(a) and (h).

~~((9))~~ (b) For periodic reviews prepared under RCW 90.58.080(4), a checklist completed in accordance with WAC 173-26-090.

(c) For locally initiated amendments, a checklist and any supporting material demonstrating consistency with RCW 90.58.020 and applicable guidelines.

(10) For comprehensive master program updates, copies of the inventory and characterization, use analysis, restoration plan and cumulative impacts analysis.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-120 State process for approving/amending shoreline master programs. Review and

approval of master programs and amendments by the department shall follow the procedures set forth below(~~(:~~

~~FORMAL REVIEW:)~~. The state public comment period under subsection (2) of this section does not apply to master programs adopted under the optional joint review process of WAC 173-26-104.

(1) Formal review for completeness:

(a) The department shall review the submitted master program or amendment for compliance with either WAC 173-26-100 or 173-26-104, and 173-26-110. The department shall notify the local government in writing when it determines that a complete submittal has been received.

(b) If the submittal is determined to be incomplete, the department will identify the deficiencies and so notify the local government in writing. The review process will not ~~((commence))~~ begin until the department determines the submittal is complete.

(2) State public comment period:

For local governments that have followed WAC 173-26-100, the department shall follow the procedures below:

(a) The department shall provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the local government proposal and to all persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter. The comment period shall be at least thirty days, unless the department determines that a lack of complexity or controversy surrounding the proposal supports a shorter period.

~~((3))~~ (b) For master program or amendment proposals involving local governments planning under chapter 36.70A RCW, the department shall provide notice to the department of ~~((community, trade, and economic development))~~ commerce of its intent to ~~((commence))~~ begin formal review of the local government proposal.

~~((4))~~ (c) At the department's discretion, it may conduct a public hearing during the comment period in the jurisdiction proposing the master program or amendment.

~~((5))~~ (d) If the department conducts a hearing pursuant to subsection ~~((4))~~ (c) of this section, it shall publish notice of the hearing in at least one newspaper of general circulation in the area affected by the master program. The public notice shall include:

~~((a))~~ (i) A description of the proposed master program or amendment;

~~((b))~~ (ii) Reference to the authority under which the action is proposed;

~~((c))~~ (iii) The dates, times, and locations of the public hearing, and the manner in which interested persons may obtain copies of the proposal and present their views.

For master program or amendment proposals involving adoption by rule, the notice of the hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

~~((6))~~ (e) Within fifteen days after the close of the department's public comment period, the department shall request of the local government submitting the proposal a review of the issues if any, identified by the public, interested parties, groups, agencies, and tribes, and a written response

as to how the proposal addresses the identified issues consistent with the policy of RCW 90.58.020 and the applicable guidelines. Local government shall submit its response to the department within forty-five days of the date of the department's letter requesting a response. If no response is received by the department within the forty-five-day period, the department may proceed with action on the proposal according to subsection ~~((7))~~ (3) of this section. Within the forty-five-day period, the local government may request in writing additional time to prepare a response.

~~((APPROVAL:~~

~~(7))~~ (3) Approval:

(a) Within thirty days after receipt of the local government written response pursuant to subsection ~~((6))~~ (2)(e) of this section, or for jurisdictions that followed WAC 173-26-104, after determination of completeness pursuant to subsection (1)(a) of this section, the department shall:

(i) Make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines;

(ii) For amendments adopted under WAC 173-26-100, provide a response to the issues identified in subsection ~~((6))~~ (2)(e) of this section; and

(iii) Either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with chapter 90.58 RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government~~((:))~~ and made available to all interested persons, parties, tribes, groups, and agencies of record on the proposal.

(A) In reaching its determination of consistency with the policy of RCW 90.58.020 and the applicable guidelines, the department shall approve those parts of a master program relating to shorelines unless it determines that the submitted parts are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(B) The department shall approve those parts of a master program relating to shorelines of statewide significance only after determining the program provides for optimum implementation of the statewide interest as set forth in the policy of RCW 90.58.020 and the applicable guidelines.

~~((a) In cases where the proposal is approved as submitted, the effective date of the approved master program or amendment shall be the date of the department's letter to local government approving the submitted master program or amendments.)~~

(b) If the department recommends changes to the proposal, within thirty days after the department ~~((mails))~~ provides the written findings and conclusions to the local government pursuant to this subsection ~~((7))~~ (3), the local government may:

(i) Agree to the proposed changes~~((Receipt by the department of the written notice of agreement from the local government shall constitute final action by the department approving the revised submittal.))~~ by written notice to the department. The department shall provide written notice of the local government acceptance ~~((shall be provided by the~~

department)) to all parties of record (~~(In such cases, the effective date of the approved master program or amendment is the date the department receives from local government the written notice of agreement))~~); or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally proposed by the department in this subsection (~~((7))~~) (3) and with the policy of RCW 90.58.020 and the applicable guidelines, it shall approve the alternative changes and provide written notice to all parties of record. (~~(In such cases, the effective date of the approved master program or amendments is the date of the department's letter to local government approving the alternative proposal.)~~)

If the department determines the alternative proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may either deny the alternative proposal or at the request of local government start anew with the review and approval process beginning (~~(at)~~) in WAC 173-26-120.

~~((8))~~ (c) Department notice of final action.

(i) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments.

(ii) If the notice is for a local government that does not fully plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

(d) Effective date.

(i) A master program or amendment thereto takes effect (~~(when and)~~) in such form as it is approved or adopted by rule by the department (~~(except when appealed to the shorelines board as provided for in RCW 90.58.190(4) for local governments not planning under chapter 36.70A RCW. The department's approved document of record, filed at the department, constitutes the official master program.~~

~~(9) For local governments planning under chapter 36.70A RCW, after final action by the department on a local government's shoreline master program or amendment the local government shall (pursuant to RCW 90.58.090) promptly publish a notice that the department has taken final action on the master program or amendment. For purposes of this section, the date of publication for the master program adoption or amendment shall be the date on which the local government publishes the notice that the department has taken final action on the master program or amendment)). The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal.~~

(ii) For master programs adopted by rule, the effective date is governed by RCW 34.05.380.

(iii) The department's written notice to the local government must conspicuously and plainly state that it is the

department's final decision and that there will be no further modifications to the proposal.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-130 Appeal procedures for master programs. (1) For local governments planning under chapter 36.70A RCW, appeals shall be to the growth management hearings board (~~(The petition must be filed pursuant to the requirements of RCW 90.58.190))~~ as provided in RCW 36.70A.290. The department's (~~(ecology's))~~ written notice of final action will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2).

(2) For local governments not planning under chapter 36.70A RCW, all petitions for review shall be filed with the state shorelines hearings board within thirty days of the (~~(written decision by the department approving or denying the master program or amendment. The department's written notice will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2))~~) date the department publishes notice of its final decision under RCW 90.58.090(8).

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-160 Local government annexation. Except as provided in WAC 173-26-150, in the event of annexation of a shoreline of the state, the local government assuming jurisdiction shall notify the department of such annexation and develop or amend a master program to include the annexed area. Such master program development or amendment shall be consistent with the policy of RCW 90.58.020 and the applicable guidelines and shall be submitted to the department for approval no later than one year from the effective date of annexation.

Until a new or amended master program is adopted or approved by the department, any decision on an application for a shoreline permit in the annexed shoreline area shall be based upon compliance with the master program in effect for the area prior to annexation.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-201 Process to prepare or amend shoreline master programs. (1) **Applicability.** This section outlines the process to prepare a comprehensive shoreline master program adoption or update. This section also establishes approval criteria for (~~(limited))~~ shoreline master program amendments.

(a) All master program amendments are subject to the minimum procedural rule requirements of WAC 173-26-010 through 173-26-160, and approval by the department as provided in RCW 90.58.090.

(b) Comprehensive master program adoptions and updates shall fully achieve the procedural and substantive requirements of these guidelines. (~~(Adoption of new shoreline master programs and amendments submitted to meet the~~

comprehensive update requirements of RCW 90.58.080 are a statewide priority over and above other amendments.)

(c) ~~((Limited))~~ Master program amendments may be approved by the department provided ~~((the department concludes))~~:

(i) ~~((The amendment is necessary to:~~

~~(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;~~

~~(B) Include a newly annexed shoreline of the state within the local government jurisdiction;~~

~~(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;~~

~~(D) Improve consistency with the act's goals and policies and its implementing rules; or~~

~~(E) Correct errors or omissions.~~

~~(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;~~

~~((iii))~~ The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;

~~((iv))~~ (ii) The amendment is consistent with all applicable policies and standards of the act;

~~((v))~~ (iii) All procedural rule requirements for public notice and consultation have been satisfied; and

~~((vi))~~ (iv) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the ~~((limited))~~ amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

~~((d) A limited amendment in process at the time a local government's comprehensive update begins will be processed to completion, unless requested otherwise by the local government.)~~

(2) Basic concepts.

(a) **Use of scientific and technical information.** To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government, chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research pro-

cedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

(i) Scientific information and management recommendations on which the master program provisions are based;

(ii) Assumptions made concerning, and data gaps in, the scientific information; and

(iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201 (3)(b). Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

(b) **Adaptation of policies and regulations.** Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information. Local governments should monitor actions taken to implement the master program and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time. In reviewing proposals to amend master programs, the department shall evaluate whether the change promotes achievement of the policies of the master program and the act. As provided in WAC 173-26-171 (3)(d), ecology will periodically review these guidelines, based in part on information provided by local government, and through that process local government will receive additional guidance on significant shoreline management issues that may require amendments to master programs.

(c) **Protection of ecological functions of the shorelines.** This chapter implements the act's policy on protection of shoreline natural resources through protection and restoration of ecological functions necessary to sustain these natural resources. The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical and biological components, that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any

time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these components.

As established in WAC 173-26-186(8), these guidelines are designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by:

- Ecosystem-wide processes such as those associated with the flow and movement of water, sediment and organic materials; the presence and movement of fish and wildlife and the maintenance of water quality.
- Individual components and localized processes such as those associated with shoreline vegetation, soils, water movement through the soil and across the land surface and the composition and configuration of the beds and banks of water bodies.

The loss or degradation of the functions associated with ecosystem-wide processes, individual components and localized processes can significantly impact shoreline natural resources and may also adversely impact human health and safety. Shoreline master programs shall address ecological functions associated with applicable ecosystem-wide processes, individual components and localized processes identified in the ecological systems analysis described in WAC 173-26-201 (3)(d)(i).

Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions. For example, an intensely developed harbor area may also serve as a fish migration corridor and feeding area critical to species survival. Also, ecosystems are interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species associated with the shoreline depend on the health of both terrestrial and aquatic environments. Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.

Master programs shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources. To achieve this standard while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply:

- Environment designations with appropriate use and development standards; and
- Provisions to address the impacts of specific common shoreline uses, development activities and modification actions; and
- Provisions for the protection of critical areas within the shoreline; and
- Provisions for mitigation measures and methods to address unanticipated impacts.

When based on the inventory and analysis requirements and completed consistent with the specific provisions of these guidelines, the master program should ensure that development will be protective of ecological functions necessary to sustain existing shoreline natural resources and meet

the standard. The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Master programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201 (2)(f), where such functions are found to have been impaired based on analysis described in WAC 173-26-201 (3)(d)(i). It is intended that local government, through the master program, along with other regulatory and nonregulatory programs, contribute to restoration by planning for and fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local government should identify restoration opportunities through the shoreline inventory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their master programs. The goal of this effort is master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.

(d) **Preferred uses.** As summarized in WAC 173-26-176, the act establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms "water-dependent," "water-related," and "water-enjoyment," as defined in WAC 173-26-020, when discussing appropriate uses for various shoreline areas.

Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 173-26-186, local governments shall, when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below, starting with (d)(i) of this subsection. For shorelines of statewide significance, also apply the preferences as indicated in WAC 173-26-251(2).

(i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

(ii) Reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas

that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

(iii) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.

(iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

(v) Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommodated provided that the preferred uses are reasonably provided for in the jurisdiction.

(e) Environmental impact mitigation.

(i) To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (e)(i)(A) of this subsection being top priority.

(A) Avoiding the impact altogether by not taking a certain action or parts of an action;

(B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) Reducing or eliminating the impact over time by preservation and maintenance operations;

(E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

(F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

(A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

(B) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

(f) **Shoreline restoration planning.** Consistent with principle WAC 173-26-186 (8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program. The approach to restoration planning may vary significantly among local jurisdictions, depending on:

- The size of the jurisdiction;
- The extent and condition of shorelines in the jurisdiction;
- The availability of grants, volunteer programs or other tools for restoration; and
- The nature of the ecological functions to be addressed by restoration planning.

Master program restoration plans shall consider and address the following subjects:

(i) Identify degraded areas, impaired ecological functions, and sites with potential for ecological restoration;

(ii) Establish overall goals and priorities for restoration of degraded areas and impaired ecological functions;

(iii) Identify existing and ongoing projects and programs that are currently being implemented, or are reasonably assured of being implemented (based on an evaluation of funding likely in the foreseeable future), which are designed to contribute to local restoration goals;

(iv) Identify additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources for those projects and programs;

(v) Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals;

(vi) Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals.

(3) Steps in preparing and amending a master program.

(a) **Process overview.** This section provides a generalized process to prepare or comprehensively amend a shoreline master program. Local governments may modify the timing of the various steps, integrate the process into other planning activities, add steps to the process, or work jointly with other jurisdictions or regional efforts, provided the provisions of this chapter are met.

The department will provide a shoreline master program amendment checklist to help local governments identify issues to address. The checklist will not create new or additional requirements beyond the provisions of this chapter. The checklist is intended to aid the preparation and review of master program amendments. Local governments shall submit the completed checklist with the proposed master program amendments.

(b) Participation process.

(i) **Participation requirements.** Local government shall comply with the provisions of RCW 90.58.130 which states:

"To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments."

Additionally, the provisions of WAC 173-26-100 apply and include provisions to assure proper public participation and, for local governments planning under the Growth Management Act, the provisions of RCW 36.70A.140 also apply.

At a minimum, all local governments shall be prepared to describe and document their methods to ensure that all interested parties have a meaningful opportunity to participate.

(ii) **Communication with state agencies.** Before undertaking substantial work, local governments shall notify applicable state agencies to identify state interests, relevant regional and statewide efforts, available information, and methods for coordination and input. Contact the department for a list of applicable agencies to be notified.

(iii) **Communication with affected Indian tribes.** Prior to undertaking substantial work, local governments shall

notify affected Indian tribes to identify tribal interests, relevant tribal efforts, available information and methods for coordination and input. Contact the individual tribes or coordinating bodies such as the Northwest Indian Fisheries Commission, for a list of affected Indian tribes to be notified.

(c) **Inventory shoreline conditions.** Gather and incorporate all pertinent and available information, existing inventory data and materials from state and federal agencies, individuals and nongovernmental entities with expertise, affected Indian tribes, watershed management planning, port districts and other appropriate sources. Ensure that, whenever possible, inventory methods and protocols are consistent with those of neighboring jurisdictions and state efforts. The department will provide, to the extent possible, services and resources for inventory work. Contact the department to determine information sources and other relevant efforts. Map inventory information at an appropriate scale. The department may provide an inventory of shoreline conditions to the local jurisdiction.

Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments.

Collection of additional inventory information is encouraged and should be coordinated with other watershed, regional, or statewide inventory and planning efforts in order to ensure consistent methods and data protocol as well as effective use of fiscal and human resources. Local governments should be prepared to demonstrate that they have coordinated with applicable interjurisdictional shoreline inventory and planning programs where they exist. Two or more local governments are encouraged to jointly conduct an inventory in order to increase the efficiency of data gathering and comprehensiveness of inventory information. Data from interjurisdictional, watershed, or regional inventories may be substituted for an inventory conducted by an individual jurisdiction, provided it meets the requirements of this section.

Local government shall, at a minimum, and to the extent such information is relevant and reasonably available, collect the following information:

(i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of ecologically intact blocks of upland vegetation, developed areas with largely intact riparian vegetation, water-oriented uses and related navigation, transportation and utility facilities.

(ii) Existing aquatic and terrestrial wildlife habitats; native aquatic vegetation; riparian and associated upland plant communities; and critical areas, including wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas. See also WAC 173-26-221.

(iii) Altered and degraded areas and sites with potential for ecological restoration.

(iv) Areas of special interest, such as priority habitats, ecologically intact late successional native plant communities, developing or redeveloping harbors and waterfronts, previously identified toxic or hazardous material clean-up

sites, dredged material disposal sites, or eroding shorelines, to be addressed through new master program provisions.

(v) Conditions and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use regulations. This information may be useful in achieving mutual consistency between the master program and other development regulations.

(vi) Existing and potential shoreline public access sites, including public rights of way and utility corridors.

(vii) General location of channel migration zones, and flood plains.

(viii) Gaps in existing information. During the initial inventory, local governments should identify what additional information may be necessary for more effective shoreline management.

(ix) If the shoreline is rapidly developing or subject to substantial human changes such as clearing and grading, past and current records or historical aerial photographs may be necessary to identify cumulative impacts, such as bulkhead construction, intrusive development on priority and critical habitats, and conversion of harbor areas to nonwater-oriented uses.

(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological and historical information.

(xi) Information specific to the aquatic environment for siting in-water uses and development, such as sediment contamination, intertidal property ownership, aquaculture operations, shellfish beds, shellfish protection districts, and areas that meet department of health shellfish water quality certification requirements.

(d) **Analyze shoreline issues of concern.** Before establishing specific master program provisions, local governments shall analyze the information gathered in (c) of this subsection and as necessary to ensure effective shoreline management provisions, address the topics below, where applicable.

(i) **Characterization of functions and ecosystem-wide processes.**

(A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:

(I) Identify the ecosystem-wide processes and ecological functions based on the list in (d)(i)(C) of this subsection that apply to the shoreline(s) of the jurisdiction.

(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (d)(i)(D) of this subsection; and

(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.

(B) The characterization of shoreline ecological systems may be achieved by using one or more of the approaches below:

(I) If a regional environmental management plan, such as a watershed plan or coastal erosion study, is ongoing or has been completed, then conduct the characterization either within the framework of the regional plan or use the data provided in the regional plan. This methodology is intended to contribute to an in-depth and comprehensive assessment and characterization.

(II) If a regional environmental management plan has not been completed, use available scientific and technical information, including flood studies, habitat evaluations and studies, water quality studies, and data and information from environmental impact statements. This characterization of ecosystem-wide processes and the impact upon the functions of specific habitats and human health and safety objectives may be of a generalized nature.

(III) One or more local governments may pursue a characterization which includes a greater scope and complexity than listed in (d)(i)(B)(I) and (II) of this subsection.

(C) Shoreline ecological functions include, but are not limited to:

In rivers and streams and associated flood plains:

Hydrologic: Transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, nutrient flux, recruitment and transport of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of high stream flow energy; and provision of woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction; resting, hiding and migration; and food production and delivery.

In lakes:

Hydrologic: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruitment of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

In marine waters:

Hydrologic: Transporting and stabilizing sediment, attenuating wave and tidal energy, removing excessive nutrients and toxic compounds; recruitment, redistribution and reduction of woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy,

sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

Wetlands:

Hydrological: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruiting woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, removing and stabilizing sediment; and providing woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, storing water and maintaining base flows, storing sediment and support of vegetation.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

(D) The overall condition of habitat and shoreline resources are determined by the following ecosystem-wide processes and ecological functions:

The distribution, diversity, and complexity of the watersheds, marine environments, and landscape-scale features that form the aquatic systems to which species, populations, and communities are uniquely adapted.

The spatial and temporal connectivity within and between watersheds and along marine shorelines. Drainage network connections include flood plains, wetlands, upslope areas, headwater tributaries, and naturally functioning routes to areas critical for fulfilling life history requirements of aquatic and riverine-dependent species.

The shorelines, beaches, banks, marine near-shore habitats, and bottom configurations that provide the physical framework of the aquatic system.

The timing, volume, and distribution of woody debris recruitment in rivers, streams and marine habitat areas.

The water quality necessary to maintain the biological, physical, and chemical integrity of the system and support survival, growth, reproduction, and migration of individuals composing aquatic, riverine and lacustrine communities.

The sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and character of sediment input, storage, and transport.

The range of flow variability sufficient to create and sustain lacustrine, fluvial, aquatic, and wetland habitats, the patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows, and duration of flood plain inundation and water table elevation in meadows and wetlands.

The species composition and structural diversity of plant communities in river and stream areas and wetlands that provides summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of

woody debris sufficient to sustain physical complexity and stability.

(E) Local governments should use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve no net loss of ecological functions necessary to support shoreline resources and to plan for the restoration of the ecosystem-wide processes and individual ecological functions on a comprehensive basis over time.

(ii) **Shoreline use analysis and priorities.** Conduct an analysis to estimate the future demand for shoreline space and potential use conflicts. Characterize current shoreline use patterns and projected trends to ensure appropriate uses consistent with chapter 90.58 RCW and WAC 173-26-201 (2)(d) and 173-26-211(5).

If the jurisdiction includes a designated harbor area or urban waterfront with intensive uses or significant development or redevelopment issues, work with the Washington state department of natural resources and port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans. Identify measures and strategies to encourage appropriate use of these shoreline areas in accordance with the use priorities of chapter 90.58 RCW and WAC 173-26-201 (2)(d) while pursuing opportunities for ecological restoration.

(iii) **Addressing cumulative impacts in developing master programs.** The principle that regulation of development shall achieve no net loss of ecological function requires that master program policies and regulations address the cumulative impacts on shoreline ecological functions that would result from future shoreline development and uses that are reasonably foreseeable from proposed master programs. To comply with the general obligation to assure no net loss of shoreline ecological function, the process of developing the policies and regulations of a shoreline master program requires assessment of how proposed policies and regulations cause and avoid such cumulative impacts.

Evaluating and addressing cumulative impacts shall be consistent with the guiding principle in WAC 173-26-186 (8)(d). An appropriate evaluation of cumulative impacts on ecological functions will consider the factors identified in WAC 173-26-186 (8)(d)(i) through (iii) and the effect on the ecological functions of the shoreline that are caused by unregulated activities, development and uses exempt from permitting, effects such as the incremental impact of residential bulkheads, residential piers, or runoff from newly developed properties. Accordingly, particular attention should be paid to policies and regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development that is to be regulated by the master program.

There are practical limits when evaluating impacts that are prospective and sometimes indirect. Local government should rely on the assistance of state agencies and appropriate parties using evaluation, measurement, estimation, or quantification of impact consistent with the guidance of RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Policies and regulations of a master program are not inconsistent with these guidelines for failing to address cumulative impacts where a purported impact is not susceptible to being

addressed using an approach consistent with RCW 90.58.100 (1).

Complying with the above guidelines is the way that master program policies and regulations should be developed to assure that the commonly occurring and foreseeable cumulative impacts do not cause a net loss of ecological functions of the shoreline. For such commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis. Local government shall fairly allocate the burden of addressing cumulative impacts.

For development projects and uses that may have unanticipated or uncommon impacts that cannot be reasonably identified at the time of master program development, the master program policies and regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation.

Similarly, local government shall consider and address cumulative impacts on other functions and uses of the shoreline that are consistent with the act. For example, a cumulative impact of allowing development of docks or piers could be interference with navigation on a water body.

(iv) **Shorelines of statewide significance.** If the area contains shorelines of statewide significance, undertake the steps outlined in WAC 173-26-251.

(v) **Public access.** Identify public access needs and opportunities within the jurisdiction and explore actions to enhance shoreline recreation facilities, as described in WAC 173-26-221(4).

(vi) **Enforcement and coordination with other regulatory programs.** Local governments planning under the Growth Management Act shall review their comprehensive plan policies and development regulations to ensure mutual consistency. In order to effectively administer and enforce master program provisions, local governments should also review their current permit review and inspection practices to identify ways to increase efficiency and effectiveness and to ensure consistency.

(vii) **Water quality and quantity.** Identify water quality and quantity issues relevant to master program provisions, including those that affect human health and safety. Review data and information specific to shellfish areas. Identify measures to protect water quality for human health as described in WAC 173-26-221(6). At a minimum, consult with appropriate federal, state, tribal, and local agencies.

(viii) **Vegetation conservation.** Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives. While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Identify measures to ensure that new development meets vegetation conservation objectives.

(ix) **Special area planning.** Some shoreline sites or areas require more focused attention than is possible in the

overall master program development process due to complex shoreline ecological issues, changing uses, or other unique features or issues. In these circumstances, the local government is encouraged to undertake special area planning. Special area planning also may be used to address: Public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration, or other issues best addressed on a comprehensive basis.

The resultant plans may serve as the basis for facilitating state and local government coordination and permit review. Special area planning shall provide for public and affected Indian tribe participation and compliance with all applicable provisions of the act and WAC 173-26-090 through 173-26-120.

(e) **Establish shoreline policies.** Address all of the elements listed in RCW 90.58.100(2) and all applicable provisions of these guidelines in policies. These policies should be reviewed for mutual consistency with the comprehensive plan policies. If there are shorelines of statewide significance, ensure that the other comprehensive plan policies affecting shoreline jurisdiction are consistent with the objectives of RCW 90.58.020 and 90.58.090(4).

(f) **Establish environment designations.** Establish environment designations and identify permitted uses and development standards for each environment designation.

Based on the inventory in (c) of this subsection and the analysis in (d) of this subsection, assign each shoreline segment an environment designation.

Prepare specific environment designation policies and regulations.

Review the environment designations for mutual consistency with comprehensive plan land use designations as indicated in WAC 173-26-211(3).

In determining the boundaries and classifications of environment designations, adhere to the criteria in WAC 173-26-211(5).

(g) **Prepare other shoreline regulations.** Prepare other shoreline regulations based on the policies and the analyses described in this section as necessary to assure consistency with the guidelines of this chapter. The level of detail of inventory information and planning analysis will be a consideration in setting shoreline regulations. As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines.

(h) **Submit for review and approval.** Local governments are encouraged to work with department personnel during preparation of the master program and to submit draft master program provisions to the department for informal advice and guidance prior to formal submittal.

Local governments shall submit the completed checklist, as described in WAC 173-26-201 (3)(a), with their master program amendments proposed for adoption. Master program review and formal adoption procedures are described in Parts I and II of this chapter.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-211 Environment designation system.

(1) **Applicability.** This section applies to the establishment of environment designation boundaries and provisions as described in WAC 173-26-191 (1)(d).

(2) **Basic requirements for environment designation classification and provisions.**

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish

the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the comprehensive plan future land use map as described in WAC ((365-195-300)) 365-196-400 (2)(d).

(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030 (2)(c) within the local government's jurisdiction in a manner consistent with WAC 173-26-211 (4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be redesignated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

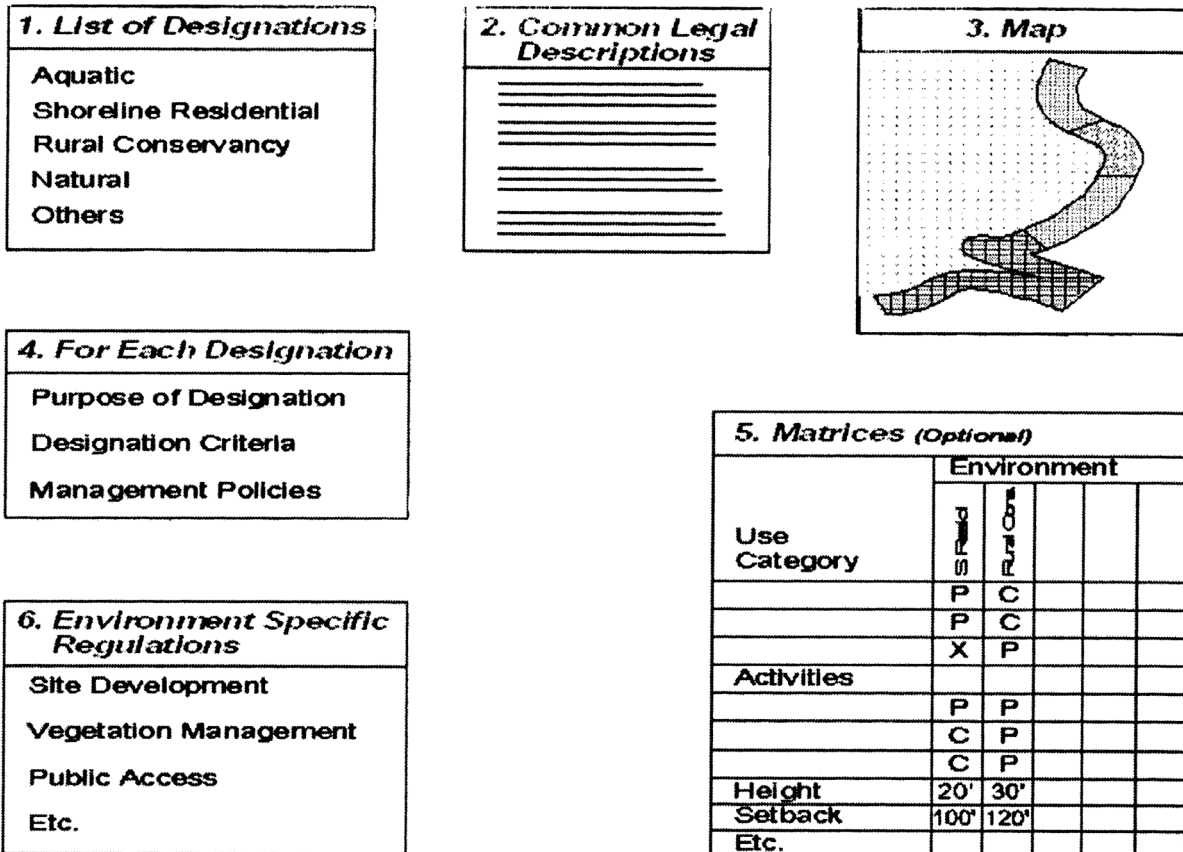


Diagram summarizing the components of the environment designation provisions.
 (This is for illustration purposes only and does not supplement or add to the language in the chapter text.)

(3) **Consistency between shoreline environment designations and the local comprehensive plan.** As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

(4) **General environment designation provisions.**

(a) **Requirements.** For each environment designation, the shoreline master program shall describe:

(i) **Purpose statement.** The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) **Classification criteria.** Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) **Management policies.** These policies shall be in sufficient detail to assist in the interpretation of the environ-

ment designation regulations and, for jurisdictions planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) **Regulations.** Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) **The recommended classification system.** The recommended classification system consists of six basic environments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC 173-26-211(5). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations, local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) **Alternative systems.**

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

(ii) Local governments may use "parallel environments" where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) **The designations.**

(a) **"Natural" environment.**

(i) **Purpose.** The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, local government should include planning for restoration of degraded shorelines within this environment.

(ii) **Management policies.**

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the "natural" environment:

- Commercial uses.
- Industrial uses.
- Nonwater-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.

(C) Single-family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(iii) **Designation criteria.** A "natural" environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

(B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural."

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegeta-

tion with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term "ecologically intact shorelines" applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the "natural" designation, except where the existing agricultural operations involve very low intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the "natural" designation.

(b) **"Rural conservancy" environment.**

(i) **Purpose.** The purpose of the "rural conservancy" environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity residential development and other natural resource-based low-intensity uses.

(ii) **Management policies.**

(A) Uses in the "rural conservancy" environment should be limited to those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.

Except as noted, commercial and industrial uses should not be allowed. Agriculture, commercial forestry, and aquaculture when consistent with provisions of this chapter may be allowed. Low-intensity, water-oriented commercial and industrial uses may be permitted in the limited instances where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the use.

Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated.

Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(B) Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.

(C) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied, consistent with WAC 173-26-231. New development should be designed and located to preclude the need for such work.

(D) Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density, lot coverage, vegetation conservation and other provisions.

Scientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic character of the shoreline. However, an alternative standard developed based on scientific information that meets the provisions of this chapter and accomplishes the purpose of the environment designation may be used.

Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.

(E) New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with these guidelines to ensure that the natural shoreline functions are protected. Such shoreline modification should not be inconsistent with planning provisions for restoration of shoreline ecological functions.

(iii) **Designation criteria.** Assign a "rural conservancy" environment designation to shoreline areas outside incorporated municipalities and outside urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply:

(A) The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170;

(B) The shoreline is currently accommodating residential uses outside urban growth areas and incorporated cities or towns;

(C) The shoreline is supporting human uses but subject to environmental limitations, such as properties that include or are adjacent to steep banks, feeder bluffs, or flood plains or other flood-prone areas;

(D) The shoreline is of high recreational value or with unique historic or cultural resources; or

(E) The shoreline has low-intensity water-dependent uses.

Areas designated in a local comprehensive plan as "limited areas of more intensive rural development," as provided for in chapter 36.70A RCW, may be designated an alternate

shoreline environment, provided it is consistent with the objectives of the Growth Management Act and this chapter. "Master planned resorts" as described in RCW 36.70A.360 may be designated an alternate shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

Lands that may otherwise qualify for designation as rural conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "rural conservancy" environment that allows mining and associated uses in addition to other uses consistent with the rural conservancy environment.

(c) **"Aquatic" environment.**

(i) **Purpose.** The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) **Management policies.**

(A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(G) Local governments should reserve shoreline space for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

(iii) **Designation criteria.** Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., "high-intensity" or "rural conservancy") if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the "aquatic" environment management policies in this chapter. Additionally, local governments may assign an "aquatic" environment designation to wetlands.

(d) **"High-intensity" environment.**

(i) **Purpose.** The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) **Management policies.**

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC (~~(173-26-200(3)(d))~~) 173-26-201(3)(d)(ii) and (ix).

If an analysis of water-dependent use needs as described in WAC 173-26-201 (3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of nonwater-oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply in accordance with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221(4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) **Designation criteria.** Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "limited areas of more intensive rural development," as described by RCW 36.70A.070, if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) **"Urban conservancy" environment.**

(i) **Purpose.** The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they

exist in urban and developed settings, while allowing a variety of compatible uses.

(ii) **Management policies.**

(A) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(C) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC (~~(173-26-240(3)(h) [173-26-241(3)(h)])~~) 173-26-241(3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) **Designation criteria.** Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "limited areas of more intensive rural development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

(f) **"Shoreline residential" environment.**

(i) **Purpose.** The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter.

An additional purpose is to provide appropriate public access and recreational uses.

(ii) **Management policies.**

(A) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Local governments may establish two or more different "shoreline residential" environments to accommodate different shoreline densities or conditions, provided both environments adhere to the provisions in this chapter.

(B) Multifamily and multilot residential and recreational developments should provide public access and joint use for community recreational facilities.

(C) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) **Designation criteria.** Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-221 General master program provisions. The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

(1) **Archaeological and historic resources.**

(a) **Applicability.** The following provisions apply to archaeological and historic resources that are either recorded at the state department of archaeology and historic preservation (~~(office)~~) and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

(b) **Principles.** Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the (~~(office)~~) department of archaeology and historic preservation.

(c) **Standards.** Local shoreline master programs shall include policies and regulations to protect historic, archaeological, and cultural features and qualities of shorelines and implement the following standards. A local government may reference historic inventories or regulations. Contact the (~~(office)~~) department of archaeology and historic preservation and affected Indian tribes for additional information.

(i) Require that developers and property owners immediately stop work and notify the local government, the (~~(office)~~) department of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation.

(ii) Require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.

(2) **Critical areas.**

(a) **Applicability.** Pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by chapter 107, Laws of 2010 (EHB 1653), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

The provisions of this section and subsection (3) of this section, flood hazard reduction, shall be applied to critical areas within the shorelines of the state. RCW 36.70A.030 defines critical areas as:

"Critical areas" include the following areas and ecosystems:

(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable waters; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."

The provisions of WAC 365-190-080 through 365-190-130, to the extent standards for certain types of critical areas are not provided by this section and subsection (3) of this section flood hazard reduction, and to the extent consistent with these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in RCW 90.58.030 (2)(f)(ii) and 36.70A.-480, as amended by chapter 321, Laws of 2003 (ESHB 1933), any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provision of WAC 173-26-241 (3)(e) are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those

critical areas and required buffers pursuant to RCW 36.70A-060(2).

In addition to critical areas defined under chapter 36.70A RCW and critical saltwater and freshwater habitats as described in these guidelines, local governments should identify additional shoreline areas that warrant special protection necessary to achieve no net loss of ecological functions.

(b) **Principles.** Local master programs, when addressing critical areas, shall implement the following principles:

(i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in RCW 90.58.100(1) and as described in WAC 173-26-201 (2)(a) that an alternative approach provides better resource protection.

(ii) In addressing issues related to critical areas, use scientific and technical information, as described in WAC 173-26-201 (2)(a). The role of ecology in reviewing master program provisions for critical areas in shorelines of the state will be based on the Shoreline Management Act and these guidelines.

(iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum of planning and regulatory measures, including the comprehensive plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

(c) **Standards.** When preparing master program provisions for critical areas, local governments should implement the following standards and use scientific and technical information, as provided for in WAC 173-26-201 (2)(a).

Provisions for frequently flooded areas are included in WAC 173-26-221(3).

(i) **Wetlands.**

(A) **Wetland use regulations.** Local governments should consult the department's technical guidance documents on wetlands.

Regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:

- The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;
- The draining, flooding, or disturbing of the water level, duration of inundation, or water table;

- The driving of pilings;
- The placing of obstructions;
- The construction, reconstruction, demolition, or expansion of any structure;
- Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules;
- Other uses or development that results in an ecological impact to the physical, chemical, or biological characteristics of wetlands; or
- Activities reducing the functions of buffers described in (c)(i)(D) of this subsection.

(B) **Wetland rating or categorization.** Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should either use the Washington state wetland rating system, Eastern or Western Washington version as appropriate, or they should develop their own, regionally specific, scientifically based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed.

(C) **Alterations to wetlands.** Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC 173-26-201 (2)(e).

(D) **Buffers.** Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall take into account the ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

(E) **Mitigation.** Master programs shall contain wetland mitigation requirements that are consistent with WAC 173-26-201 (2)(e) and which are based on the wetland rating.

(F) **Compensatory mitigation.** Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

Requirements for compensatory mitigation must include provisions for:

(I) Mitigation replacement ratios or a similar method of addressing the following:

- The risk of failure of the compensatory mitigation action;
- The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;
- The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(II) Establishment of performance standards for evaluating the success of compensatory mitigation actions;

(III) Establishment of long-term monitoring and reporting procedures to determine if performance standards are met; and

(IV) Establishment of long-term protection and management of compensatory mitigation sites.

Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

(ii) **Geologically hazardous areas.** Development in designated geologically hazardous areas shall be regulated in accordance with the following:

(A) Consult designation criteria for geologically hazardous areas, WAC 365-190-120.

(B) Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

(C) Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to WAC 173-26-231.

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC 173-26-231 requirements and then only if no net loss of ecological functions will result.

(iii) **Critical saltwater habitats.**

(A) **Applicability.** Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) **Principles.** Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. The inclusion of commercial aquaculture in the critical saltwater habitat definition does not limit its regulation as a use. Reserving shoreline areas for protecting and restoring ecological functions should be done prior to reserving shoreline areas for uses described in WAC 173-26-201 (2)(d)(i) through (v). Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW 90.58.340. Local govern-

ments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information.

The management planning should include an evaluation of current data and trends regarding the following:

- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;

- Terrestrial and aquatic vegetation;

- The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);

- Restoration potential;

- Tributaries and small streams flowing into marine waters;

- Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;

- Conditions and ecological functions in the near-shore area;

- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and

- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;

- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;

- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;

- Protecting existing and restoring degraded near-shore habitat;

- Protecting existing and restoring degraded or lost salmonid, shorebird, waterfowl, or marine mammal habitat;

- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian and associated upland native plant communities;

- Improving water quality;

- Protecting existing and restoring degraded sediment inflow and transport regimens; and

- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

Local governments shall protect kelp and eelgrass beds, forage fish spawning and holding areas, and priority species habitat identified by the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

(C) **Standards.** Docks, piers, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
- The project is consistent with the state's interest in resource protection and species recovery.

Private, noncommercial docks for individual residential or community use may be authorized provided that:

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

Until an inventory of critical saltwater habitat has been done, shoreline master programs shall condition all over-water and near-shore developments in marine and estuarine waters with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory shall be consistent with accepted research methodology. At a minimum, local governments should consult with department technical assistance materials for guidance.

(iv) **Critical freshwater habitats.**

(A) **Applicability.** The following applies to master program provisions affecting critical freshwater habitats within shorelines of the state designated under chapter 36.70A RCW, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains designated as such in the master program.

(B) **Principles.** Many ecological functions of lake, river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of river channel and lake basin. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions in lakes and downstream. Likewise, gradual

destruction or loss of riparian and associated upland native plant communities, alteration of runoff quality and quantity along the lake basin and stream corridor resulting from incremental flood plain and lake basin development can raise water temperatures and alter hydrographic conditions, degrading ecological functions. This makes the corridor inhospitable for invertebrate and vertebrate aquatic, amphibian and terrestrial wildlife species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of lake, river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of lake basins and river and stream corridors depends on:

(I) Planning for protection, and restoration where appropriate, throughout the lake basin and along the entire length of the corridor from river headwaters to the mouth; and

(II) Regulating uses and development within lake basins and stream channels, associated channel migration zones, wetlands, and the flood plains, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions, including where applicable the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other lake, river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore lake and river corridor ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.

Master program provisions for lake basins and river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.

(C) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss of ecological functions.

(II) Integrate protection of critical freshwater, riparian and associated upland habitat, protection with flood hazard reduction and other lake, wetland, river and stream management provisions.

(III) Include provisions that facilitate authorization of appropriate restoration projects.

(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection.

(3) **Flood hazard reduction.**

(a) **Applicability.** The following provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use con-

trols, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).

(b) **Principles.** Flooding of rivers, streams, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Past land use practices have disrupted hydrological processes and increased the rate and volume of runoff, thereby exacerbating flood hazards and reducing ecological functions. Flood hazard reduction measures are most effective when integrated into comprehensive strategies that recognize the natural hydrogeological and biological processes of water bodies. Over the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas, to manage storm water within the flood plain, and to maintain or restore river and stream system's natural hydrological and geomorphological processes.

Structural flood hazard reduction measures, such as diking, even if effective in reducing inundation in a portion of the watershed, can intensify flooding elsewhere. Moreover, structural flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Therefore, structural flood hazard reduction measures shall be avoided whenever possible. When necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.

The dynamic physical processes of rivers, including the movement of water, sediment and wood, cause the river channel in some areas to move laterally, or "migrate," over time. This is a natural process in response to gravity and topography and allows the river to release energy and distribute its sediment load. The area within which a river channel is likely to move over a period of time is referred to as the channel migration zone (CMZ) or the meander belt. Scientific examination as well as experience has demonstrated that interference with this natural process often has unintended consequences for human users of the river and its valley such as increased or changed flood, sedimentation and erosion patterns. It also has adverse effects on fish and wildlife through loss of critical habitat for river and riparian dependent species. Failing to recognize the process often leads to damage to, or loss of, structures and threats to life safety.

Applicable shoreline master programs should include provisions to limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams. (See also (c) of this subsection.)

The channel migration zone should be established to identify those areas with a high probability of being subject to channel movement based on the historic record, geologic character and evidence of past migration. It should also be recognized that past action is not a perfect predictor of the future and that human and natural changes may alter migra-

tion patterns. Consideration should be given to such changes that may have occurred and their effect on future migration patterns.

For management purposes, the extent of likely migration along a stream reach can be identified using evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from historic and current aerial photos and maps and may require field analysis of specific channel and valley bottom characteristics in some cases. A time frame of one hundred years was chosen because aerial photos, maps and field evidence can be used to evaluate movement in this time frame.

In some cases, river channels are prevented from normal or historic migration by human-made structures or other shoreline modifications. The definition of channel migration zone indicates that in defining the extent of a CMZ, local governments should take into account the river's characteristics and its surroundings. Unless otherwise demonstrated through scientific and technical information, the following characteristics should be considered when establishing the extent of the CMZ for management purposes:

- Within incorporated municipalities and urban growth areas, areas separated from the active river channel by legally existing artificial channel constraints that limit channel movement should not be considered within the channel migration zone.
- All areas separated from the active channel by a legally existing artificial structure(s) that is likely to restrain channel migration, including transportation facilities, built above or constructed to remain intact through the one hundred-year flood, should not be considered to be in the channel migration zone.
- In areas outside incorporated municipalities and urban growth areas, channel constraints and flood control structures built below the one hundred-year flood elevation do not necessarily restrict channel migration and should not be considered to limit the channel migration zone unless demonstrated otherwise using scientific and technical information.

Master programs shall implement the following principles:

- (i) Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures.
- (ii) Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter.
 - (iii) Consider integrating master program flood hazard reduction provisions with other regulations and programs, including (if applicable):
 - Storm water management plans;
 - Flood plain regulations, as provided for in chapter 86.16 RCW;
 - Critical area ordinances and comprehensive plans, as provided in chapter 36.70A RCW; and
 - The National Flood Insurance Program.
 - (iv) Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with the rivers and streams.

(v) Plan for and facilitate returning river and stream corridors to more natural hydrological conditions. Recognize that seasonal flooding is an essential natural process.

(vi) When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.

(vii) Local governments are encouraged to plan for and facilitate removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and return river processes to a more natural state where feasible and appropriate.

(c) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(i) Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC 173-26-241 (3)(h).
- Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- Development in incorporated municipalities and designated urban growth areas, as defined in chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.
- Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and

that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(iv) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(v) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

(4) **Public access.**

(a) **Applicability.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) **Principles.** Local master programs shall:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) **Planning process to address public access.** Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible off-site or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) **Standards.** Shoreline master programs should implement the following standards:

(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221 (4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

(5) Shoreline vegetation conservation.

(a) **Applicability.** Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) **Principles.** The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species are inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmonid rearing and refuge

habitat. Abundant large woody debris increases aquatic diversity and stabilization.

- Regulation of microclimate in the stream-riparian and intertidal corridors.
- Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) **Standards.** Master programs shall implement the following requirements in shoreline jurisdiction.

Establish vegetation conservation standards that implement the principles in WAC 173-26-221 (5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC 173-26-241(3).

(6) **Water quality, storm water, and nonpoint pollution.**

(a) **Applicability.** The following section applies to all development and uses in shorelines of the state, as defined in WAC 173-26-020, that affect water quality.

(b) **Principles.** Shoreline master programs shall, as stated in RCW 90.58.020, protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

(i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.

(ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(c) **Standards.** Shoreline master programs shall include provisions to implement the principles of this section.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-241 Shoreline uses. (1) **Applicability.** The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

(2) **General use provisions.**

(a) **Principles.** Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201 (2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

(b) **Conditional uses.**

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.
- To address cumulative impacts.
- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

(A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.

(B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.

(C) Development and uses in critical saltwater habitats.

(D) New commercial geoduck aquaculture as described in (3)(b) of this section.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government's ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) **Standards.** Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

(a) **Agriculture.**

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030 (3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020(3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent with the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.

Measures appropriate to meet these requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220 (5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agen-

cies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.

(b) Aquaculture.

(i) General provisions.

(A) Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

(B) Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

(C) Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-201 (2)(e).

(D) Local government should ensure proper management of upland uses to avoid degradation of water quality of existing shellfish areas.

(ii) Siting considerations for commercial geoduck aquaculture.

In addition to the siting provisions of (b)(i) of this subsection, commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

(iii) Shoreline substantial development permits for geoduck aquaculture.

As determined by Attorney General Opinion 2007 No. 1, the planting, growing, and harvesting of farm-raised geoduck

clams requires a substantial development permit if a specific project or practice causes substantial interference with normal public use of the surface waters, but not otherwise.

(iv) Conditional use permits for commercial geoduck aquaculture.

(A) Conditional use permits are required for new commercial geoduck aquaculture only. Where the applicant proposes to convert existing nongeoduck aquaculture to geoduck aquaculture, the requirement for a conditional use permit is at the discretion of local government.

(B) All subsequent cycles of planting and harvest shall not require a new conditional use permit.

(C) Conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.

(D) A single conditional use permit may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the same shoreline permitting jurisdiction.

(E) Local governments should minimize redundancy between federal, state and local commercial geoduck aquaculture permit application requirements. Measures to consider include accepting documentation that has been submitted to other permitting agencies, and using permit applications that mirror federal or state permit applications.

(F) In addition to complying with chapter 173-27 WAC, the application must contain:

(I) A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.

(II) A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above.

(III) Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in WAC-173-26-201 (2)(e).

(IV) Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.

(G) Local governments should provide public notice to all property owners within three hundred feet of the proposed project boundary, and notice to tribes with usual and accustomed fishing rights to the area.

(H) Commercial geoduck aquaculture workers often-times need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses.

(I) Local governments should establish monitoring and reporting requirements necessary to verify that geoduck aquaculture operations are in compliance with shoreline limits and conditions set forth in conditional use permits and to support cumulative impacts analysis.

(J) Conditional use permits should be reviewed using the best scientific and technical information available.

(K) Local governments should apply best management practices to accomplish the intent of the limits and conditions.

(L) In order to avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, local governments should consider the following:

(I) The practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments.

(II) Use of motorized vehicles, such as trucks, tractors and forklifts below the ordinary high water mark.

(III) Specific periods when limits on activities are necessary to protect priority habitats and associated species. The need for such measures should be identified in the baseline ecological survey conducted for the site.

(IV) Alterations to the natural condition of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments.

(V) Installation of property corner markers that are visible at low tide during planting and harvesting.

(VI) Mitigation measures such as buffers between commercial geoduck aquaculture and other fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions.

(VII) Use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion.

(VIII) Use of the best available methods to minimize turbid runoff from the water jets used to harvest geoducks.

(IX) Number of barges or vessels that can be moored or beached at the site as well as duration limits.

(X) Public rights to navigation over the surface of the water.

(XI) Good housekeeping practices at geoduck aquaculture sites, including worker training and regular removal of equipment, tools, extra materials, and all wastes.

(XII) Where the site contains existing public access to publicly owned lands, consider recommendations from the department of natural resources or other landowning agencies regarding protection of the existing public access.

(c) **Boating facilities.** For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

(d) **Commercial development.** Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water-related or water-enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water-related or water-enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

(e) **Forest practices.** Local master programs should rely on the Forest Practices Act and rules implementing the act and the *Forest and Fish Report* as adequate management of commercial forest uses within shoreline jurisdiction. ~~((However))~~ A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit. In addition, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to nonforest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to nonforest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed's hydrologic system. Master programs shall establish provisions to ensure that all such practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW 90.58.150 regarding selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW 36.70A.170 shall be designated consistent with either the "natural," "rural conservancy," environment designation.

Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

(f) **Industry.** Master programs shall first give preference to water-dependent industrial uses over nonwater-dependent industrial uses; and second, give preference to water-related industrial uses over nonwater-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in

significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4).

Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated. New nonwater-oriented industrial development should be prohibited on shorelines except when:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, nonwater-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

(g) **In-stream structural uses.** "In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources(;) including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(h) **Mining.** Mining is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses. Historically, the most common form of mining in shoreline areas is for sand and gravel because of the geomorphic association of rivers and sand and gravel deposits. Mining in the shoreline generally alters the natural character, resources, and ecology of shorelines of the state and may impact critical shoreline resources and ecological functions of the shoreline. However, in some circumstances, mining may be designed to have benefits for shoreline resources, such as creation of off channel habitat for fish or habitat for wildlife. Activities associated with shoreline mining, such as processing and transportation, also generally have the potential to impact shoreline resources unless the impacts of those associated activities are evaluated and properly managed in accordance with applicable provisions of the master program.

A shoreline master program should accomplish two purposes in addressing mining. First, identify where mining may be an appropriate use of the shoreline, which is addressed in this section and in the environment designation sections

above. Second, ensure that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline.

(i) Identification of shoreline areas where mining may be designated as appropriate shall:

(A) Be consistent with the environment designation provisions of WAC 173-26-211 and where applicable WAC 173-26-251(2) regarding shorelines of statewide significance; and

(B) Be consistent with local government designation of mineral resource lands with long-term significance as provided for in RCW 36.70A.170 (1)(c), 36.70A.130, and 36.70A.131; and

(C) Be based on a showing that mining is dependent on a shoreline location in the city or county, or portion thereof, which requires evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (chapter 43.21C RCW), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a).

(ii) Master programs shall include policies and regulations for mining, when authorized, that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapters 78.44 and 77.55 RCW.

(C) Master programs shall assure that proposed subsequent use of mined property is consistent with the provisions of the environment designation in which the property is located and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

(D) Mining within the active channel or channels (a location waterward of the ordinary high-water mark) of a river shall not be permitted unless:

(I) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

(III) The determinations required by (h)(ii)(D)(I) and (II) of this subsection shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

(IV) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, local government shall require compliance with this subsection (D) to the extent that no such review has previously been conducted. Where there has been prior review, local government shall review previous determinations comparable to the requirements of this section to assure compliance with this subsection (D) under current site conditions.

(V) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-26-231 (3)(f).

(E) Mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a shoreline conditional use permit.

(i) **Recreational development.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) **Residential development.**

(i) Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily development and the creation of new residential lots through land division.

(ii) Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer

areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

(iii) Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

(iv) Over-water residences.

(A) New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

(B) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use. For the purposes of this subsection, "conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(C) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

(v) Multiunit residential development.

(A) New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

(B) Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

((+)) (I) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

((+)) (II) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

((+)) (III) Implement the provisions of WAC 173-26-211 and 173-26-221.

(vi) Option for addressing legal status of existing shoreline structures.

(A) New or amended master programs may include provisions authorizing:

(I) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(II) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(B) For purposes of this subsection, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(C) Nothing in this subsection:

(I) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as flood plains and geologically hazardous areas; or

(II) Affects the application of other federal, state, or local government requirements to residential structures.

(k) Transportation and parking. Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent with these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(l) Utilities. These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

All utility facilities are designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

Utilities should be located in existing rights of way and corridors whenever possible.

Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-360 Ocean management. (1) Purpose and intent. This section implements the Ocean Resources Management Act, (RCW 43.143.005 through 43.143.030) enacted in 1989 by the Washington state legislature. The law requires the department of ecology to develop guidelines and policies for the management of ocean uses and to serve as the basis for evaluation and modification of local shoreline management master programs of coastal local governments in Jefferson, Clallam, Grays Harbor, and Pacific counties. The guidelines are intended to clarify state shoreline management policy regarding use of coastal resources, address evolving interest in ocean development and prepare state and local agencies for new ocean developments and activities.

(2) Geographical application. The guidelines apply to Washington's coastal waters from Cape Disappointment ~~((a))~~ directly south to the state border, including the mouth of the Columbia River, and from Cape Disappointment north one hundred sixty miles to Cape Flattery at the entrance to the Strait of Juan De Fuca including the offshore ocean area, the near shore area under state ownership, shorelines of the state, and their adjacent uplands. Their broadest application would include an area seaward two hundred miles (RCW 43.143.-020) and landward to include those uplands immediately adjacent to land under permit jurisdiction for which consistent planning is required under RCW 90.58.340. The guidelines address uses occurring in Washington's coastal waters, but not impacts generated from activities offshore of Oregon, Alaska, California, or British Columbia or impacts from Washington's offshore on the Strait of Juan de Fuca, the Columbia River east of Cape Disappointment, or other inland marine waters.

(3) Ocean uses defined. Ocean uses are activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine, shoreland, and upland facilities and the supply, service, and

distribution activities, such as crew ships, circulating to and between the activities and developments. Ocean uses involving nonrenewable resources include such activities as extraction of oil, gas and minerals, energy production, disposal of waste products, and salvage. Ocean uses which generally involve sustainable use of renewable resources include commercial, recreational, and tribal fishing, aquaculture, recreation, shellfish harvesting, and pleasure craft activity.

(4) Relationship to existing management programs. These guidelines augment existing requirements of the Shoreline Management Act, chapter 90.58 RCW, and those chapters in Title 173 of the Washington Administrative Code that implement the act. They are not intended to modify current resource allocation procedures or regulations administered by other agencies, such as the Washington department of fisheries management of commercial, recreational, and tribal fisheries. They are not intended to regulate recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources. Every effort will be made to take into account tribal interests and programs in the guidelines and master program amendment processes. After inclusion in the state coastal zone management program, these guidelines and resultant master programs will be used for federal consistency purposes in evaluating federal permits and activities in Washington's coastal waters. Participation in the development of these guidelines and subsequent amendments to master programs will not preclude state and local government from opposing the introduction of new uses, such as oil and gas development.

These and other statutes, documents, and regulations referred to or cited in these rules may be reviewed at the department of ecology, headquarters in Lacey, Washington, for which the mailing address is P.O. Box 47600, Olympia, WA 98504. The physical address is 300 Desmond Drive S.E., Lacey, WA 98503.

(5) Regional approach. The guidelines are intended to foster a regional perspective and consistent approach for the management of ocean uses. While local governments may have need to vary their programs to accommodate local circumstances, local government should attempt and the department will review local programs for compliance with these guidelines and chapter 173-26 WAC: Shoreline Management Act guidelines for development of master programs. It is recognized that further amendments to the master programs may be required to address new information on critical and sensitive habitats and environmental impacts of ocean uses or to address future activities, such as oil development. In addition to the criteria in RCW 43.143.030, these guidelines apply to ocean uses until local master program amendments are adopted. The amended master program shall be the basis for review of an action that is either located exclusively in, or its environmental impacts confined to, one county. Where a proposal clearly involves more than one local jurisdiction, the guidelines shall be applied and remain in effect in addition to the provisions of the local master programs.

(6) Permit criteria: Local government and the department may permit ocean or coastal uses and activities as a substantial development, variance or conditional use only if the criteria of RCW 43.143.030(2) listed below are met or exceeded:

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity;

(b) There is no reasonable alternative to meet the public need for the proposed use or activity;

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park;

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

(h) The use or activity complies with all applicable local, state, and federal laws and regulations.

(7) General ocean uses guidelines. The following guidelines apply to all ocean uses, their service, distribution, and supply activities and their associated facilities that require shoreline permits.

(a) Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

(b) Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be given priority over uses and activities that will have more such impacts.

(c) When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

(d) The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

(e) Chapter 197-11 WAC (SEPA rules) provides guidance in the application of the permit criteria and guidelines of this section. The range of impacts to be considered should be consistent with WAC 197-11-060 (4)(e) and 197-11-792 (2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

(f) Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

(g) Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

(h) Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

(i) Local governments should evaluate their master programs and select the environment(s) for coastal waters that best meets the intent of chapter 173-26 WAC, these guidelines and chapter 90.58 RCW.

(j) Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

(k) Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

(l) Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with chapter 27.34 RCW. Permits in general should contain special provisions that require permittees to comply with chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.

(m) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

(n) Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

(o) In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities adequate protection from explosions, spills, and other disasters.

(p) Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water dependent businesses and existing land transportation routes to the maximum extent feasible.

(q) Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

(r) Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

(s) Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

(t) Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

(u) Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

(v) Preproject environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

(w) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

(x) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

(y) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

(8) Oil and gas uses and activities. Oil and gas uses and activities involve the extraction of oil and gas resources from beneath the ocean.

~~((a) Whenever feasible oil and gas facilities should be located and designed to permit joint use in order to minimize adverse impacts to coastal resources and uses and the environment.~~

~~(b) Special attention should be given to the availability and adequacy of general disaster response capabilities in reviewing ocean locations for oil and gas facilities.~~

~~(c) Because environmental damage is a very probable impact of oil and gas uses, the adequacy of plans, equipment, staffing, procedures, and demonstrated financial and performance capabilities for preventing, responding to, and mitigating the effects of accidents and disasters such as oil spills should be major considerations in the review of permits for their location and operation. If a permit is issued, it should ensure that adequate prevention, response, and mitigation can be provided before the use is initiated and throughout the life of the use.~~

~~(d) Special attention should be given to the response times for public safety services such as police, fire, emergency medical, and hazardous materials spill response services in providing and reviewing onshore locations for oil and gas facilities.~~

~~(e) Oil and gas facilities including pipelines should be located, designed, constructed, and maintained in conformance with applicable requirements but should at a minimum ensure adequate protection from geological hazards such as liquefaction, hazardous slopes, earthquakes, physical oceanographic processes, and natural disasters.~~

~~(f) Upland disposal of oil and gas construction and operation materials and waste products such as cuttings and drilling muds should be allowed only in sites that meet applicable requirements-))~~ As established by the legislature in RCW 43.143.010, there shall be no leasing of Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia River downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production.

(9) Ocean mining. Ocean mining includes such uses as the mining of metal, mineral, sand, and gravel resources from the sea floor.

(a) Seafloor mining should be located and operated to avoid detrimental effects on ground fishing or other renewable resource uses.

(b) Seafloor mining should be located and operated to avoid detrimental effects on beach erosion or accretion processes.

(c) Special attention should be given to habitat recovery rates in the review of permits for seafloor mining.

(10) Energy production. Energy production uses involve the production of energy in a usable form directly in or on the ocean rather than extracting a raw material that is transported elsewhere to produce energy in a readily usable form. Examples of these ocean uses are facilities that use wave action or differences in water temperature to generate electricity.

(a) Energy-producing uses should be located, constructed, and operated in a manner that has no detrimental effects on beach accretion or erosion and wave processes.

(b) An assessment should be made of the effect of energy producing uses on upwelling, and other oceanographic and ecosystem processes.

(c) Associated energy distribution facilities and lines should be located in existing utility rights of way and corridors whenever feasible, rather than creating new corridors that would be detrimental to the aesthetic qualities of the shoreline area.

(11) Ocean disposal. Ocean disposal uses involve the deliberate deposition or release of material at sea, such as solid wastes, industrial waste, radioactive waste, incineration, incinerator residue, dredged materials, vessels, aircraft, ordnance, platforms, or other man-made structures.

(a) Storage, loading, transporting, and disposal of materials shall be done in conformance with local, state, and federal requirements for protection of the environment.

(b) Ocean disposal shall be allowed only in sites that have been approved by the Washington department of ecol-

ogy, the Washington department of natural resources, the United States Environmental Protection Agency, and the United States Army Corps of Engineers as appropriate.

(c) Ocean disposal sites should be located and designed to prevent, avoid, and minimize adverse impacts on environmentally critical and sensitive habitats, coastal resources and uses, or loss of opportunities for mineral resource development. Ocean disposal sites for which the primary purpose is habitat enhancement may be located in a wider variety of habitats, but the general intent of the guidelines should still be met.

(12) Transportation. Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in Washington's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

(a) An assessment should be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

(b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

(c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

(13) Ocean research. Ocean research activities involve scientific investigation for the purpose of furthering knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an ocean use or development may be considered exploration or part of the use or development. Since ocean research often involves activities and equipment, such as drilling and vessels, that also occur in exploration and ocean uses or developments, a case by case determination of the applicable regulations may be necessary.

(a) Ocean research should be encouraged to coordinate with other ocean uses occurring in the same area to minimize potential conflicts.

(b) Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of chapter 173-15 WAC: Permits for oil or natural gas exploration activities conducted from state marine waters.

(c) Ocean research should be located and operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.

(d) Ocean research should be completed or discontinued in a manner that restores the environment to its original con-

dition to the maximum extent feasible, consistent with the purposes of the research.

(e) Public dissemination of ocean research findings should be encouraged.

(14) Ocean salvage. Ocean salvage uses share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage which combines aspects of recreation, exploration, research, and mining is an example of such a use.

(a) Nonemergency marine salvage and historic shipwreck salvage activities should be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.

(b) Nonemergency marine salvage and historic shipwreck salvage activities should not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-27-030 Definitions. The following definitions shall apply:

(1) "Act" means chapter 90.58 RCW, the Shoreline Management Act of 1971, as amended;

(2) "Applicable master program" means the master program approved or adopted by the department pursuant to RCW 90.58.090(6) or 90.58.190(4) prior to acceptance of a complete application by local government;

(3) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure;

(4) "Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program;

(5) "Department" means the department of ecology;

(6) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment;

(7) "Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the act and the local master program;

(8) "Fair market value" of a development is the open market bid price for conducting the work, using the equip-

ment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(9) "Height" is measured from average grade level to the highest point of a structure: Provided, That television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: Provided further, That temporary construction equipment is excluded in this calculation;

(10) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to chapter 90.58 RCW;

(11) "Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling;

(12) "Party of record" includes all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail;

(13) "Permit" means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW;

(14) "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development;

(15) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;

(16) "Transmit" means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination;

(17) "Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline;

(18) "Vessel" (~~includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water~~) means a floating structure that is designed primarily for navigation, is normally capable of self-propulsion and use

as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels including, but not limited to, registration as a vessel by an appropriate government agency;

(19) The definitions and concepts set forth in RCW 90.58.030, and chapters ~~((473-25))~~ 173-20, 173-22, and 173-26 WAC also apply as used in this chapter.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-040 Developments exempt from substantial development permit requirement. (1) Application and interpretation of exemptions.

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining

whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bio-engineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife((-);

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master

program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed;

(A) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser

square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or

(B) Ten thousand dollars (~~(-but)~~) for all other docks constructed in fresh waters.

However, if subsequent construction ((~~having a fair market value exceeding two thousand five hundred dollars~~)) occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (h)(i)(A) or (B) of this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of stream-reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement

project must meet the criteria under (p)(iii)(A)(I) and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;
- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;
- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment

period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

(q) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

NEW SECTION

WAC 173-27-044 Developments not required to obtain shoreline permits or local reviews. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement this chapter do not apply to the following:

(1) **Remedial actions.** Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

(2) **Boatyard improvements to meet NPDES permit requirements.** Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities.

(3) **WSDOT facility maintenance and safety improvements.** Pursuant to RCW 90.58.356, department of transportation projects and activities meeting the conditions of RCW

90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act, chapter 90.58 RCW.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-045 Developments not subject to the Shoreline Management Act. Certain developments are not required to meet requirements of the Shoreline Management Act as follows:

~~(1) ((Pursuant to RCW 90.58.390, certain secure community transition facilities are not subject to the Shoreline Management Act. An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.~~

~~This section expires June 30, 2009.~~

~~(2)) Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.~~

~~((3) Pursuant to RCW 90.58.355 regarding hazardous substance remedial actions, the procedural requirements of the Shoreline Management Act shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.~~

~~(4)) (2) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW.~~

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-060 Applicability of chapter 90.58 RCW to federal lands and agencies. (1) Direct federal agency activities in or affecting Washington's coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of the most recent federally approved Washington state coastal zone management program pursuant to the Federal Coastal Zone Management Act, 16 U.S.C.

1451 et seq. (CZMA) and federal regulations adopted pursuant thereto.

Washington's coastal zone, as established in the state's approved coastal zone management program, includes the following coastal counties: Whatcom, Skagit, San Juan, Island, Snohomish, King, Pierce, Thurston, Mason, Kitsap, Jefferson, Clallam, Grays Harbor, Pacific and Wahkiakum.

The Shoreline Management Act is incorporated into the Washington state coastal zone management program and, thereby, those direct federal agency activities affecting the uses or resources subject to the act must be consistent to the maximum extent practicable with the enforceable provisions of the act, and regulations adopted pursuant to the act ~~((and))~~. The applicable state-approved local master program will inform the department's consistency determinations.

(a) When the department receives a consistency determination for an activity proposed by the federal government, it shall request that local government review the proposal and provide the department with its views regarding the consistency of the activity or development project with ~~((the enforceable policies of))~~ the local master program.

(b) The CZMA federal consistency decision-making process for federal agency activities is prescribed in the Coastal Zone Management Act (16 U.S.C. 1456 (c)(1) and (2), in federal regulations at 15 C.F.R. part 930, subpart C, and in Washington's most recent federally approved CZM program document.

(2) Federal agency activities may be required by other federal laws to meet the permitting requirements of chapter 90.58 RCW.

(3) The policies and provisions of chapter 90.58 RCW, including the permit system, shall apply statewide to all non-federal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-27-080 Nonconforming use and development standards. Local governments typically develop their own approaches to addressing nonconforming use and development. This section is intended to apply if a shoreline master program does not contain locally adopted nonconforming use and development standards. When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply~~((:))~~.

(1) Definitions.

(a) "Nonconforming use ~~((or development))~~" means ~~((a))~~ an existing shoreline use ~~((or development which))~~ that was lawfully ~~((constructed or))~~ established prior to the effective date of the act or the applicable master program, ~~((or amendments thereto,))~~ but which does not conform to present use regulations ~~((or standards of the program.~~

~~((2))~~ due to subsequent changes to the master program.

(b) "Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consis-

tent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

(c) "Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.

(2) Nonconforming structures.

(a) Structures that were legally established and are used for a conforming use but (~~which~~) are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may continue as legal nonconforming structures and may be maintained and repaired (~~and~~).

(b) Nonconforming structures may be enlarged or expanded provided that said enlargement (~~does~~) meets the applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction (~~or use~~) would not be allowed for new (~~development or uses~~.

(3) ~~Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that~~) structures, unless a shoreline variance permit is obtained.

(c) Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(~~(4)~~) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(~~(5)~~) (d) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to pre-existing nonconformities.

(~~(6)~~) (e) In the absence of other more specific regulations, a structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(~~(a)~~) (i) No reasonable alternative conforming use is practical; and

(~~(b)~~) (ii) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above

findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

(~~(7)~~) (f) A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.

(~~(8)~~) (g) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within (~~six months~~) two years of the date the damage occurred(~~, all permits are obtained and the restoration is completed within two years of permit issuance.~~

(~~(9)~~).

(3) Nonconforming uses.

(a) Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.

(b) In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.

(c) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless reestablishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection (~~(6)~~) (2)(e) of this section shall be considered a conforming use for purposes of this section.

(~~(10)~~) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards) (4) Nonconforming lot. A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

NEW SECTION

WAC 173-27-085 Moratoria. (1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement chapter 90.58 RCW.

(2) A local government adopting a moratorium or control under this section must:

(a) Hold a public hearing on the moratorium or control within sixty days of its adoption;

(b) Adopt detailed findings of fact that include, but are not limited to, justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(c) Notify the department of the moratorium or control immediately after its adoption. The notification must specify

the time, place, and date of any public hearing required by this subsection;

(d) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(3) A moratorium or control may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

NEW SECTION

WAC 173-27-125 Special procedures for WSDOT projects. (1) Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the legislature established a target of ninety days review time for local governments.

(2) Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington state department of transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-130 Filing with department. (1) All applications for a permit or a permit revision shall be submitted to the department by return receipt requested mail upon a final decision by local government. Final decision by local government shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed.

(2) When a substantial development permit and a conditional use or variance permit are required for a development, the submittal on the permits shall be made concurrently.

(3) A complete submittal shall consist of the following documents and information:

(a) A copy of the complete application pursuant to WAC 173-27-180;

(b) Findings and conclusions that establish the basis for the decision including, but not limited to, identification of shoreline environment designation, applicable master program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s) as established in WAC 173-27-140 through 173-27-170;

(c) The final decision of the local government;

(d) The permit data sheet required by WAC 173-27-190; and

(e) Where applicable, local government shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW.

(4) When the project has been modified in the course of the local review process, plans or text shall be provided to the department that clearly indicate the final approved plan.

(5) Submittal of substantial development permits, conditional use permits, variances, rescissions and revisions is complete when all of the documents required pursuant to subsections (3) and (4) of this section have been received by the department. If the department determines that the submittal does not contain all of the documents and information required by this section, the department shall identify the deficiencies and so notify local government and the applicant in writing. Ecology will not act on conditional use permit or variance submittal until the material requested in writing is submitted to the department.

(6) "Date of filing" of a local government final decision involving approval or denial of a substantial development permit is the date of actual receipt by the department of a local government's final decision on the permit.

(7) "Date of filing" involving approval or denial of a variance or conditional use permit, is the date of transmittal of the department's final decision on the variance or conditional use permit to local government and the applicant.

(8) Date of filing for a substantial development permit transmitted simultaneously with a shoreline conditional use permit or variance, or both, has the same meaning as subsection (7) of this section.

~~(9) The department shall ((provide a written notice to the local government and the applicant of the "date of filing."~~

~~(9))~~ notify the local government and applicant of the date of filing by telephone or electronic means, followed by written communication, to ensure that the applicant has received the full written decision.

(10) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general.

~~((10))~~ (11) When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided by the local government to the department. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the local government, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan and the local government shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with subsection (3) of this section to the department for completion of the file on the permit. The purpose of this provision is to assure that the local and department files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-27-170 Review criteria for variance permits. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)((b))~~(c)~~, and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

(e) That the variance requested is the minimum necessary to afford relief; and

(f) That the public interest will suffer no substantial detrimental effect.

(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)((b))~~(c)~~, or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were

granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

(5) Variances from the use regulations of the master program are prohibited.

NEW SECTION

WAC 173-27-215 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations.

(1) Purpose of section. In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts Shoreline Management Act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects.

(2) Conditions and criteria for providing relief. The local government may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(ii) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(iii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;

(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides

a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (3) of this section, the department shall provide at least twenty days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on its web site.

(ii) The department shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(3) The public notice requirements of subsection (2)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the department under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(4) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A-030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(6) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

WSR 17-06-069

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 1, 2017, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-22-038.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-102-0100 Online registration, contained in a new chapter 388-102 WAC, Online registration of continuing care retirement communities (CCRC).

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on April 4, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 5, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., April 4, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by March 21, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will establish consistent application and registration requirements for the continuing care retirement community online state registry. The proposed rule will require an entity to submit a completed application with required documentation and pay a registration fee in order to become registered as a continuing care retirement community.

Reasons Supporting Proposal: Legislation that passed in 2016 requires the department of social and health services (DSHS) to create an online registry and a collect a registration fee for CCRCs operating in the state of Washington effective July 1, 2017.

Statutory Authority for Adoption: RCW 43.17.060, 18.390.40 [18.390.040].

Statute Being Implemented: SSHB [2SHB] 2726, chapter 183, Laws of 2016.

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: HB [2SHB] 2726 directed the department in section 4 (1)(a) to require submission of a complete application, and in (c) to establish and collect a fee. Section 2(2) allows an applicant to appeal [a] decision by the department to deny an applicant registration.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Teri Smistad, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2394; Implementation and Enforcement: Eric Mandt, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses or small nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule are [is] exempt under RCW 34.05.328 (5)(b)(iii), rules adopting or incorporating by reference Washington state statutes.

February 23, 2017
Katherine I. Vasquez
Rules Coordinator

Chapter 388-102 WAC

ONLINE REGISTRATION OF CONTINUING CARE
RETIREMENT COMMUNITIES (CCRC)NEW SECTION

WAC 388-102-0100 Online registration. (1) The department of social and health services business analysis and applications unit (BAAU) will establish an online registration as required by chapter 18.390 RCW.

(2) To be eligible to be registered as a continuing care retirement community (CCRC) and listed on the state aging and long-term support administration (AL TSA) CCRC online registry, an entity must:

- (a) Complete the application; and
- (b) Pay the registration fee.

(3) A CCRC must register with the state and pay the required fee every two years.

(4) At the time of the application for or renewal of a CCRC registration, the entity must pay a registration fee. Beginning July 1, 2017, the registration fee must be established in the omnibus appropriations act and any amendment or additions made to that act.

(5) An applicant may appeal agency denials of an application for CCRC registration.

(a) Appeals to the department must be made in writing within thirty days of the department's denial.

(b) Appeals should be sent to the office of administrative hearings.

WSR 17-06-070

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed March 1, 2017, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-012.

Title of Rule and Other Identifying Information: Health and safety regulations, WAC 504-36-030 Spectator events—Safety rules.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on April 6, 2017, at 4:00 p.m.

Date of Intended Adoption: May 5, 2017.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax (509) 335-3969, by April 6, 2017.

Assistance for Persons with Disabilities: Contact Joy Faerber by April 4, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the safety rules for spectator events.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: [Washington State University], public.

Name of Agency Personnel Responsible for Drafting: Benjamin Clarke, Assistant Director, Athletic Events, Intercollegiate Athletics, Bohler Gym 130a, Pullman, Washington 99164-1602, (509) 335-5109 and Amanda Owen, Contracts Manager, Finance and Administration, French Administration 442, Pullman, Washington 99164-1048, (509) 335-7739; Implementation: Stacy Pearson, Vice President, Finance and Administration, French Administration 442, Pullman, Washington 99164-1048, (509) 335-5524; and Enforcement: Bill Gardner, Associate Vice President, WSU Police/Public Safety, Public Safety 104, Pullman, Washington 99164-1072, (509) 335-4484.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

March 1, 2017

D. Bartlett, Director

Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-021, filed 8/27/12, effective 9/27/12)

WAC 504-36-030 Spectator events—Safety rules. (1)

Protection of the safety and general welfare of students, faculty and staff, performers and officials, and members of the general public attending or participating in spectator events on ~~((the))~~ campus is a primary concern of Washington State University.

(2) The following rules of conduct ~~((are applicable))~~ apply to all ~~((public))~~ spectator events of Washington State University. "Spectator event," for the purposes of this section, means ticketed or nonticketed athletic or entertainment events held on any portion of university property, including ~~((specifically))~~, but not limited to, Martin Stadium and the Beasley Coliseum ~~((and to all public areas of the facility wherein the event is held))~~ (hereafter the "event site").

(a) Behavior which in the judgment of designated university officials constitutes a disruption of the event or a safety hazard for other spectators or participants is prohibited.

(b) For ticketed events, an individual is entitled to occupy only the seat for which he or she has the proper ticket.

(c) Photographing or making audio or visual recordings of a spectator event for commercial purposes is not permitted without specific written permission from the WSU athletic department (for athletic events) or the performer and applicable designated university official (for entertainment events).

(d) Aisles, walkways, and stairs must be kept clear of hazards and obstacles at all times to ensure safe and easy passage for all persons.

(e) Possession and/or consumption of illegal drugs or marijuana is prohibited((;)). Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.

(i) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with ~~((b))~~ (e)(ii) of this subsection, found ~~((shall be))~~ in the possession

of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials ((or their representatives upon request. In addition, violators of this section may be subject to university disciplinary action (if applicable) and/or legal proceedings, and to removal from the event site)) for law enforcement purposes or for disposal, as appropriate.

(ii) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor ~~((control))~~ and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor ~~((control))~~ and cannabis board and restrictions and policies imposed by the university, have restricted attendance, and be limited to specified room(s) or area(s). Possession, consumption, service, dispensation, or sale of alcohol is prohibited except to persons of legal age.

~~((e) Except as provided in (b) of this subsection, possession of glass or metal beverage containers, or devices used for carrying such beverage containers, is prohibited; however, this section shall not apply to personal canteens or thermos bottles one liter or less in size, containing beverages not in violation of this section, and provided further, that this section shall not apply to small soft-sided articles used to carry such permitted containers, as more fully described in (d) of this subsection.))~~ (f) Smoking and other uses of tobacco and/or nicotine products are prohibited in all areas of the Pullman campus in accordance with chapter 504-38 WAC and all areas of the Vancouver campus in accordance with chapter 504-37 WAC.

(g) Each spectator is allowed to bring one empty nondisposable water bottle into the event site, provided that the capacity of the water bottle is no more than one and one-half liters. All other beverage containers and devices used for carrying beverage containers are prohibited. All such items ((shall be)) are subject to a visual inspection by designated university officials upon entry to the event site. ((Any containers or devices prohibited by this section shall be removed by the possessor or delivered to the custody of designated university officials or their representatives upon request. This section shall not apply to approved vendors.

~~(d) Knapsacks, duffel bags, backpacks, bags used to transport permitted beverage containers or other))~~ If designated university officials make the determination that a given container or device is prohibited, the possessor of the container or device must remove the container or device from the event site premises or may surrender the container or device to such designated university officials for disposal.

(h) Each spectator is allowed to bring one soft sided bag((s shall be)) into the event site, provided such bag is no larger than fourteen inches by eight inches by fourteen inches and, for seated events, is small enough to fit completely under ((one seat, and shall be so kept at all times to maintain clear aisles, walkways and stairs)) the spectator's seat, where such bags must be kept. All other bags and containers are prohibited. All such items are subject to a visual inspection by designated university officials upon entry into the event site. ((No hard sided bags, suitcases, coolers or other similar items shall be permitted into the event site.

~~(e) Aisles, walkways and stairs shall be kept clear of hazards and obstacles (including but not limited to those items discussed in (c) and (d) of this subsection) at all times, to ensure safe and easy passage for persons attending the event, university and security officials, and others at the event site.~~

~~(f) Possession of any))~~ If designated university officials make the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university officials for disposal.

(i) The following items are prohibited in the event site:

(i) Fireworks, weapons, explosive devices, or artificial noisemaking devices (such as airhorns) ((is prohibited in the event site. Any such items shall be surrendered to designated university officials upon request. In addition, possession of such items may subject violators of this section to university disciplinary action (if applicable) and/or legal proceedings, and to removal from the event site.

~~(g) Smoking is prohibited in areas designated as "no smoking."~~

~~(h) An individual is entitled to occupy only the seat for which he or she has the proper ticket.~~

~~(i) Recording video of the event for commercial purposes is not permitted into the event site without written permission from the WSU athletic department.~~

~~(j) Umbrellas may not be opened or raised in seating areas of any event site, in order to ensure that all persons attending the event have as clear and unobstructed a view of the event as possible. Personal sized umbrellas may be brought into the event site and stored as described in (d) and (e) of this subsection);~~

(ii) Items deemed dangerous or unacceptable by designated university officials;

(iii) Drones;

(iv) Laser pointers;

(v) Extension items used to hold cellular telephones or cameras in place (e.g., "selfie sticks");

(vi) Flag poles, or any items that act as an extension of an arm and have a flag or sign affixed;

(vii) Footballs, frisbees, sport balls, any kind of inflatable balls, or any other projectiles;

(viii) Umbrellas;

(ix) Pets or animals, except as allowed by WAC 504-36-020 or as otherwise required by state or federal law;

(x) Food and beverages, unless purchased from a vendor within the event site.

(3) Where there is reasonable cause to believe that a person~~((s are))~~ is violating, or ~~((are))~~ is attempting to~~((;))~~ violate, the requirements identified in ~~((WAC 504-36-030(2)))~~ subsection (2) of this section, such person ~~((or persons will be))~~ is denied license or privilege to enter or remain in or upon the event site premises, and designated university officials may take necessary action to deny entry or to remove such persons from the event site premises.

Prohibited items found in the possession of a spectator or otherwise found on the event site are to be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate. Violation of the requirements identified in subsection (2) of this section or failure to vacate the event site premises upon

request of designated university officials may result in university disciplinary action (if applicable) and/or subsequent legal ((process under the laws of the state of) proceedings under federal or state law and/or the Washington Administrative Code.

(4) For purposes of ~~((WAC 504-36-030 (1) and (2)))~~ this section, designated university officials include the president of the university, the vice president for ~~((business and))~~ finance and administration, and the following officials:

- (a) Director of athletics or designee for athletic events;
- (b) Director of the Beasley Coliseum or designee for Beasley Coliseum events;
- (c) Director of the Compton Union Building or designee for events in the Compton Union Building;
- (d) Director of the School of Music or designee for events sponsored by that school;
- (e) The WSU executive director of public safety or designee;
- (f) Officers of the WSU police department when ~~((+))~~ (i) acting at the request of any of the above-named officials to enforce university regulations, or ((2)) (ii) enforcing state laws or local ordinances;

(g) Contracted or hired security personnel and crowd management personnel when acting at the direction of the above-named officials or designees to enforce university regulations.

WSR 17-06-071

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 16-11—Filed March 1, 2017, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-24-082.

Title of Rule and Other Identifying Information: Chapter 173-224 WAC, Wastewater discharge permit fees.

Hearing Location(s): Presentation, question and answer session followed by the formal public hearing. 300 Desmond Drive, Lacey, WA 98503, on April 4, 2017, at 1:30 p.m., combined with a webinar.

Webinar: Ecology is also offering this hearing via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access.

Comments: Ecology will accept comments at the Lacey location and through the webinar.

To join the webinar click on the following link for more information and instructions <https://wadis.webex.com/wadis/j.php?RGID=r50e27d5d01ef99bfb9f05ede8a9d1516>.

Date of Intended Adoption: June 28, 2017.

Submit Written Comments to: Charles Gilman, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, email charles.gilman@ecy.wa.gov, by April 11, 2017.

Assistance for Persons with Disabilities: Contact ecology water quality program by March 28, 2017, TTY (877) 833-6341 or (360) 407-6600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is propos-

ing to change the title of this chapter to water quality permit fees.

Ecology is also proposing to:

- Increase annual permit fees for the following fee types by 6.37 percent for state fiscal year 2018 and 5.58 percent for state fiscal year 2019: Aluminum alloys, aluminum forming, Aggregate production—Individual and general permits, aquatic pest control, boatyards—Individual and general permits, coal mining and preparation, concentrated animal feeding operations, dairies, iron and steel, metal finishing, municipal wastewater - >250,000 residential equivalents, nonferrous metals forming, ore mining, private and state-owned facilities, shipyards, Stormwater construction—Individual and general permits, Stormwater industrial—Individual and general permits, and stormwater municipal Phase 1 and 2 permits.
- Increase annual permit fees for the following fee types by 5.50 percent for state fiscal year 2018 and 4.50 percent for state fiscal year 2019: Aquaculture, aluminum and magnesium reduction mills, bridge washing, combined industrial waste treatment, combined food processing waste treatment, combined sewer overflow system, commercial laundry, Crop preparing—Individual and general permits, Facilities not otherwise classified—Individual and general permits, flavor extraction, food processing, fuel and chemical storage, hazardous waste cleanup sites, ink formulation and printing, inorganic chemicals manufacturing, municipal wastewater - >250,000 residential equivalents, Noncontact cooling water with additives—Individual and general permits, Noncontact cooling water without additives—Individual and general permits, organic chemical manufacturing, petroleum refining, photofinishers, power and/or steam plants, pulp, paper and paperboard, radioactive effluents and discharges, RCRA corrective action sites, seafood processing, solid waste sites, textile mills, timber products, vegetable/bulb washing facilities, vehicle maintenance and freight transfer, Water plants—Individual and general permits and wineries—Individual permits.

Ecology is also updating rule language to account for changes in current business practices relating to electronic payment options, collection processes, and data collection. Ecology is also removing the winery general permit fee category for the 2017-19 biennium, as this new permit will not be effective until July 1, 2019.

Reasons Supporting Proposal: RCW 90.48.465, water pollution control requires ecology to establish, by rule, annual fees that will fund the water quality permit programs. Ecology adopted chapter 173-224 WAC, Wastewater discharge permit fees, in response to this law.

This rule amendment allows for the continued recovery of ecology's expenses in operating and managing the permit programs. Ecology is proposing to increase fees for fiscal years 2018 and 2019 in order to collect the revenue needed to recover the costs of administering the water quality permit programs next biennium.

Statutory Authority for Adoption: RCW 90.48.465, water pollution control.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

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

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

Name of Agency Personnel Responsible for Drafting: Charles Gilman, 300 Desmond Drive S.E., Lacey, WA, (360) 407-6425; Implementation and Enforcement: Don Seeberger, 300 Desmond Drive S.E., Lacey, WA, (360) 407-6489.

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

Small Business Economic Impact Statement

This small business economic impact statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment - the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts for this document are not evaluated for nonprofit or government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of economic analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the preliminary regulatory analysis (Ecology Publication No. 17-10-004, February 2017).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments. In the current analysis, the regulatory baseline is the way permit fees would be calculated if the proposed rule is not adopted.

Under the current law, (RCW 90.48.465, water pollution control), ecology is required to set, by rule, fees that would fund the program. Without the adoption of the proposed rule, fees would remain at their previously set levels.

The proposed rule amendments that differ from the baseline and are not *specifically* dictated in the authorizing statute or elsewhere in law or rule include:

1. Increase fees for the following fee types (overpaying fee payers) by:

- 5.50 percent for fiscal year 2018
- 4.50 percent for fiscal year 2019

These fee types include:

- Aluminum and magnesium reduction mills
- Aquaculture
- Bridge washing
- Combined industrial waste treatment
- Combined food processing waste treatment
- Combined sewer overflow system
- Commercial laundry
- Crop preparing (fruit packers)—Individual and general permits
- Facilities not otherwise classified—Individual and general permits
- Flavor extraction
- Food processing
- Fuel and chemical storage
- Hazardous waste cleanup sites
- Ink formulation and printing
- Inorganic chemicals manufacturing
- Municipal wastewater - >250,000 residential equivalents (res)
 - Noncontact cooling water with additives—Individual and general permits
 - Noncontact cooling water without additives—Individual and general permits
- Organic chemical manufacturing
- Petroleum refining
- Photofinishers
- Power and/or steam plants
- Pulp, paper, and paperboard
- Radioactive effluents and discharges
- RCRA corrective action sites
- Seafood processing
- Solid waste sites
- Textile mills
- Timber products
- Vegetable/bulb washing facilities
- Vehicle maintenance and freight transfer
- Water plants—Individual and general permits
- Wineries—Individual permits

2. Increase fees for the following fee types (underpaying fee payers) by:

- 6.37 percent for fiscal year 2018
- 5.58 percent for fiscal year 2019

These fee types include:

- Aluminum alloys
- Aluminum forming
- Aggregate production (sand and gravel)—Individual and general permit
- Aquatic pest control
- Boatyards—Individual and general permits
- Coal mining and preparation
- Concentrated animal feeding operations

- Dairies
- Iron and steel
- Metal finishing
- Nonferrous metals forming
- Ore mining
- Private and state-owned facilities
- Shipyards
- Stormwater construction—Individual and general permits
- Stormwater industrial—Individual and general permits
- Stormwater municipal Phase 1 and 2 permits

Overpaying fee payers:

- **Baseline**

Zero percent increase in fees for 2018 and 2019.

- **Proposed**

Increase in fees by:

- o 5.50 percent for fiscal year 2018
- o 4.50 percent for fiscal year 2019

- **Expected impact**

Increase in fees.

Underpaying fee payers:

- **Baseline**

Zero percent increase in fees for 2018 and 2019.

- **Proposed**

Increase in fees by:

- o 6.37 percent for fiscal year 2018
- o 5.58 percent for fiscal year 2019

- **Expected impact**

Increase in fees.

The baseline of no fee increases would result in total annual fees of \$20,823,885 (estimated aggregate fees for fiscal year 2017).

Under the proposed rule, we estimated total fees to be \$21,867,315 in fiscal year 2018 and \$22,803,749 in fiscal year 2019. This represents increases of \$1,043,430 in fiscal year 2018 and \$1,979,864 in fiscal year 2019 for an aggregated, discounted total cost of \$3,001,365 for the biennium.

COSTS OF COMPLIANCE: EQUIPMENT, compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

COSTS OF COMPLIANCE: SUPPLIES, compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR, compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of labor.

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES, compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS, where applicable, ecology estimates administrative costs

("overhead") as part of the cost of labor and professional services, above.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: Ecology currently manages nearly five thousand six hundred permits in the various categories. Each of the permitted businesses would be impacted by the rule.

Though many of the permitted categories have more than one fee level, these breakpoints are based on the scope and scale of the permitted activity, NOT the size of the business (measured by employment at the highest level of ownership and operation) conducting the activity. While it is often the case that smaller businesses conduct smaller permitted activities and larger businesses conduct larger activities, this is far from universal and the opposite may sometimes be the case. For this reason, permit fee changes were treated as constant, regardless of the number of employees a business has.

Inherently, these constant values divided by a smaller number of employees (fewer than fifty) will result in a larger cost-to-employee ratio than if divided by a larger number of employees (greater than fifty).

We conclude that the proposed rule is likely to impose disproportionate compliance costs on small businesses, and must therefore include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur costs could experience reduced sales or revenues if the fee changes would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes.

The businesses incurring increased compliance costs under the proposed rule are highly diverse. They would likely have varied ability to pass costs onto their consumers without causing a response in demand that affects their revenues.

MITIGATION OF DISPROPORTIONATE IMPACT: The RFA (RCW 19.85.030(2)) states that:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

Ecology considered all of the above options, and included the following legal and feasible elements in the proposed rule that reduce costs. These may be available to small and large businesses, but would reduce relative burden more for small businesses. We also considered the alternative rule contents discussed in Chapter 6, and excluded those elements that would have imposed excess compliance burden on businesses.

The permit fee rule contains language that helps mitigate the impact of fees on small businesses.

WAC 173-224-090 allows business[es] to have their annual fee reduced by fifty percent if they meet the following criteria:

- (a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
- (b) Be independently owned and operated from all other businesses (i.e. not a subsidiary of a parent company);
- (c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the permit; and
- (d) Have an original annual fee assessment totaling five hundred dollars or greater.

Extreme hardship fee reductions: Any industrial or construction small business with annual gross revenue totaling one hundred thousand dollars or less of the goods or services produced using the processes regulated by the permit may apply to ecology for an extreme hardship fee reduction. If granted, the annual fee is reduced to a flat rate totaling \$128.00.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: When the fee rule was first developed, an advisory committee consisting of representatives of large and small business, state and federal government agencies, municipalities, and environmental groups helped us establish fee category types and fee amounts. They also gave us input on how we could mitigate the fees for small business by allowing small business or extreme hardship fee reductions.

We have continued to work with this committee now called the "water quality partnership" (the partnership). We meet to discuss proposed fee rule amendments and other issues surrounding the permit programs. Ecology met with the partnership prior to the filing of the CR-101 for this rule amendment.

Ecology also has a very intense public involvement process which allows permit holders consisting of large and small business[es], municipalities, state and federal governments, and tribes to provide comments on any amendments being proposed to the fee rule.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule is likely to impact the following industries:

1114	1121	1125	1151	2121	2122
2211	2213	311X	3121	3132	3133
3221	3241	325X	3311	3313	3366
4239	4841	5621	5622	8123	8129

IMPACT ON JOBS: Ecology used the Washington state office of financial management's 2007 Washington input-output model¹ to estimate the impact of the proposed rule on

jobs in the state. The model accounts for interindustry impacts and spending multipliers of earned income and changes in output.

¹ See the Washington state office of financial management's site for more information on the input-output model. <http://www.ofm.wa.gov/economy/io/2007/default.asp>.

We estimated that there would be a net decrease of twenty-nine jobs statewide over the two years covered by the proposed rule.

These prospective changes in overall employment in the state are actually the sum of multiple small increase[s] and decreases across all industries in the state.

A copy of the statement may be obtained by contacting Charles Gilman, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6425, email charles.gilman@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Charles Gilman, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6425, email charles.gilman@ecy.wa.gov.

February 22, 2017
Polly Zehm
Deputy Director

Chapter 173-224 WAC

~~((WASTEWATER DISCHARGE))~~ WATER QUALITY PERMIT FEES

AMENDATORY SECTION (Amending WSR 13-22-051, filed 11/1/13, effective 12/2/13)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

("Aggregate production" means the mining or quarrying of sand, gravel, or rock, or the production of concrete, or asphalt or a combination thereof.)

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400

Animal Type	Number of Animals per Animal Unit
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the ~~((crop preparing))~~ fruit packing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents will be considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for the hoisting and lifting of ship hulls.

~~("Crop preparing" means the preparation of fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.)~~

"cu. yds/yr" means the total production from an ~~((aggregate production))~~ sand and gravel facility in cubic yards during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

~~("Existing operations" means those industrial operations requiring a wastewater discharge permit before July 1, 1993.)~~

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal byproducts, excluding ~~((crop preparing))~~ fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Fruit packing" means the preparation of fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"Gross revenue for business" means the gross income from Washington business activities ~~((as reported to the Washington state department of revenue))~~.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial stormwater" means an operation required to be covered under ecology's NPDES and state waste discharge ((~~baseline~~)) general permit for stormwater discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for stormwater only.

~~("MGD" means permitted flow expressed in million gallons per day.)~~

"Manufacturing" means the making of goods and articles by hand or especially, by machinery into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means the preparation of metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"MGD" means permitted flow expressed in million gallons per day.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means the manufacturing of semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating (~~(aggregate)~~) sand and gravel site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that (~~(has no current)~~) conducts mining or processing fewer than ninety days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site. (~~(This definition can be found in ecology's National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations.)~~)

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.-260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW

including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Sand and gravel" means the mining or quarrying of sand, gravel, or rock, or the production of concrete, or asphalt or a combination thereof.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW (~~(98.48.160 [90.48.160])~~) 90.48.160 or 90.48.-162.

"Stormwater" means an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means the washing, packing, and shipping of fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending WSR 15-23-110, filed 11/18/15, effective 12/19/15)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
Aluminum Alloys	\$(17,600.00) <u>19,707.00</u>	\$(18,527.00) <u>20,807.00</u>
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	((101,757.00)) <u>110,799.00</u>	((105,023.00)) <u>115,785.00</u>
b. State Permit	((50,881.00)) <u>55,402.00</u>	((52,514.00)) <u>57,895.00</u>
Aluminum Forming	((52,798.00)) <u>59,120.00</u>	((55,580.00)) <u>62,420.00</u>
((Aggregate Production)) <u>Sand and Gravel - Individual Permit Coverage</u>		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((3,029.00)) <u>3,392.00</u>	((3,189.00)) <u>3,581.00</u>
2. Nonoperating ((aggregate)) site (fee per site)	((124.00)) <u>139.00</u>	((131.00)) <u>147.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((1,262.00)) <u>1,413.00</u>	((1,328.00)) <u>1,492.00</u>
2. 50,000 - < 300,000 tons/yr.	((3,030.00)) <u>3,393.00</u>	((3,190.00)) <u>3,582.00</u>
3. 300,000 tons/yr. and greater	((3,789.00)) <u>4,243.00</u>	((3,989.00)) <u>4,480.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((1,262.00)) <u>1,413.00</u>	((1,328.00)) <u>1,492.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((3,030.00)) <u>3,393.00</u>	((3,190.00)) <u>3,582.00</u>
3. 200,000 cu. yds/yr. and greater	((3,789.00)) <u>4,243.00</u>	((3,989.00)) <u>4,480.00</u>

The fee for a facility in the ((aggregate)) sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.

d. Portable Operations		
1. Rock Crushing	((3,029.00)) <u>3,392.00</u>	((3,189.00)) <u>3,581.00</u>
2. Asphalt	((3,029.00)) <u>3,392.00</u>	((3,189.00)) <u>3,581.00</u>
3. Concrete	((3,029.00)) <u>3,392.00</u>	((3,189.00)) <u>3,581.00</u>

((Aggregate Production)) Sand and Gravel - General Permit Coverage

a. Mining Activities		
1. Mining, screening, washing and/or crushing	((2,119.00)) <u>2,373.00</u>	((2,231.00)) <u>2,505.00</u>
2. Nonoperating ((aggregate)) site (fee per site)	((87.00)) <u>98.00</u>	((92.00)) <u>103.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((885.00)) <u>991.00</u>	((932.00)) <u>1,046.00</u>
2. 50,000 - < 300,000 tons/yr.	((2,120.00)) <u>2,374.00</u>	((2,232.00)) <u>2,507.00</u>
3. 300,000 tons/yr. and greater	((2,651.00)) <u>2,969.00</u>	((2,791.00)) <u>3,135.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((885.00)) <u>991.00</u>	((932.00)) <u>1,046.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((2,120.00)) <u>2,374.00</u>	((2,232.00)) <u>2,507.00</u>
3. 200,000 cu. yds/yr. and greater	((2,651.00)) <u>2,969.00</u>	((2,791.00)) <u>3,135.00</u>

The fee for a facility in the ((aggregate)) sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.

d. Portable Operations		
1. Rock Crushing	((2,120.00)) <u>2,374.00</u>	((2,232.00)) <u>2,507.00</u>
2. Asphalt	((2,120.00)) <u>2,374.00</u>	((2,232.00)) <u>2,507.00</u>
3. Concrete	((2,120.00)) <u>2,374.00</u>	((2,232.00)) <u>2,507.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	((5,175.00))	((5,341.00))
	<u>5,635.00</u>	<u>5,889.00</u>
b. Finfish hatching and rearing - General Permit Coverage	((3,625.00))	((3,741.00))
	<u>3,947.00</u>	<u>4,125.00</u>
c. Shellfish hatching	((196.00))	((202.00))
	<u>213.00</u>	<u>223.00</u>
Aquatic Pest Control		
a. Irrigation Districts	((522.00))	((550.00))
	<u>585.00</u>	<u>618.00</u>
b. Mosquito Control Districts	((522.00))	((550.00))
	<u>585.00</u>	<u>618.00</u>
c. Invasive Moth Control	((522.00))	((550.00))
	<u>585.00</u>	<u>618.00</u>
d. Aquatic Species Control & Eradication	((522.00))	((550.00))
	<u>585.00</u>	<u>618.00</u>
e. Oyster Growers	((522.00))	((550.00))
	<u>585.00</u>	<u>618.00</u>
f. Rotenone Control	((522.00))	((550.00))
	<u>585.00</u>	<u>618.00</u>
Boat Yards - Individual Permit Coverage		
a. With stormwater only discharge	((451.00))	((475.00))
	<u>505.00</u>	<u>533.00</u>
b. All others	((901.00))	((948.00))
	<u>1,008.00</u>	<u>1,064.00</u>
Boat Yards - General Permit Coverage		
a. With stormwater only discharge	((411.00))	((433.00))
	<u>461.00</u>	<u>487.00</u>
b. All others	((833.00))	((877.00))
	<u>933.00</u>	<u>985.00</u>
Bridge Washing		
a. Single-site Permit	((3,328.00))	((3,328.00))
	<u>3,511.00</u>	<u>3,669.00</u>
b. WSDOT Annual Fee	((11,061.00))	((11,061.00))
	<u>11,669.00</u>	<u>12,194.00</u>
Coal Mining and Preparation		
a. < 200,000 tons per year	((7,035.00))	((7,406.00))
	<u>7,878.00</u>	<u>8,318.00</u>
b. 200,000 - < 500,000 tons per year	((15,841.00))	((16,676.00))
	<u>17,738.00</u>	<u>18,728.00</u>
c. 500,000 - < 1,000,000 tons per year	((28,158.00))	((29,641.00))
	<u>31,529.00</u>	<u>33,289.00</u>
d. 1,000,000 tons per year and greater	((52,798.00))	((55,580.00))
	<u>59,120.00</u>	<u>62,420.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
Combined Industrial Waste Treatment		
a. < 10,000 gpd	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,972.00</u>
b. 10,000 - < 50,000 gpd	((8,626.00)) <u>9,393.00</u>	((8,903.00)) <u>9,816.00</u>
c. 50,000 - < 100,000 gpd	((17,256.00)) <u>18,790.00</u>	((17,810.00)) <u>19,636.00</u>
d. 100,000 - < 500,000 gpd	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
e. 500,000 gpd and greater	((51,765.00)) <u>56,365.00</u>	((53,427.00)) <u>58,901.00</u>
Combined Food Processing Waste Treatment Facilities	((16,520.00)) <u>17,988.00</u>	((17,050.00)) <u>18,797.00</u>
Combined Sewer Overflow System		
a. < 50 acres	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,927.00</u>
b. 50 - < 100 acres	((8,626.00)) <u>9,393.00</u>	((8,903.00)) <u>9,816.00</u>
c. 100 - < 500 acres	((10,356.00)) <u>11,276.00</u>	((10,688.00)) <u>11,783.00</u>
d. 500 acres and greater	((13,802.00)) <u>15,028.00</u>	((14,245.00)) <u>15,704.00</u>
Commercial Laundry	((442.00)) <u>481.00</u>	((456.00)) <u>503.00</u>
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((236.00)) <u>264.00</u>	((248.00)) <u>279.00</u>
b. 200 - < 400 Animal Units	((592.00)) <u>663.00</u>	((623.00)) <u>700.00</u>
c. 400 - < 600 Animal Units	((1,186.00)) <u>1,327.00</u>	((1,248.00)) <u>1,401.00</u>
d. 600 - < 800 Animal Units	((1,777.00)) <u>1,990.00</u>	((1,871.00)) <u>2,101.00</u>
e. 800 Animal Units and greater	((2,373.00)) <u>2,657.00</u>	((2,498.00)) <u>2,805.00</u>
((Crop Preparing)) Fruit Packing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	((344.00)) <u>375.00</u>	((355.00)) <u>392.00</u>
b. 1,000 - < 5,000 bins/yr.	((691.00)) <u>752.00</u>	((713.00)) <u>786.00</u>
c. 5,000 - < 10,000 bins/yr.	((1,380.00)) <u>1,502.00</u>	((1,424.00)) <u>1,570.00</u>
d. 10,000 - < 15,000 bins/yr.	((2,763.00)) <u>3,009.00</u>	((2,852.00)) <u>3,144.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
e. 15,000 - < 20,000 bins/yr.	((4,569.00)) <u>4,975.00</u>	((4,716.00)) <u>5,199.00</u>
f. 20,000 - < 25,000 bins/yr.	((6,384.00)) <u>6,951.00</u>	((6,589.00)) <u>7,264.00</u>
g. 25,000 - < 50,000 bins/yr.	((8,540.00)) <u>9,299.00</u>	((8,814.00)) <u>9,717.00</u>
h. 50,000 - < 75,000 bins/yr.	((9,491.00)) <u>10,335.00</u>	((9,796.00)) <u>10,800.00</u>
i. 75,000 - < 100,000 bins/yr.	((11,042.00)) <u>12,023.00</u>	((11,396.00)) <u>12,564.00</u>
j. 100,000 - < 125,000 bins/yr.	((13,802.00)) <u>15,028.00</u>	((14,245.00)) <u>15,704.00</u>
k. 125,000 - < 150,000 bins/yr.	((17,255.00)) <u>18,788.00</u>	((17,809.00)) <u>19,633.00</u>
l. 150,000 bins/yr. and greater	((20,673.00)) <u>22,511.00</u>	((21,337.00)) <u>23,524.00</u>
((Crop Preparing)) Fruit Packing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	((240.00)) <u>262.00</u>	((248.00)) <u>274.00</u>
b. 1,000 - < 5,000 bins/yr.	((483.00)) <u>526.00</u>	((499.00)) <u>550.00</u>
c. 5,000 - < 10,000 bins/yr.	((967.00)) <u>1,053.00</u>	((998.00)) <u>1,100.00</u>
d. 10,000 - < 15,000 bins/yr.	((1,934.00)) <u>2,106.00</u>	((1,996.00)) <u>2,201.00</u>
e. 15,000 - < 20,000 bins/yr.	((3,201.00)) <u>3,486.00</u>	((3,304.00)) <u>3,643.00</u>
f. 20,000 - < 25,000 bins/yr.	((4,469.00)) <u>4,866.00</u>	((4,612.00)) <u>5,085.00</u>
g. 25,000 - < 50,000 bins/yr.	((5,976.00)) <u>6,507.00</u>	((6,168.00)) <u>6,800.00</u>
h. 50,000 - < 75,000 bins/yr.	((6,642.00)) <u>7,232.00</u>	((6,855.00)) <u>7,557.00</u>
i. 75,000 - < 100,000 bins/yr.	((7,724.00)) <u>8,410.00</u>	((7,972.00)) <u>8,788.00</u>
j. 100,000 - < 125,000 bins/yr.	((9,664.00)) <u>10,523.00</u>	((9,974.00)) <u>10,997.00</u>
k. 125,000 - < 150,000 bins/yr.	((12,078.00)) <u>13,152.00</u>	((12,466.00)) <u>13,744.00</u>
l. 150,000 bins/yr. and greater	((14,493.00)) <u>15,781.00</u>	((14,958.00)) <u>16,491.00</u>
Dairies \$.50 per Animal Unit not to exceed \$((1,586.00)) <u>1,776.00</u> for FY ((2016)) 2018 and \$((1,670.00)) <u>1,875.00</u> for FY ((2017)) 2018 & beyond		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	((1,725.00)) <u>1,878.00</u>	((1,780.00)) <u>1,963.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
b. 1,000 - < 10,000 gpd	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,927.00</u>
c. 10,000 - < 50,000 gpd	((8,627.00)) <u>9,394.00</u>	((8,904.00)) <u>9,817.00</u>
d. 50,000 - < 100,000 gpd	((13,802.00)) <u>15,028.00</u>	((14,245.00)) <u>15,704.00</u>
e. 100,000 - < 500,000 gpd	((27,471.00)) <u>29,912.00</u>	((28,353.00)) <u>31,258.00</u>
f. 500,000 - < 1,000,000 gpd	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
g. 1,000,000 gpd and greater	((51,764.00)) <u>56,364.00</u>	((53,426.00)) <u>58,900.00</u>
Facilities Not Otherwise Classified - General Permit Coverage		
a. < 1,000 gpd	((1,210.00)) <u>1,318.00</u>	((1,249.00)) <u>1,377.00</u>
b. 1,000 - < 10,000 gpd	((2,504.00)) <u>2,726.00</u>	((2,584.00)) <u>2,849.00</u>
c. 10,000 - < 50,000 gpd	((6,041.00)) <u>6,578.00</u>	((6,235.00)) <u>6,874.00</u>
d. 50,000 - < 100,000 gpd	((9,664.00)) <u>10,523.00</u>	((9,974.00)) <u>10,997.00</u>
e. 100,000 - < 500,000 gpd	((19,323.00)) <u>21,040.00</u>	((19,943.00)) <u>21,987.00</u>
f. 500,000 - < 1,000,000 gpd	((24,154.00)) <u>26,300.00</u>	((24,929.00)) <u>27,484.00</u>
g. 1,000,000 gpd and greater	((36,236.00)) <u>39,456.00</u>	((37,399.00)) <u>41,232.00</u>
Flavor Extraction		
a. Steam Distillation	((177.00)) <u>193.00</u>	((183.00)) <u>202.00</u>
Food Processing		
a. < 1,000 gpd	((1,724.00)) <u>1,877.00</u>	((1,779.00)) <u>1,961.00</u>
b. 1,000 - < 10,000 gpd	((4,397.00)) <u>4,788.00</u>	((4,438.00)) <u>5,003.00</u>
c. 10,000 - < 50,000 gpd	((7,851.00)) <u>8,549.00</u>	((8,103.00)) <u>8,934.00</u>
d. 50,000 - < 100,000 gpd	((12,336.00)) <u>13,432.00</u>	((12,732.00)) <u>14,036.00</u>
e. 100,000 - < 250,000 gpd	((17,255.00)) <u>18,788.00</u>	((17,809.00)) <u>19,633.00</u>
f. 250,000 - < 500,000 gpd	((22,691.00)) <u>24,707.00</u>	((23,419.00)) <u>25,819.00</u>
g. 500,000 - < 750,000 gpd	((28,468.00)) <u>30,998.00</u>	((29,382.00)) <u>32,393.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
h. 750,000 - < 1,000,000 gpd	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
i. 1,000,000 - < 2,500,000 gpd	((42,513.00)) <u>46,291.00</u>	((43,878.00)) <u>48,374.00</u>
j. 2,500,000 - < 5,000,000 gpd	((47,451.00)) <u>51,668.00</u>	((48,974.00)) <u>53,993.00</u>
k. 5,000,000 gpd and greater	((51,765.00)) <u>56,365.00</u>	((53,427.00)) <u>58,901.00</u>
Fuel and Chemical Storage		
a. < 50,000 bbls	((1,725.00)) <u>1,878.00</u>	((1,780.00)) <u>1,963.00</u>
b. 50,000 - < 100,000 bbls	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,927.00</u>
c. 100,000 - < 500,000 bbls	((8,626.00)) <u>9,393.00</u>	((8,903.00)) <u>9,816.00</u>
d. 500,000 bbls and greater	((17,256.00)) <u>18,790.00</u>	((17,810.00)) <u>19,636.00</u>
Hazardous Waste Clean Up Sites		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	((4,525.00)) <u>4,927.00</u>	((4,670.00)) <u>5,149.00</u>
2. NPDES Permit Issued pre 7/1/94	((4,524.00)) <u>4,926.00</u>	((4,669.00)) <u>5,148.00</u>
3. NPDES Permit Issued post 7/1/94	((9,050.00)) <u>9,855.00</u>	((9,341.00)) <u>10,298.00</u>
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	((8,849.00)) <u>9,635.00</u>	((9,133.00)) <u>10,069.00</u>
2. > 2 Contaminants of concern	((17,697.00)) <u>19,270.00</u>	((18,265.00)) <u>20,137.00</u>
Ink Formulation and Printing		
a. Commercial Print Shops	((2,655.00)) <u>2,891.00</u>	((2,740.00)) <u>3,021.00</u>
b. Newspapers	((4,425.00)) <u>4,818.00</u>	((4,567.00)) <u>5,035.00</u>
c. Box Plants	((7,079.00)) <u>7,708.00</u>	((7,306.00)) <u>8,055.00</u>
d. Ink Formulation	((8,850.00)) <u>9,636.00</u>	((9,134.00)) <u>10,070.00</u>
Inorganic Chemicals Manufacturing		
a. Lime Products	((8,626.00)) <u>9,393.00</u>	((8,903.00)) <u>9,816.00</u>
b. Fertilizer	((10,385.00)) <u>11,307.00</u>	((10,718.00)) <u>11,816.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
c. Peroxide	((13,802.00)) <u>15,028.00</u>	((14,245.00)) <u>15,704.00</u>
d. Alkaline Earth Salts	((17,256.00)) <u>18,790.00</u>	((17,810.00)) <u>19,636.00</u>
e. Metal Salts	((24,153.00)) <u>26,299.00</u>	((24,928.00)) <u>27,482.00</u>
f. Acid Manufacturing	((34,223.00)) <u>37,265.00</u>	((35,322.00)) <u>38,942.00</u>
g. Chlor-alkali	((69,018.00)) <u>75,151.00</u>	((71,233.00)) <u>78,533.00</u>
Iron and Steel		
a. Foundries	((17,600.00)) <u>19,707.00</u>	((18,527.00)) <u>20,807.00</u>
b. Mills	((35,229.00)) <u>39,447.00</u>	((37,085.00)) <u>41,649.00</u>
Metal Finishing		
a. < 1,000 gpd	((2,110.00)) <u>2,362.00</u>	((2,221.00)) <u>2,494.00</u>
b. 1,000 - < 10,000 gpd	((3,518.00)) <u>3,939.00</u>	((3,703.00)) <u>4,159.00</u>
c. 10,000 - < 50,000 gpd	((8,796.00)) <u>9,849.00</u>	((9,259.00)) <u>10,399.00</u>
d. 50,000 - < 100,000 gpd	((17,599.00)) <u>19,706.00</u>	((18,526.00)) <u>20,806.00</u>
e. 100,000 - < 500,000 gpd	((35,194.00)) <u>39,408.00</u>	((37,048.00)) <u>41,608.00</u>
f. 500,000 gpd and greater	((52,794.00)) <u>59,115.00</u>	((55,575.00)) <u>62,415.00</u>
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	((1,080.00)) <u>1,176.00</u>	((1,115.00)) <u>1,229.00</u>
b. 1,000 - < 10,000 gpd	((1,506.00)) <u>1,639.00</u>	((1,554.00)) <u>1,713.00</u>
c. 10,000 - < 50,000 gpd	((3,238.00)) <u>3,526.00</u>	((3,342.00)) <u>3,685.00</u>
d. 50,000 - < 100,000 gpd	((7,552.00)) <u>8,223.00</u>	((7,794.00)) <u>8,593.00</u>
e. 100,000 - < 500,000 gpd	((12,938.00)) <u>14,087.00</u>	((13,353.00)) <u>14,721.00</u>
f. 500,000 - < 1,000,000 gpd	((18,335.00)) <u>19,965.00</u>	((18,924.00)) <u>20,863.00</u>
g. 1,000,000 - < 2,500,000 gpd	((23,729.00)) <u>25,838.00</u>	((24,491.00)) <u>27,001.00</u>
h. 2,500,000 - < 5,000,000 gpd	((28,995.00)) <u>31,572.00</u>	((29,926.00)) <u>32,993.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
i. 5,000,000 gpd and greater	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
Noncontact Cooling Water With Additives - General Permit Coverage		
a. < 1,000 gpd	((757.00)) <u>824.00</u>	((781.00)) <u>861.00</u>
b. 1,000 - < 10,000 gpd	((1,508.00)) <u>1,642.00</u>	((1,556.00)) <u>1,716.00</u>
c. 10,000 - < 50,000 gpd	((2,266.00)) <u>2,468.00</u>	((2,339.00)) <u>2,579.00</u>
d. 50,000 - < 100,000 gpd	((5,286.00)) <u>5,756.00</u>	((5,456.00)) <u>6,015.00</u>
e. 100,000 - < 500,000 gpd	((9,058.00)) <u>9,863.00</u>	((9,349.00)) <u>10,307.00</u>
f. 500,000 - < 1,000,000 gpd	((12,836.00)) <u>13,977.00</u>	((13,248.00)) <u>14,606.00</u>
g. 1,000,000 - < 2,500,000 gpd	((16,609.00)) <u>18,085.00</u>	((17,142.00)) <u>18,899.00</u>
h. 2,500,000 - < 5,000,000 gpd	((20,381.00)) <u>22,192.00</u>	((21,035.00)) <u>23,191.00</u>
i. 5,000,000 gpd and greater	((24,154.00)) <u>26,300.00</u>	((24,929.00)) <u>27,484.00</u>
Noncontact Cooling Water Without Additives - Individual Permit Coverage		
a. < 1,000 gpd	((865.00)) <u>942.00</u>	((893.00)) <u>984.00</u>
b. 1,000 - < 10,000 gpd	((1,725.00)) <u>1,878.00</u>	((1,780.00)) <u>1,963.00</u>
c. 10,000 - < 50,000 gpd	((2,591.00)) <u>2,821.00</u>	((2,674.00)) <u>2,948.00</u>
d. 50,000 - < 100,000 gpd	((6,041.00)) <u>6,578.00</u>	((6,235.00)) <u>6,874.00</u>
e. 100,000 - < 500,000 gpd	((10,356.00)) <u>11,276.00</u>	((10,688.00)) <u>11,783.00</u>
f. 500,000 - < 1,000,000 gpd	((14,665.00)) <u>15,968.00</u>	((15,136.00)) <u>16,687.00</u>
g. 1,000,000 - < 2,500,000 gpd	((18,905.00)) <u>20,585.00</u>	((19,512.00)) <u>21,511.00</u>
h. 2,500,000 - < 5,000,000 gpd	((23,292.00)) <u>25,362.00</u>	((24,040.00)) <u>26,503.00</u>
i. 5,000,000 gpd and greater	((27,608.00)) <u>30,061.00</u>	((28,494.00)) <u>31,414.00</u>
Noncontact Cooling Water Without Additives - General Permit Coverage		
a. < 1,000 gpd	((605.00)) <u>658.00</u>	((624.00)) <u>688.00</u>
b. 1,000 - < 10,000 gpd	((1,210.00)) <u>1,318.00</u>	((1,249.00)) <u>1,377.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
c. 10,000 - < 50,000 gpd	((1,814.00)) <u>1,975.00</u>	((1,872.00)) <u>2,064.00</u>
d. 50,000 - < 100,000 gpd	((4,228.00)) <u>4,604.00</u>	((4,364.00)) <u>4,811.00</u>
e. 100,000 - < 500,000 gpd	((7,247.00)) <u>7,891.00</u>	((7,480.00)) <u>8,246.00</u>
f. 500,000 - < 1,000,000 gpd	((10,267.00)) <u>11,180.00</u>	((10,597.00)) <u>11,683.00</u>
g. 1,000,000 - < 2,500,000 gpd	((13,286.00)) <u>14,466.00</u>	((13,712.00)) <u>15,117.00</u>
h. 2,500,000 - < 5,000,000 gpd	((16,306.00)) <u>17,755.00</u>	((16,829.00)) <u>18,554.00</u>
i. 5,000,000 gpd and greater	((19,323.00)) <u>21,040.00</u>	((19,943.00)) <u>21,987.00</u>
Nonferrous Metals Forming	((17,600.00)) <u>19,707.00</u>	((18,527.00)) <u>20,807.00</u>
Ore Mining		
a. Ore Mining	((3,519.00)) <u>3,940.00</u>	((3,704.00)) <u>4,160.00</u>
b. Ore mining with physical concentration processes	((7,037.00)) <u>7,880.00</u>	((7,408.00)) <u>8,320.00</u>
c. Ore mining with physical and chemical concentration processes	((28,158.00)) <u>31,529.00</u>	((29,641.00)) <u>33,289.00</u>
Organic Chemicals Manufacturing		
a. Fertilizer	((17,256.00)) <u>18,790.00</u>	((17,810.00)) <u>19,636.00</u>
b. Aliphatic	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
c. Aromatic	((51,765.00)) <u>56,365.00</u>	((53,427.00)) <u>58,901.00</u>
Petroleum Refining		
a. < 10,000 bbls/d	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
b. 10,000 - < 50,000 bbls/d	((68,420.00)) <u>74,500.00</u>	((70,616.00)) <u>77,853.00</u>
c. 50,000 bbls/d and greater	((138,044.00)) <u>150,311.00</u>	((142,475.00)) <u>157,075.00</u>
Photofinishers		
a. < 1,000 gpd	((1,380.00)) <u>1,502.00</u>	((1,424.00)) <u>1,570.00</u>
b. 1,000 gpd and greater	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,927.00</u>
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	((6,897.00)) <u>7,583.00</u>	((7,188.00)) <u>7,924.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
b. Hydroelectric	((6,897.00)) <u>7,583.00</u>	((7,188.00)) <u>7,924.00</u>
c. Nonfossil Fuel	((10,354.00)) <u>11,274.00</u>	((10,686.00)) <u>11,781.00</u>
d. Fossil Fuel	((27,608.00)) <u>30,061.00</u>	((28,494.00)) <u>31,414.00</u>
Pulp, Paper and Paper Board		
a. Fiber Recyclers	((17,254.00)) <u>18,787.00</u>	((17,808.00)) <u>19,632.00</u>
b. Paper Mills	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
c. Groundwood Pulp Mills		
1. < 300 tons per day	((51,765.00)) <u>56,365.00</u>	((53,427.00)) <u>58,901.00</u>
2. > 300 tons per day	((103,539.00)) <u>112,740.00</u>	((106,863.00)) <u>117,813.00</u>
d. Chemical Pulp Mills w/o Chlorine Bleaching	((138,037.00)) <u>150,304.00</u>	((142,468.00)) <u>157,068.00</u>
e. Chemical Pulp Mills w/Chlorine Bleaching	((155,288.00)) <u>169,088.00</u>	((160,273.00)) <u>176,697.00</u>
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	((33,383.00)) <u>36,350.00</u>	((34,455.00)) <u>37,986.00</u>
b. 3 - < 8 waste streams	((57,972.00)) <u>63,124.00</u>	((59,833.00)) <u>65,965.00</u>
c. 8 waste streams and greater	((95,484.00)) <u>103,969.00</u>	((98,549.00)) <u>108,648.00</u>
RCRA Corrective Action Sites	((24,253.00)) <u>26,409.00</u>	((25,032.00)) <u>27,597.00</u>
Seafood Processing		
a. < 1,000 gpd	((1,725.00)) <u>1,878.00</u>	((1,780.00)) <u>1,963.00</u>
b. 1,000 - < 10,000 gpd	((4,397.00)) <u>4,788.00</u>	((4,538.00)) <u>5,003.00</u>
c. 10,000 - < 50,000 gpd	((7,851.00)) <u>8,549.00</u>	((8,103.00)) <u>8,934.00</u>
d. 50,000 - < 100,000 gpd	((12,336.00)) <u>13,432.00</u>	((12,732.00)) <u>14,036.00</u>
e. 100,000 gpd and greater	((17,256.00)) <u>18,790.00</u>	((17,810.00)) <u>19,636.00</u>
Shipyards		
a. Per crane, travel lift, small boat lift	((3,519.00)) <u>3,940.00</u>	((3,704.00)) <u>4,160.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
b. Per drydock under 250 ft in length	((3,519.00)) <u>3,940.00</u>	((3,704.00)) <u>4,160.00</u>
c. Per graving dock	((3,519.00)) <u>3,940.00</u>	((3,704.00)) <u>4,160.00</u>
d. Per marine way	((5,278.00)) <u>5,910.00</u>	((5,556.00)) <u>6,240.00</u>
e. Per ((syncrolift)) <u>syncrolift</u>	((5,278.00)) <u>5,910.00</u>	((5,556.00)) <u>6,240.00</u>
f. Per drydock ((over)) 250 ft <u>and over</u> in length	((7,037.00)) <u>7,880.00</u>	((7,408.00)) <u>8,320.00</u>
g. In-water vessel maintenance	((7,037.00)) <u>7,880.00</u>	((7,408.00)) <u>8,320.00</u>
h. In-water vessel deconstruction	((16,304.00)) <u>17,343.00</u>	((16,304.00)) <u>18,311.00</u>
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	((6,899.00)) <u>7,512.00</u>	((7,120.00)) <u>7,850.00</u>
b. < 50 acres	((13,801.00)) <u>15,027.00</u>	((14,244.00)) <u>15,703.00</u>
c. 50 - < 100 acres	((27,608.00)) <u>30,061.00</u>	((28,494.00)) <u>31,414.00</u>
d. 100 - < 250 acres	((34,508.00)) <u>37,575.00</u>	((35,616.00)) <u>39,266.00</u>
e. 250 acres and greater	((51,765.00)) <u>56,365.00</u>	((53,427.00)) <u>58,901.00</u>
Textile Mills	((69,018.00)) <u>75,151.00</u>	((71,233.00)) <u>78,533.00</u>
Timber Products		
a. Log Storage	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,927.00</u>
b. Veneer	((6,899.00)) <u>7,512.00</u>	((7,120.00)) <u>7,850.00</u>
c. Sawmills	((13,802.00)) <u>15,028.00</u>	((14,245.00)) <u>15,704.00</u>
d. Hardwood, Plywood	((24,153.00)) <u>26,299.00</u>	((24,928.00)) <u>27,482.00</u>
e. Wood Preserving	((33,137.00)) <u>36,082.00</u>	((34,201.00)) <u>37,706.00</u>
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	((114.00)) <u>124.00</u>	((118.00)) <u>130.00</u>
b. 1,000 - < 5,000 gpd	((231.00)) <u>251.00</u>	((238.00)) <u>262.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2016)) 2018 ANNUAL PERMIT FEE	FY ((2017)) 2019 ANNUAL PERMIT FEE & BEYOND
c. 5,000 - < 10,000 gpd	((454.00)) <u>495.00</u>	((469.00)) <u>517.00</u>
d. 10,000 - < 20,000 gpd	((916.00)) <u>997.00</u>	((945.00)) <u>1,042.00</u>
e. 20,000 and greater	((1,512.00)) <u>1,647.00</u>	((1,561.00)) <u>1,721.00</u>
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	((3,451.00)) <u>3,758.00</u>	((3,562.00)) <u>3,927.00</u>
b. 0.5 - < 1.0 acre	((6,899.00)) <u>7,512.00</u>	((7,120.00)) <u>7,850.00</u>
c. 1.0 acre and greater	((10,354.00)) <u>11,274.00</u>	((10,686.00)) <u>11,781.00</u>
Water Plants - Individual Permit Coverage	((4,710.00)) <u>5,128.00</u>	((4,861.00)) <u>5,359.00</u>
Water Plants - General Permit Coverage	((3,297.00)) <u>3,590.00</u>	((3,403.00)) <u>3,752.00</u>
Wineries - Individual Permit Coverage		
a. < 500 gpd	((352.00)) <u>383.00</u>	((363.00)) <u>400.00</u>
b. 500 - < 750 gpd	((706.00)) <u>769.00</u>	((729.00)) <u>804.00</u>
c. 750 - < 1,000 gpd	((1,411.00)) <u>1,536.00</u>	((1,456.00)) <u>1,605.00</u>
d. 1,000 - < 2,500 gpd	((2,823.00)) <u>3,074.00</u>	((2,914.00)) <u>3,212.00</u>
e. 2,500 - < 5,000 gpd	((4,504.00)) <u>4,905.00</u>	((4,649.00)) <u>5,126.00</u>
f. 5,000 gpd and greater	((6,182.00)) <u>6,731.00</u>	((6,380.00)) <u>7,034.00</u>
((Wineries - General Permit Coverage		
a. Facilities producing 0 - 9,999 gallons of wine per year and/or facilities that discharge to a nondelegated publicly owned treatment works and produce less than 9,999 gallons of wine per year	645.00	645.00
b. Facilities producing 10,000 - 24,999 gallons of wine per year and/or facilities that discharge to a nondelegated publicly owned treatment works and produce greater than 10,000 gallons of wine per year	1,289.00	1,289.00
e. Facilities producing 25,000 - 49,999 gallons of wine per year	2,581.00	2,581.00
d. Facilities producing 50,000 gallons of wine per year and greater	7,743.00	7,743.00

(a) Facilities other than those in the ~~((aggregate production))~~ sand and gravel, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number

of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) ~~((Crop preparation and aggregate production))~~ Fruit packer and sand and gravel permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the

department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for ~~((crop preparers))~~ fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the ~~((crop preparing))~~ fruit packing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating ~~((aggregate))~~ sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode ~~((must))~~ may be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

	FY ((2016)) <u>2018</u>	FY ((2017)) <u>2019</u>
	Annual Permit Fee	Annual Permit Fee & Beyond
Residential Equivalents (RE)		
< 250,000	\$2.16	\$2.16
> 250,000	((1.72)) <u>1.89</u>	((1.79)) <u>1.98</u>

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and government-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or government-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or government-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

	FY ((2016)) <u>2018</u>	FY ((2017)) <u>2019</u>
	Annual Permit Fee	Annual Permit Fee & Beyond
Permitted Flows		
.1 MGD and Greater	((11,561.00)) <u>12,945.00</u>	((12,170.00)) <u>13,668.00</u>
.05 MGD to < .1 MGD	((4,625.00)) <u>5,179.00</u>	((4,869.00)) <u>5,468.00</u>

	FY ((2016))	FY ((2017))
	<u>2018</u>	<u>2019</u>
	Annual	Annual
Permitted Flows	Permit Fee	Permit Fee & Beyond
.0008 MGD to	((2,313.00))	((2,435.00))
< .05 MGD	<u>2,590.00</u>	<u>2,735.00</u>
< .0008 MGD	((697.00))	((734.00))
	<u>781.00</u>	<u>825.00</u>

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must

complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

	FY (2016) 2018 Annual Permit Fee	FY (2017) 2019 Annual Permit Fee & Beyond
a. Individual Construction or Industrial Stormwater Permits		
1. < 50 acres	\$((4,625.00)) <u>5,179.00</u>	\$((4,869.00)) <u>5,468.00</u>
2. 50 -< 100 acres	((9,243.00)) <u>10,350.00</u>	((9,730.00)) <u>10,928.00</u>
3. 100 -< 500 acres	((13,877.00)) <u>15,538.00</u>	((14,608.00)) <u>16,405.00</u>
4. 500 acres and greater	((18,499.00)) <u>20,714.00</u>	((19,474.00)) <u>21,870.00</u>
b. Facilities Covered Under the Industrial Stormwater General Permit		
1. Municipalities and state agencies	((1,514.00)) <u>1,696.00</u>	((1,594.00)) <u>1,791.00</u>
2. New permit holders without historical gross revenue information	((794.00)) <u>889.00</u>	((836.00)) <u>939.00</u>
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	((147.00)) <u>165.00</u>	((155.00)) <u>174.00</u>
\$100,000 -< \$1,000,000	((637.00)) <u>714.00</u>	((671.00)) <u>754.00</u>
\$1,000,000 -< \$2,500,000	((763.00)) <u>854.00</u>	((803.00)) <u>902.00</u>
\$2,500,000 -< \$5,000,000	((1,275.00)) <u>1,427.00</u>	((1,342.00)) <u>1,507.00</u>
\$5,000,000 -< \$10,000,000	((1,912.00)) <u>2,141.00</u>	((2,013.00)) <u>2,261.00</u>
\$10,000,000 and greater	((2,310.00)) <u>2,587.00</u>	((2,432.00)) <u>2,731.00</u>

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.
 The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the

adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Stormwater General Permit(s)

1. Less than 5 acres disturbed area	\$(598.00) <u>670.00</u>	\$(630.00) <u>707.00</u>
2. 5 -< 7 acres of disturbed area	((973.00)) <u>1,089.00</u>	((1,024.00)) <u>1,150.00</u>
3. 7 -< 10 acres of disturbed area	((1,313.00)) <u>1,470.00</u>	((1,382.00)) <u>1,552.00</u>
4. 10 -< 20 acres of disturbed area	((1,792.00)) <u>2,006.00</u>	((1,886.00)) <u>2,118.00</u>
5. 20 acres and greater of disturbed area	((2,229.00)) <u>2,495.00</u>	((2,346.00)) <u>2,634.00</u>

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below will be:

Name of Entity	FY ((2016)) <u>2018</u> Annual Permit Fee	FY ((2017)) <u>2019</u> Annual Permit Fee & Beyond
King County	\$(52,680.00) <u>58,987.00</u>	\$(55,455.00) <u>62,280.00</u>
Snohomish County	((52,680.00)) <u>58,987.00</u>	((55,455.00)) <u>62,280.00</u>
Pierce County	((52,680.00)) <u>58,987.00</u>	((55,455.00)) <u>62,280.00</u>
Tacoma, City of	((52,680.00)) <u>58,987.00</u>	((55,455.00)) <u>62,280.00</u>
Seattle, City of	((52,680.00)) <u>58,987.00</u>	((55,455.00)) <u>62,280.00</u>
Washington Department of Transportation	((52,680.00)) <u>58,987.00</u>	((55,455.00)) <u>62,280.00</u>
Clark County	((52,680.00)) <u>58,987.00</u>	((55,455.00)) <u>62,280.00</u>

(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ~~((2016))~~ 2018, ecology will charge ~~\$(4.53)~~ 1.71 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.75)~~ .84 per housing unit inside the geographic area covered by the permit. For fiscal year ~~((2017))~~ 2019, ecology will charge ~~\$(4.61)~~ 1.81 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state aver-

age. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.79)~~ .89 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~\$(52,680.00)~~ 58,987.00 for fiscal year ~~((2016))~~ 2018 and ~~\$(55,455.00)~~ 62,280.00 for fiscal year ~~((2017))~~ 2019. The minimum annual fee will not be lower than ~~\$(2,190.00)~~ 2,452.00 for fiscal year ~~((2016))~~ 2018 and ~~\$(2,305.00)~~ 2,589.00 for fiscal year ~~((2017))~~ 2019 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ~~\$(.75)~~ .84 per housing unit for fiscal year ~~((2016))~~ 2018. The fee amount for FY ~~((2017))~~ 2019 will be ~~\$(.79)~~ .89 per housing unit.

(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2016)) <u>2018</u> Annual Permit Fee	FY ((2017)) <u>2019</u> Annual Permit Fee (& Beyond)
Less than \$100,000	\$(153.00) <u>171.00</u>	\$(161.00) <u>181.00</u>
\$100,000 -< \$1,000,000	((617.00)) <u>691.00</u>	((650.00)) <u>730.00</u>
\$1,000,000 -< \$5,000,000	((1,542.00)) <u>1,726.00</u>	((1,623.00)) <u>1,822.00</u>
\$5,000,000 -< \$10,000,000	((2,312.00)) <u>2,589.00</u>	((2,434.00)) <u>2,734.00</u>
\$10,000,000 and greater	((3,853.00)) <u>4,314.00</u>	((4,056.00)) <u>4,555.00</u>

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal year ~~((2016))~~ 2018 annual fee for a permit written for a specific entity shall be ~~\$(10,958.00)~~ 12,270.00. For ~~((FY 2017))~~ fiscal year 2019, the annual fee will be ~~\$(11,535.00)~~ 12,955.00.

(e) Ecology will assess a single permit fee for entities which apply only as ~~((co-permittees or co-applicants))~~ co-permittees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the ~~((co-permittees))~~ co-permittees had applied separately.

AMENDATORY SECTION (Amending WSR 13-22-051, filed 11/1/13, effective 12/2/13)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit

a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel ~~((aggregate))~~ general permit holders will be assessed as in subsection (2) of this section and:

(a) Nonoperating sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the ~~((average of the three))~~ previous calendar year~~((s))~~ production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous ~~((three))~~ calendar year~~((s or for the number of full calendar years of operation if less than three))~~. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. ~~((The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.))~~

~~((d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection (2) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.))~~

(4) Fees for ~~((crop preparation))~~ fruit packer general permit holders will be assessed as in subsection (2) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)~~((c))~~ (c). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(5) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(6) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(7) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

(8) The applicable permit fee shall be paid using ecology's online payment software or by check or money order payable to the "Department of Ecology" and mailed to the ~~((Wastewater Discharge))~~ Water Quality Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

(9) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(10) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days ~~((will))~~ may be turned over for collection. In addition~~((;))~~ to the amount owed, the collection agent will add a surcharge totaling twenty percent of the delinquent amount owed ~~((will also be added))~~. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

WSR 17-06-077
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed March 1, 2017, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-03-076 on January 11, 2017.

Title of Rule and Other Identifying Information: WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-401 Reef net—Open periods, 220-47-411 Gillnet—Open periods, and 220-47-428 Beach seine—Open periods.

Hearing Location(s): Natural Resources Building, Room 630, 1111 Washington Street S.E., Olympia, WA 98504, on Friday, April 7, 2017, at 1 p.m. to 2 p.m.

Date of Intended Adoption: On or after May 3, 2017.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email rules.coordinator@dfw.wa.gov, fax (360) 902-2155, by April 5, 2017.

Assistance for Persons with Disabilities: Contact Tami Lininger by April 5, 2017, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.12.045, 77.12.047, and 77.04.020.

Statute Being Implemented: RCW 77.12.045, 77.12.047, and 77.04.020.

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

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

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2799; and Enforcement: Chris Anderson, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the 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.

None, the proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements to those used in the previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Scott Bird, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2403, fax (360) 902-2155, email rules.coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

March 1, 2017
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-307 Puget Sound salmon—Closed areas~~(Puget Sound salmon)~~. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC ~~((220-47-266))~~ 220-354-330.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 -

(1) The San Juan Island Preserve as defined in WAC ~~((220-47-262))~~ 220-354-320.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwesternmost point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwesternmost point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC ((220-47-252)) 220-354-310.

Area 7B -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho ((~~and chum~~)) seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Areas 12, 12B, and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

~~((Area 12 - Additional purse seine chum seasonal closures:~~

~~(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 24 and October 31.~~

~~(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 24 and October 31.))~~

Area 12A -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

Area 12B -

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Area 12C -

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspout marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-307	220-354-080

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-311 Puget Sound salmon—Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, <u>10/11</u> , 10/12, 10/13, <u>10/14</u> , 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4((5-11/5))
	7AM - 5PM	- <u>11/5</u> , 11/6, 11/7, 11/8, 11/9, 11/10, 11/11((5-11/12))

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC (~~(220-47-301)~~) 220-354-100 (7)(a) through (f).

7B, 7C:	6AM - 8PM	- ((8/10, 8/17, 8/24, 8/31)) <u>8/16, 8/23, 8/30, 9/6</u>
7B:	(6AM-8PM)	- <u>9/5, 9/7, 9/9)</u>
	7AM - 7PM	- ((9/12, 9/14, 9/16)) <u>9/11, 9/13, 9/15, 9/18, 9/20, 9/22</u>
	7AM (9/18)	- 6PM ((10/29)) <u>11/4</u>
	<u>9/24</u>	
	7AM (10/31)	- 4PM ((11/4)) <u>11/10</u>
	<u>11/6</u>	
	7AM (11/7)	- 4PM ((11/11)) <u>11/17</u>
	<u>11/13</u>	
	7AM (11/14)	- 4PM ((11/18)) <u>11/24</u>
	<u>11/20</u>	

AREA	TIME	DATE
	7AM (11/21)	- 4PM ((11/25)) <u>11/30</u>
	<u>11/27</u>	
	<u>7AM 12/4</u>	- <u>4PM 12/8</u>

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	((Closed))	- <u>8/29, 9/6, 9/13</u>
	<u>6AM - 8PM</u>	
8A:	((Closed))	- <u>8/22, 8/30, 9/5</u>
	<u>7AM - 7PM</u>	
	<u>7AM - 7PM</u>	- <u>Limited participation - 2 boats 9/18, 9/25</u>
8D:	((Closed))	- <u>9/25, 10/2, 10/9</u>
	<u>7AM - 7PM</u>	
	<u>7AM - 6PM</u>	- <u>10/16, 10/23, 10/31, 11/2</u>
	<u>7AM - 5PM</u>	- <u>11/6, 11/14, 11/16, 11/20, 11/28</u>
10:	<u>7AM - 7PM</u>	- <u>Limited participation - 5 boats 8/23, 8/29, 8/31, 9/4, 9/6</u>
10, 11:	7AM - 6PM	- ((10/20, 10/24)) <u>10/23, 10/31, 11/2</u>
	7AM - 5PM	- ((11/08)) <u>11/6, 11/14, 11/16, ((11/22)) 11/20, 11/28</u>
12, 12B:	7AM - 6PM	- ((10/20, 10/24)) <u>10/23, 10/31, 11/2</u>
	7AM - 5PM	- ((11/08)) <u>11/6, 11/14, 11/16, 11/20</u>
12C:	((7AM-6PM))	- <u>10/31)</u>
	7AM - 5PM	- ((11/08)) <u>11/6, 11/14, 11/16, ((11/22)) 11/20, 11/28</u>

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC (~~(220-47-301)~~) 220-354-100 (7)(a) through (f).

(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

- (a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.
- (b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.
- (c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.
- (d) All other saltwater and freshwater areas - Closed for all species at all times.

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-411 Puget Sound salmon—Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC ((220-16-046) <u>220-350-170</u> and lawful gear description WAC ((220-47-302) <u>220-354-140</u> .	7AM - 7PM	9/21, 9/22, ((9/23) <u>9/25</u> , 9/26, 9/27, 9/28, 9/29, ((9/30) <u>10/2</u> , 10/3, 10/4, 10/5, 10/6, ((10/7) <u>10/9</u> , 10/10, 10/11, 10/12, 10/13, ((10/14) <u>10/16</u> , 10/17, 10/18, 10/19, 10/20, ((10/21) <u>10/23</u> , 10/24, 10/25, 10/26, 10/27((10/28))	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM - Midnight; use of recovery box required	10/10, <u>10/11</u> , 10/12, 10/13, <u>10/14</u> , 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21((10/22))	6 1/4"
	7AM - Midnight	<u>10/22</u> , 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11((11/12))	6 1/4"

Note: In Areas 7 and 7A after October 9 and prior to October 23, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC ((~~220-47-302~~) 220-354-140 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM - 8AM	NIGHTLY ((8/7, 8/8, 8/9) <u>8/13</u> , 8/14, 8/15, ((8/16, 8/17) <u>8/20</u> , 8/21, 8/22, 8/23, ((8/24) <u>8/27</u> , 8/28, 8/29, 8/30	7"
7B, 7C:	7AM ((8/28) <u>9/3</u> - 7AM ((9/2) <u>9/8</u>		5"
7B:	7AM ((9/4) <u>9/10</u> - 7AM ((9/9) <u>9/15</u>		5"
	7AM ((9/11) <u>9/17</u> - 7AM ((9/16) <u>9/22</u>		5"
	7AM ((9/18) <u>9/24</u> - Midnight ((10/29) <u>11/4</u>		5"
	7AM ((10/31) <u>11/6</u> - 4PM ((11/4) <u>11/10</u>		6 1/4"
	6AM ((11/7) <u>11/13</u> - 4PM ((11/11) <u>11/17</u>		6 1/4"
	6AM ((11/14) <u>11/20</u> - 4PM ((11/18) <u>11/24</u>		6 1/4"
	7AM ((11/21) <u>11/27</u> - 4PM ((11/25) <u>11/30</u>		6 1/4"
	<u>7AM 12/4</u> - <u>4PM 12/8</u>		

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	5AM - 11PM	((Closed) <u>8/30, 9/5, 9/12</u>	5"
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	<u>5AM</u> - <u>11PM</u>	<u>8/23, 8/29, 9/6</u>	5"
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AREA	TIME		DATE(S)	MINIMUM MESH
	6PM	-	8AM ((Closed)) <u>Limited participation - 2 boats 9/20</u>	
	<u>6PM</u>	=	<u>8AM</u> <u>9/26, 9/28</u>	
Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.				
8D:	6PM	-	((Closed)) <u>Nightly 9/24, 9/28, 10/1, 10/5, 10/9, 10/12</u>	5"
	<u>6PM 9/25</u>	=	<u>8AM 9/28</u>	
	<u>6PM 10/2</u>	=	<u>8AM 10/5</u>	
	<u>6PM 10/10</u>	=	<u>8AM 10/12</u>	
	<u>5PM</u>	=	<u>8AM</u> <u>Nightly 10/15, 10/19</u>	
	<u>5PM 10/16</u>	=	<u>8AM 10/19</u>	
	<u>5PM</u>	=	<u>9AM</u> <u>Nightly 10/22, 10/26, 10/29, 11/2</u>	
	<u>5PM 10/23</u>	=	<u>9AM 10/26</u>	
	<u>5PM 10/30</u>	=	<u>9AM 11/2</u>	
	<u>4PM</u>	=	<u>8AM</u> <u>Nightly 11/5, 11/10</u>	
	<u>4PM 11/6</u>	=	<u>8AM 11/10</u>	
	<u>6AM</u>	=	<u>6PM</u> <u>11/15, 11/16, 11/17, 11/20, 11/22, 11/23, 11/24</u>	
	<u>7AM</u>	=	<u>6PM</u> <u>11/29, 11/30, 12/1</u>	
9A: Skiff gillnet only, definition WAC ((220-16-046)) <u>220-350-170</u> and lawful gear description WAC ((220-47-302)) <u>220-354-140</u> .	7AM	-	7PM (((+0/29))) <u>11/4</u>	5"
Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
10:	7PM	-	((Closed)) <u>Limited participation - 5 boats 8/22, 8/28, 8/30, 9/5, 9/7</u>	4 1/2" minimum and 5 1/2" maximum
Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC ((220-47-302)) <u>220-354-140</u> (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.				
10, 11:	5PM	-	NIGHTLY (((+0/16, +0/25, +0/27, +1/1, +1/3))) <u>10/24, 10/26, 10/29</u>	6 1/4"
	5PM	-	NIGHTLY (((+0/49))) <u>11/1</u>	6 1/4"
	4PM	-	((+1/6)) <u>11/7, 11/9, ((+1/15, +1/20)) 11/12, 11/21, 11/23, 11/26, 11/29</u>	6 1/4"
	4PM	-	NIGHTLY (((+1/47))) <u>11/15</u>	6 1/4"
12A: Skiff gillnet only, definition WAC ((220-16-046)) <u>220-350-170</u> and lawful gear description WAC ((220-47-302)) <u>220-354-140</u> .	7AM	-	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
12, 12B:	7AM	-	((+0/17, +0/19)) <u>10/24, 10/26</u>	6 1/4"
	7AM	-	((+0/25, +0/27)) <u>10/30, 11/1, ((+1/3)) 11/7, 11/9</u>	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH
	6AM - 6PM	((11/7, 11/9)) 11/13, 11/15, ((11/17)) 11/21, 11/23	6 1/4"
12C:	7AM - 7PM	((11/4, 11/3)) 11/7, 11/9	
	6AM - 6PM	((11/7, 11/9)) 11/13, 11/15, ((11/17)) 11/21, 11/23	6 1/4"
	7AM - 6PM	((11/21, 11/23)) 11/27, 11/29	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-311	220-354-120
220-47-411	220-354-160

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-401 Puget Sound salmon—Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7	5AM - 9PM Daily	((9/18—11/12)) 9/17 - 11/17

(2) It is unlawful at all times to retain unmarked Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or unmarked coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-401	220-354-180

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-428 Puget Sound salmon—Beach seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/21, 8/22, 8/23, 8/24, 8/25, ((8/26)) 8/28, 8/29, 8/30, 8/31, 9/1, 9/2, 9/5, 9/6, 9/7, 9/8, ((9/9)) 9/11, 9/12, 9/13, 9/14, 9/15, ((9/16)) 9/18, 9/19, 9/20, 9/21, 9/22, ((9/23)) 9/25, 9/26, 9/27, 9/28, 9/29(((9/30)))
12C, Hoodsport Hatchery Zone:	7AM - 7PM	((7/25, 7/27, 8/1, 8/3, 8/8, 8/10, 8/15, 8/17, 8/22, 8/24, 8/29, 8/31)) 7/31, 8/2, 8/7, 8/9, 8/14, 8/16, 8/21, 8/23, 8/28, 8/30, 9/4, 9/6

November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

(2) It is unlawful to retain the following salmon species taken with beach seine gear within the following areas during the following periods:

- (a) Chinook salmon - At all times in Area 12A.
- (b) Chum salmon - In all areas prior to October 10.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-428	220-354-210

WSR 17-06-079
PROPOSED RULES
RECREATION AND CONSERVATION
OFFICE

(Recreation and Conservation Funding Board)

[Filed March 1, 2017, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-075.

Title of Rule and Other Identifying Information: Amending chapter 286-04 WAC, General and chapter 286-13 WAC, General grant assistance.

Repealing chapter 286-26 WAC, Nonhighway road and off-road vehicle funds; chapter 286-27 WAC, Washington wildlife and recreation program; chapter 286-35 WAC, Boating facilities program; chapter 286-40 WAC, Land and water conservation fund; and chapter 286-42 WAC, Aquatic lands enhancement account program.

Hearing Location(s): South Puget Sound Community College, Campus Room 194, 4220 6th Avenue S.E., Lacey, WA 98503, on May 10, 2017, at 4:00 p.m.

Date of Intended Adoption: May 10, 2017.

Submit Written Comments to: Leslie Connelly, 1111 Washington Avenue [Street] South, P.O. Box 40917, Olympia, WA 98504-0917, email leslie.connelly@rco.wa.gov, fax (360) 902-3026, by April 15, 2017.

Assistance for Persons with Disabilities: Contact Leslie Frank by May 9, 2017, TTY (360) 902-0220 or (360) 902-3013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend and clarify grant requirements and apply them to all grants for the recreation and conservation funding board. While specific program related rules would be repealed, the requirements within those programs are consolidated and incorporated into new sections in chapter 286-13 WAC, General grant assistance. The anticipated effects are:

(1) Consistent application of rules across grant programs for applicant eligibility, planning eligibility, matching share, grant request limits, public access, compliance with applicable laws, and long-term obligations;

(2) Clarification of the long-term obligations of receiving grant funds, including a new definition for project area and requirements to provide a project area map; and

(3) Allowing for modified grant program requirements for federal agencies, regardless of the grant program, when approved by the board.

Reasons Supporting Proposal: There are two reasons for this proposal. First, the recreation and conservation funding board administers different grant programs but applies many of the same rules and policies to grant awards, regardless of which grant program the funds come from. In addition, there are grant programs administered by the recreation and conservation funding board that do not have administrative rules, but follow the same grant requirements as a matter of policy. Consolidating the grant requirements will ensure consistency in their application and allow them to be applied to any project. Second, adding a definition and a map requirement for project area will provide sponsors a clear understanding of

the long-term obligations of receiving grant funds and document where those long-term obligations apply on the ground.

Statutory Authority for Adoption: RCW 34.05.220, 42.56.040, 46.09.530, 79A.15.060, 79A.15.070, 79A.15.120, 79A.15.130, 79A.25.210.

Statute Being Implemented: Chapters 79A.15 and 79A.25 RCW, RCW 46.09.530.

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

Name of Proponent: Recreation and conservation office, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Connelly, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3080; Implementation and Enforcement: Kaleen Cottingham, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule making does not meet the definition of a "minor cost" in RCW 19.85.020(2) nor would it affect "small businesses" as defined in RCW 19.85.020(3).

A cost-benefit analysis is not required under RCW 34.05.328. The recreation and conservation office is not listed as an agency required to complete a cost-benefit analysis under RCW 34.05.328 (5)(a)(i).

March 1, 2017
 Leslie Connelly
 Rules Coordinator
 Natural Resources
 Policy Specialist

AMENDATORY SECTION (Amending WSR 15-15-072, filed 7/13/15, effective 8/13/15)

WAC 286-04-010 Definitions. For purposes of Title 286 WAC, unless the context clearly indicates otherwise the following definitions apply:

(1) "Acquisition" means the purchase or donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access or trail easements, covenants, water rights, leases, and mineral rights.

(2) "Agreement" or "project agreement" means the accord accepted by the office and the sponsor for the project and includes any supplemental agreements, any amendments to the agreement and any intergovernmental agreements.

(3) "Applicant" means any party that meets qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the board.

(4) "Application" means the documents and other materials that an applicant submits to the office to support the applicant's request for grant funds.

(5) "Board" means the recreation and conservation funding board as described in RCW 79A.25.110.

(6) "Chair" means the chair of the board as described in RCW 79A.25.110.

(7) "Development project" means a project that results in the construction of or work resulting in new elements including, but not limited to, structures, facilities and materials to enhance outdoor recreation resources.

(8) "Director" means the director of the office or that person's designee as described in RCW 79A.25.150.

(9) "Education and enforcement project" means a project that provides information, education, and outreach programs; encourages responsible recreational behaviors; and may provide law enforcement for the benefit of outdoor recreationists.

(10) "Education project" means a project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

(11) "Maintenance project" means a project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreationists.

(12) "Maintenance and operation project" means a project that maintains existing areas and facilities through repairs, upkeep, and routine servicing for the benefit of outdoor recreationists.

(13) "Manual(s)" means a compilation of state and federal laws; board rules, policies, and procedures; and director procedures, forms, and instructions assembled in manual form for dissemination to parties that participate in the board's or office's grant program(s).

(14) "Match" or "matching share" means the portion of the total project cost in the project agreement provided by the project sponsor.

(15) "Office" means the recreation and conservation office as described in RCW 79A.25.010.

(16) "Planning project" means a project that results in one or more of the following: A study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

(17) "Preagreement cost" means a project cost incurred before the period of performance identified in an agreement.

(18) "Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the office on behalf of the board.

(19) "Project area" is a geographic area that delineates a grant assisted site which is subject to application and project agreement requirements.

(20) "Reimbursement" means the payment of funds from the office to the sponsor for eligible and allowable project costs that have already been paid by the sponsor per the terms of an agreement.

~~((20))~~ (21) "Renovation project" means a project that improves an existing site or structure in order to increase its service life or functions.

~~((21))~~ (22) "Restoration project" means a project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of the site.

~~((22))~~ (23) "Sponsor" means an eligible applicant who has been awarded a grant of funds and is bound by an executed agreement; includes its officers, employees, agents, and successors.

AMENDATORY SECTION (Amending WSR 16-16-001, filed 7/20/16, effective 8/20/16)

WAC 286-13-010 Scope of chapter. (1) This chapter contains general rules for grant program eligibility, applica-

tions, and projects funded with money from or through the board.

(2) Further rules are in (~~chapter 286-26 WAC (Non-highway and off road vehicle activities program), chapter 286-27 WAC (Washington wildlife and recreation program),~~) chapter 286-30 WAC (Firearms ~~(and archery)~~) range (~~recreation program), chapter 286-35 WAC (Initiative 215 boating facilities program), chapter 286-40 WAC (Land and water conservation fund program) and chapter 286-42 WAC (Aquatic lands enhancement account program)~~)).

(3) The director may apply the rules in this chapter to programs administered by the office that are not subject to the board's approval.

NEW SECTION

WAC 286-13-015 Eligible applicants. (1) Eligibility to apply for grant funding is determined by a grant program's statutory requirements unless authority is granted to the board.

(2) Eligible applicants in the aquatic lands enhancement account grant program are any division of local or state government and Native American tribes that are legally authorized to acquire and develop public open space, habitat, recreation lands or natural resources.

NEW SECTION

WAC 286-13-035 Planning requirement. (1) An applicant must submit a plan in accordance with WAC 286-13-040 in order to apply for a grant from any of the following programs:

(a) Boating facilities program pursuant to the Marine Recreation Land Act, chapter 79A.25 RCW;

(b) Land and water conservation fund pursuant to the Land and Water Conservation Fund Act of 1965;

(c) Nonhighway and off-road vehicle activities account pursuant to chapter 46.09 RCW, except when applying for a grant for an education and enforcement project or a maintenance and operation project; or

(d) Washington wildlife and recreation program funded under chapter 79A.15 RCW, except when applying for a grant for a project funded from the farm and forest account.

(2) At a minimum, the plan must include:

(a) A statement of the applicant's long-range goals and objectives;

(b) An inventory;

(c) An analysis of demand and need, that is, why action is required;

(d) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;

(e) A current capital improvement program of at least six years; and

(f) Evidence that this plan has been approved by the applicant's governing entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope may be approved by department heads, district rangers, regional managers or supervisors, etc.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-13-045 (~~What rules govern matching resources?~~) **Matching resources and request limits.** (1) The board shall establish sponsor matching share requirements and fund request limits as allowed by law. Any changes will normally be done at a board meeting six months before program funding consideration.

(2) When the board gives preference to an applicant that provides a matching resource, it is the intent of the board to do so to foster and demonstrate local commitment to the proposed project, to make funds from a given grant program and revenue source available to a greater number of projects, and to fund projects that are ready to implement without delay.

~~((2))~~ (3) Applicant resources used to match board funds must be eligible in the grant program. Sources of matching resources include, but are not limited to, any one or more of the following:

- (a) Appropriations and cash;
- (b) Value of the applicant's expenses for labor, materials, and equipment;
- (c) Value of donated real property, labor, services, materials, and equipment use; and
- (d) Grant funds, except those from the same grant program administered by the board.

~~((3))~~ (4) The board may require the applicant to provide a portion of its matching resources in local resources.

~~((4))~~ (5) State agency projects may be assisted by one hundred percent funding from board funds except where prohibited by law or the board.

~~((5))~~ (6) Grants from state funds are intended to supplement the existing capacity of a sponsor. They are not intended to supplant existing programs or fund projects that would have been undertaken without grant funding.

~~((6))~~ (7) Except for grant applications submitted within the same biennium, matching resources or board grant funds committed in one board funded project must not be used as match in another board funded project.

~~((7))~~ (8) If a matching resource is required or provided in the grant application, it must also conform to the deadlines in WAC 286-13-040.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-13-060 Project agreement. For every funded project, an agreement must be executed as provided in this section.

(1) The project agreement shall be prepared by the office subsequent to approval of the project by the board at a public meeting. The project agreement is executed upon the signature of the office and the applicant and the parties are bound by the agreement's terms. The applicant shall not proceed until the project agreement has been executed, unless specific authorization pursuant to WAC 286-13-085 has been given by the director.

(2) If the project is approved by the board to receive a grant from federal funds, the director shall not execute an agreement or amendment with the applicant until federal

funding has been authorized through an agreement with the applicable federal agency.

(3) Execution of the project agreement must conform to the deadlines in WAC 286-13-040.

(4) A board-federal agency agreement signed by the parties shall control the provision of funds granted by the board to federal agency sponsored projects. Absent this agreement, the standard terms and conditions of board's project agreement shall control.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-13-115 (~~Discrimination~~) **Nondiscrimination, access to the public, and preferences.** (1) Sponsors shall not discriminate against users of projects assisted with board funds on the basis of race, creed, color, sex or gender, religion, national origin, disability, marital status, or sexual orientation.

(2) Properties, structures, and facilities intended for public use within the project area shall meet state and federal accessibility guidelines and nondiscrimination laws, regulations, and policies; be maintained to a standard that encourages use; and be open and available to the public at reasonable hours and times of the year.

(3) Sponsors shall not express a preference for users within the project area of board grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems). However, reasonable differences in admission and other fees may be maintained on the basis of residence. The board does not encourage the imposition of such differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the non-resident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

NEW SECTION

WAC 286-13-130 Compliance with applicable laws. Properties, structures, and facilities developed with the assistance of money granted by the board and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health standards to assure a reasonably safe condition and to prevent premature deterioration.

NEW SECTION

WAC 286-13-140 Project area map. (1) A project area map is required for each acquisition, development, renovation, and restoration project.

(2) At a minimum, the project area must include the property acquired, developed, renovated or restored with grant assistance and the route for the public to access the property. The project area must also include sufficient property that is functionally dependent to a grant assisted site and owned or controlled by the sponsor. Any additional property included in the project area must be necessary to complete the

programmatic function described in the application and meet the need for the project.

(3) The sponsor must record a notice of grant as provided by the office on the title of the properties in the project area.

NEW SECTION

WAC 286-13-150 Conveyance to the state for acquisition project. (1) Acquisition of perpetual interests. When a sponsor acquires real property in perpetuity, the sponsor must record on the title of the property a binding instrument as required by the office that contains:

(a) A legal description of the real property acquired with grant assistance;

(b) A conveyance to the state of Washington of the right to use the described real property for the purposes funded by the grant in perpetuity; and

(c) A restriction on the conversion of use of the real property.

(2) Acquisition of nonperpetual interests. When a sponsor acquires real property for less than perpetuity, the interest may not be revocable at will. The sponsor must record on the title of the property a binding instrument as required by the office that contains:

(a) A legal description of the real property acquired with grant assistance;

(b) A conveyance to the state of Washington of the right to use the described real property for the purposes funded by the grant for the duration of the nonperpetual interest acquired; and

(c) A restriction on the conversion of use of the real property based on the minimum period in the grant program as follows:

(i) At least twenty years for projects funded from the youth athletic facilities program;

(ii) At least twenty-five years for projects funded from the aquatic lands enhancement account program;

(iii) At least twenty-five years for projects funded from the nonhighway and off-road vehicle activities account;

(iv) At least fifty years for projects funded from the boating facilities program; or

(v) At least fifty years for projects funded from the Washington wildlife and recreation program, except for:

(A) Farmland category projects must be for at least twenty-five years;

(B) Riparian protection category projects for conservation reserve enhancement program leases must be for at least twenty-five years; and

(C) Forestland category projects because only perpetual acquisitions are eligible.

NEW SECTION

WAC 286-13-160 Long-term obligations for acquisition projects. (1) The project area may not, without prior approval of the board or director, be converted to a use other than that for which funds were originally approved.

(2) Projects impacted by a reversion order by the Interstate Commerce Commission under section 8(d) of the National Trails System Act, 16 United States Code 1247(d), are not considered a conversion by the board. Substitution or

replacement with interest in real property, facilities or monies which are of at least equal market value at the time of replacement may be required.

(3) The board may only approve a conversion when the sponsor:

(a) Demonstrates the need to convert the project area including all efforts to consider practical alternatives, how they were evaluated, and the reasons they were not pursued;

(b) Provides an opportunity for the public to participate in the identification, development and evaluation of the alternatives, including a minimum public comment period of at least thirty days; and

(c) Commits to provide another interest in real property to serve as a replacement. The replacement must:

(i) Be of reasonably equivalent usefulness and location;

(ii) Be administered by the same sponsor unless otherwise approved by the board;

(iii) Satisfy need(s) identified in the sponsor's current plan as described in WAC 286-13-035 or other relevant local or statewide plan;

(iv) Be eligible in the same grant program account or category from which funds were originally allocated, unless otherwise approved by the board;

(v) Be interest in real property of at least equal current market value to the converted property; and

(vi) Satisfies the conversion without grant assistance from the board.

NEW SECTION

WAC 286-13-170 Long-term obligations for development and renovation projects. (1) The project area may not, without prior approval of the board or director, be converted to a use other than that for which funds were originally approved.

(2) Projects impacted by a reversion order by the Interstate Commerce Commission under section 8(d) of the National Trails System Act, 16 United States Code 1247(d), are not considered a conversion by the board. Substitution or replacement with interest in real property, facilities or monies which are of at least equal market value at the time of replacement may be required.

(3) The board may only approve a conversion when the sponsor:

(a) Demonstrates the need to convert the project area including all efforts to consider practical alternatives, how they were evaluated, and the reasons they were not pursued;

(b) Provides an opportunity for the public to participate in the identification, development and evaluation of the alternatives, including a minimum public comment period of at least thirty days; and

(c) Provides another project area to serve as a replacement. The replacement must:

(i) Be of reasonably equivalent usefulness and location;

(ii) Be administered by the same sponsor unless otherwise approved by the board;

(iii) Be a new project area with facilities that satisfy need(s) identified in the sponsor's current plan as described in WAC 286-13-035 or the other relevant local or statewide plan;

(iv) Be eligible in the same grant program account or category from which funds were originally allocated, unless otherwise approved by the board; and

(v) Satisfies the conversion without grant assistance from the board.

NEW SECTION

WAC 286-13-180 Long-term obligations for restoration projects. (1) The project area may not, without prior approval of the board or director, be converted to a use other than that for which funds were originally approved.

(2) The board may only approve a conversion when the sponsor:

(a) Demonstrates the need to convert the project area including all efforts to consider practical alternatives, how they were evaluated, and the reasons they were not pursued;

(b) Provides an opportunity for the public to participate in the identification, development and evaluation of the alternatives, including a minimum public comment period of at least thirty days; and

(c) Provides another project area to serve as a replacement for the restoration project. The replacement must:

(i) Be of reasonably equivalent habitat utility and location;

(ii) Be administered by the same sponsor unless otherwise approved by the board;

(iii) Be a new project area that satisfies need(s) identified in the sponsor's current plan as described in WAC 286-13-035 or the other relevant local or statewide plan;

(iv) Be administered under similar stewardship methods as the converted project area;

(v) Be eligible in the same grant program or category from which funds were originally allocated, unless otherwise approved by the board; and

(vi) Satisfies the conversion without grant assistance from the board.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 286-26-010 Scope of chapter.
- WAC 286-26-020 What definitions apply to this chapter?
- WAC 286-26-080 Does this program have planning eligibility requirements?
- WAC 286-26-083 What long term rules apply?
- WAC 286-26-085 When considering approval of a conversion, what rules apply?
- WAC 286-26-090 For land acquisition projects, are there long term obligations?
- WAC 286-26-100 For development projects, are there long term obligations?
- WAC 286-26-105 What provisions apply to federal agencies?

- WAC 286-26-110 Matching amounts and caps determined.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 286-27-010 What is the purpose of this chapter?
- WAC 286-27-040 Does the program have planning eligibility requirements?
- WAC 286-27-045 What is a conversion of use?
- WAC 286-27-055 Are there long-term obligations for acquiring interest in real property?
- WAC 286-27-061 Are there long-term obligations for restoration projects?
- WAC 286-27-065 Are there long-term obligations for development projects?
- WAC 286-27-066 What additional rules apply to conversions of use?
- WAC 286-27-071 What rules apply to the sale of farmland?
- WAC 286-27-075 Are matching resources required—Are there caps?

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 286-35-010 Scope.
- WAC 286-35-030 Planning requirements.
- WAC 286-35-060 Matching requirements and caps determined.
- WAC 286-35-080 Acquisition projects—Deed of right, conversions, leases and easements.
- WAC 286-35-090 Development projects—Conversion to other uses.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 286-40-010 Scope.
- WAC 286-40-020 Funding and candidate selection.
- WAC 286-40-030 Matching requirements.
- WAC 286-40-040 Projects eligible for funding.
- WAC 286-40-050 Acquisition projects—Deed of right, conversions, leases and easements.
- WAC 286-40-060 Development projects—Conversion to other uses.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 286-42-010 What is the purpose of this chapter?
 WAC 286-42-020 What organizations may receive grants?
 WAC 286-42-030 Do these rules apply to projects funded on or before April 1, 2004?
 WAC 286-42-040 What long term rules apply?
 WAC 286-42-050 When considering approval of a conversion, what rules apply?
 WAC 286-42-060 For land acquisition projects, are there long term obligations?
 WAC 286-42-080 For development projects, are there long term obligations?
 WAC 286-42-090 Must a grant recipient provide matching funds for the project—Are grant amounts limited?

WSR 17-06-080**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed March 1, 2017, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-105.

Title of Rule and Other Identifying Information: Chapter 16-305 WAC, Industrial hemp research program.

Hearing Location(s): Department of Agriculture, Conference Room 238, 21 North 1st Avenue, Yakima, WA 98902, on April 6, 2017, at 11:00 a.m.; and at the Department of Agriculture, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504, on April 7, 2017, at 11:00 a.m.

Date of Intended Adoption: April 13, 2017.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax (360) 902-2094, by April 7, 2017.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (800) 833-6388 or 711 no later than March 30, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to adopt rules establishing an industrial hemp research program to include program goals, applicant requirements, licensing requirements and fees, transportation requirements, data and reporting requirements, records retention requirements, inspection and sampling criteria, and testing criteria and fees.

Reasons Supporting Proposal: RCW 15.120.030 requires the department to adopt rules establishing an industrial hemp research program to be supervised by the depart-

ment to study the growth, cultivation and marketing of industrial hemp.

Statutory Authority for Adoption: RCW 15.120.030 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.120 RCW.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Emily Febles, 21 North 1st Avenue, Suite 203, Yakima, WA 98902, (509) 249-6931.

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

Small Business Economic Impact Statement

SECTION 1: 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.

During the 2016 legislative session, the legislature passed ESSB 6206 (codified as chapter 15.120 RCW). This bill required the department to adopt rules establishing an industrial hemp research program to determine the feasibility and desirability of industrial hemp production in Washington state. The legislature authorized the growing of industrial hemp as a legal agricultural activity in this state solely as part of an agricultural pilot program. Industrial hemp may not be grown, produced, possessed, processed, or exchanged in the state except as part of the industrial hemp research program. The legislature has not authorized any commercial activity for industrial hemp.

Industrial hemp is a variety of the plant species *Cannabis*. Its tetrahydrocannabinol (THC) concentration is restricted to 0.3 percent or less by dry weight. Industrial hemp has many uses due to its fiber length, strength, durability, absorbency, antimildew, and antimicrobial properties. Some of these uses include cordage, clothing, mulch, animal bedding, biofuels, and plastics. Industrial hemp fiber has been used extensively throughout history for paper and rope.

The rule development of the industrial hemp research program is broken down into two components. One component establishes the requirements for participation in the research program. The other component establishes the requirements for growing certified industrial hemp seed. This small business economic impact statement (SBEIS) focuses on the requirements related to the industrial hemp research program. Separate rule making is being conducted regarding establishing the requirements for growing certified industrial hemp seed.

RCW 15.120.005 states, "The legislature intends to authorize the growing of industrial hemp as a legal, agricultural activity in this state as part of an agricultural pilot program" RCW 15.120.030 authorizes the director of agriculture to adopt by rule requirements for the industrial hemp research program. These include:

- Licensing requirements;

- Fees for license application, issuance, and renewal;
- Testing criteria and protocols; and
- Applicant qualifications.

The purpose of the industrial hemp research program is to research the growth, cultivation, and marketing of industrial hemp within the state. The research is intended to give the department valuable data about whether industrial hemp could be a viable agricultural product for the state in the future. Participation in the research on industrial hemp is voluntary; however, businesses wishing to participate will be required to comply with the application, licensing fees, and other requirements associated with the program.

In order for someone to grow, produce, possess, process, market, or exchange Washington grown industrial hemp within the state, they have to be licensed under the program. Fees established by rule are necessary to recover the costs associated with implementation of the new research program. The legislature granted the program a moderate budget to begin with the expectation that user-fees will sustain the program in the future.

Industrial hemp seed acquisition is limited by law to the valid forms of importation permitted by the United States Drug Enforcement Administration (DEA) pursuant to RCW 15.120.040(4), "The programs under this chapter are subject

to a grant of necessary permissions, waivers, or other form of valid legal status by the United States drug enforcement administration or other appropriate federal agency pursuant to applicable federal laws relating to industrial hemp." Due to this, the industrial hemp seeds used to begin the research program will be imported from abroad. In the future, industrial hemp seeds may be grown within the state and these seeds may be used to begin future research projects.

Anticipated costs to participating businesses include: Paying fees for application and licensure, inspection, sampling, and testing; a soil test; and maintaining the farming environment to include costs associated with water, fertilizers, pesticides and herbicides, labor for maintaining weed control, etc. The rules do not expressly or impliedly require that participants retain any external professional services. Businesses researching the growth, cultivation, processing, or marketing of industrial hemp will be making their own business decisions about acquiring the knowledge and expertise necessary to successfully conduct that enterprise.

SECTION 2: 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:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
11199	All Other Crop Farming	0		

No NAICS code is specifically assigned to industrial hemp farming. There are currently no legally established industrial hemp businesses operating within the state.

SECTION 3: 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.

Below are anticipated costs associated with participation in the program. Each table lists the costs associated with the different licensing categories.

Fee Description - Grower License		Cost
Application fee		\$450.00
License fee ¹		\$300.00
First field listed on application ¹		\$0.00
THC testing ²		\$200.00
Soil testing ³		\$25.00
Pesticide testing ⁴		\$0.00
Field sampling and inspection fee ⁵		\$878.00
Travel time to/from field location	\$132.00	
Mileage	\$107.00	
Actual inspection (per field)	<u>\$200.00</u>	
Total per inspection:		\$439.00
Note: The second column reflects the single inspection cost multiplied by two - the program requires two growing season inspections.		
TOTAL:		\$1,853.00 ⁶

- 1 License fee includes one field. Each additional field is \$200.
- 2 THC testing is done in batches. Batch rates can range from \$2,000 for a single test to \$200 per test for a batch of ten. This chart assumes the licensee mitigated their costs by participating in the ten sample batch rate.
- 3 Soil testing required prior to submitting license application. Soil testing kits can be obtained online.
- 4 Pesticide testing is only done on projects with food for human consumption as a research goal. The cost of the test is \$400. This chart assumes the licensee is not growing industrial hemp for human consumption.
- 5 Analysis based on applicant's field location being one hundred miles from the department's seed program headquarters in Yakima; current OFM mileage rate of \$0.535 per mile; and a rate of \$40.00 per hour for travel time.
- 6 All fees are based on a single field.

Fee Description - Processor and Marketer License	Cost
Application fee	\$450.00
License fee	\$300.00
THC testing ¹	\$0.00
Inspection fee ²	\$439.00
Travel time to/from field location	\$132.00
Mileage	\$107.00
Actual inspection (registered land area)	<u>\$200.00</u>
Total per inspection:	\$439.00
Note: The second column reflects the single inspection cost - the program requires one inspection during the processing license period.	
TOTAL:	\$1,189.00

- 1 Test is only conducted when there is observation of noncompliance during an inspection. This chart assumes the licensee is in compliance with the program requirements.
- 2 Analysis based on applicant's facility location being one hundred miles from the department's seed program headquarters in Yakima; current OFM mileage rate of \$0.535 per mile; and a rate of \$40.00 per hour for travel time.

Fee Description - Combination Grower/Processor and Marketer License	Cost
Application fee	\$800.00
License fee ¹	\$300.00
First field listed on application ¹	\$0.00
THC testing ²	\$200.00
Soil testing	\$25.00
Pesticide testing (if for food) ³	\$0.00
Field/facility sampling and inspection fees ⁴	\$1,317.00
Travel time to/from field/processing location	\$132.00
Mileage	\$107.00
Actual inspection (per growing/processing address)	<u>\$200.00</u>
Total per inspection:	\$439.00
Note: The second column reflects the single inspection cost multiplied by three - two field inspections are required during the growth and one inspection is required for processing facilities.	
TOTAL:	\$2,642.00 ⁵

- 1 License fee includes one field, one processing area, and one storage area. Each additional field, processing area, and storage area is \$200.
- 2 One THC test is required on any industrial hemp being grown. While processing, a THC test is only required on grounds of observation of noncompliance during an inspection. THC testing is done in batches. Batch rates can range from \$2,000 for a single test to \$200 per test for a batch of ten. This chart assumes the licensee mitigated their costs by participating in the ten sample batch rate.
- 3 Pesticide testing is only done on projects with food for human consumption as a research goal. The cost of the test is \$400. This chart assumes the licensee is not growing/processing for human consumption.
- 4 Analysis based on applicant's field and processing location being one hundred miles from the department's seed program headquarters in Yakima; current OFM mileage rate of \$0.535 per mile; and a rate of \$40.00 per hour for travel time.

⁵ Cost analysis based on a single field, single processing area, and single storage area.

Fee Description - Distributor License	Cost
Application fee	\$450.00
License fee	\$300.00
TOTAL:	\$750.00

Fee Description - Specialty Grower License (Seed Certification)	Cost
Application fee	\$450.00
License fee	\$300.00
THC testing ¹	\$200.00
Seed certification field application fee (per field)	Seed Certification Rules ²
Field sampling and inspection fee	Seed Certification Rules ²
Production fee	Seed Certification Rules ²
Lab testing fees	Seed Certification Rules ³
TOTAL:	\$950.00

¹ THC testing is done in batches. Batch rates can range from \$2,000 for a single test to \$200 per test for a batch of ten. This chart assumes the licensee mitigated their costs by participating in the ten sample batch rate.

² Fees associated with growing certified seed are captured in the SBEIS specific to seed certification under separate rule making. Fees are identified in proposed WAC 16-303-320 under WSR 17-05-113.

³ Fees associated with growing certified seed are captured in the SBEIS specific to seed certification under separate rule making. Laboratory testing fees are identified in WAC 16-303-200 under WSR 17-05-113.

The application fee is being charged to recover the cost of the department reviewing each application for:

- Appropriate research goals;
- Required expertise to carry out the research;
- The review of global positioning system (GPS) coordinates for field suitability;
- The review of GPS coordinates for adequate isolation distances between the proposed industrial hemp field and other fields that can pose cross pollination problems;
- Tracking and documenting fields, greenhouses, and storage facilities for research suitability; and
- Tracking payment information.

The license fee is being charged to recover the cost of issuing the license, notifying sheriff's departments of research projects in their jurisdiction, recordkeeping of researcher's data, issuing field signs to research participants, and general administrative costs associated with monitoring a year-long research project.

If additional addresses are listed on an application where industrial hemp may be grown, an additional fee will be charged to recover the costs with monitoring multiple, separate locations.

If industrial hemp research will involve growing or processing for human consumption, an additional fee will be charged to recover the costs for running the pesticide screening.

THC concentration testing will be performed on fields sown with industrial hemp one time per license period. The fee will be charged to recover expenses associated with THC laboratory testing. THC concentration testing fees for industrial hemp production are established on a sliding rate scale. THC concentration testing will be scheduled based on the

availability of laboratory resources. Individual samples may be batched with samples from the same or different licensees in order to reduce the overall cost of the testing. For the purposes of this section, "batch" means a group of samples that are tested by the department on the same day, using the same equipment calibration and testing supplies to test each sample independently from other samples in the batch. The department will bill each licensee for the samples that licensee provides, based on batch size at the time of testing.

A soil test is required for those wishing to participate in research on industrial hemp growth. The program considers data on the impacts of industrial hemp on soil profiles to be of high importance. Soil tests are already industrial standard for those engaged in industrial agriculture. Test kits cost about \$25 and are available online and at many outlets for those who are new to farming or may not already conduct these tests as part of standard farming practice.

The inspection fee is being charged to recover the expenses associated with industrial hemp inspections. A grower's industrial hemp research project will be inspected twice during each license period by the department. A processor's industrial hemp research project will be inspected once during each license period. A combination licensee's research project will be inspected three times during each license period.

There are some minor costs associated with recordkeeping of industrial hemp research throughout the license period - i.e. the cost of a spiral notebook to record field data. During the inspection process, the department will be auditing data being collected on each research project. Each licensee may keep records of research data in a method suitable to the research being performed. Examples of acceptable research recording may be by notebook to record observations, in a

spreadsheet to record data, in a computer program to monitor changes, or other typically acceptable methods to track research data.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

Minor costs is defined in RCW 19.85.020 as cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. Because there are no legally established industrial hemp businesses in Washington state, an assessment of regulatory costs on a potential licensee's annual revenue, income, or payroll would be speculative. The costs for licensed participants will exceed one hundred dollars per year based on the fee schedules outlined in section 3. Therefore, the costs are considered more than minor.

SECTION 5: 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.

The department conducted a survey via Survey Monkey to obtain information regarding the size of businesses interested in the program. The survey was open from November 8 to December 1, 2016. One hundred forty-four responses were received. All respondents indicated they were small businesses as defined in RCW 19.85.020(3).

There are currently no legally established industrial hemp businesses operating within the state. Based on the survey the department conducted, only respondents that are considered small businesses indicated that they are interested in participating in the program. The department does not anticipate that any large businesses will apply for participation in the program.

Although the application fee will disproportionately impact small businesses, the costs associated with inspection and testing are based on the number of fields - fewer fields may equal less inspection and testing fees. The \$200 per additional field cost will not disproportionately impact small businesses because it is based on the number of fields - smaller businesses will have fewer fields than larger businesses. Therefore, there would not be disproportionate costs between large and small businesses with regard to testing, inspection, and additional field costs.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

Under RCW 19.85.030, the program considers the following methods of reducing the impact of the proposed rule on small businesses:

a. *Reducing, modifying, or eliminating substantive regulatory requirements:* The requirements for the industrial hemp research program are established in chapter 15.120 RCW and any change to the requirements will take legislative action. The program is a research program written to conform with federal guidelines. The procedures for industrial hemp research are clear under state and federal guide-

lines. The methods and activities permissible are meant to be quite restrictive because the federal government considers industrial hemp to be a Class I controlled substance. Reducing, modifying, or eliminating any of the regulatory requirements would make the program illegal federally and would jeopardize the ability for the program to obtain industrial hemp seed-stock under the federal DEA permitting process for Class 1 controlled substances.

b. *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* The program is intended only as a research program. As such, recordkeeping of research data is an integral part of the licensee's participation in the program. The ability of the program to obtain data regarding the viability of an industrial hemp industry in the state is the entire purpose of the program, and because the program will be under significant federal oversight, there is not an option to reduce recordkeeping or reporting requirements.

c. *Reducing the frequency of inspections:* Federal guidelines on Class 1 controlled substances require strict and thorough monitoring of research projects involving these substances. The minimum number of inspections that the program feels it needs to comply with these guidelines per growing season is two. The first inspection will check to see that the industrial hemp is planted where the licensee indicated on his/her application and combines an audit of the licensee's research data. The last inspection will include a THC sample for testing and again combines an audit of the licensee's research data. For research on processing industrial hemp, the program has included only one inspection per license period and combines an audit of the licensee's research data. Again, this inspection is necessary to ensure compliance with federal guidelines of research on Class 1 controlled substances and proper oversight by the department. To reduce the overall number of inspections, the department will be checking for multiple compliance components during each inspection.

d. *Delaying compliance timetables:* Delaying inspection and sampling time frames on licensed growers is not an option because they are based on the growth stage of the plants. Delaying compliance inspections on processing industrial hemp is not an option because the intent of the inspection is to ensure compliance with federal guidelines of research on Class 1 controlled substances. Delaying any inspection and/or sampling time frames may jeopardize valuable research data being collected by the program - for example, delayed inspection for THC testing has been shown to cause an increase in the amount of the THC present. Collecting data with precision is key to scientific and economic research.

e. *Reducing or modifying fine schedules for noncompliance:* Except for the limited exception for those growing specifically for industrial hemp seed certification, there are no civil penalties allowed by law for violations. Industrial hemp for seed certification is addressed in a separate SBEIS.

f. *Any other mitigation techniques including those suggested by small businesses or small business advocates:* All licenses - the fee for pesticide testing was reduced from being required by all licensees to only those growing industrial hemp for human consumption.

All licenses - the cost of an individual THC test is \$2,000. To mitigate that cost, the department has offered the option to batch the tests with other growers. Batched tests are substantially less costly. If a grower chooses to batch their THC test with nine other growers, the cost to perform the test drops to \$200.

Combination license - the application fee was reduced by \$100 from the full cost of two separate licenses.

Processor and marketer license - a mandatory THC test for processors was removed after consultation with small businesses. Industrial hemp grown in Washington must already be tested for THC concentration by law before processing and imported industrial hemp must be tested for THC concentration prior to importation; therefore the extra testing on processors was considered redundant. A THC test is now only required of processors if there is an observation during inspection of noncompliance.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

An industrial hemp email distribution list was created to keep individuals, small businesses, large businesses and all stakeholders informed of the creation and rule-making process for the industrial hemp research program.

The department held a five-hour, in-person working group meeting consisting of those who expressed an interest in seeking licensure. All license types were represented. The purpose of holding this working group meeting was to seek public comment on the program rule draft before officially initiating the formal rule-making process.

The department conducted a survey via Survey Monkey to obtain information regarding the size of businesses interested in participation in the program. The survey was open from November 8 to December 1, 2016. One hundred forty-four responses were received. All respondents indicated they were small businesses as defined in RCW 19.85.020(3).

Small businesses were involved with writing the proposed rules and in providing input to the department with regards to the expected costs associated with this new research program. The ultimate goal of the legislature mandated program fees for industrial hemp research is to set them at a level that supports the program.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

As there are no legally established industrial hemp businesses within the state, no jobs will be lost under the creation and amendment of these rules.

The creation of the industrial hemp research program and subsequent seed certification has the potential to create some limited jobs within the state. The number of jobs created will depend on the number of applications received and licenses issued. These jobs will mainly be created in the agricultural research sector, although some jobs may be created in the marketing research sector of agricultural commodities as well. If data from the research program indicates that growing industrial hemp in Washington state is viable, then this could be the basis for future job creation. Purely commercial growing or processing of industrial hemp is currently not permitted under chapter 15.120 RCW or under federal law.

A copy of the statement may be obtained by contacting Henri Gonzales, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1802, fax (360) 902-2094, email wsdarulescomments@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 1, 2017
Jason Ferrante
Assistant Director

Chapter 16-305 WAC

INDUSTRIAL HEMP RESEARCH PROGRAM

NEW SECTION

WAC 16-305-010 Purpose of chapter. The purpose of this chapter is to establish the requirements for persons to participate in the department's industrial hemp research program as provided under chapter 15.120 RCW. These rules include licensing requirements. Licensing is required for persons to grow, produce, possess, process, and market or exchange industrial hemp as provided under this chapter and chapters 15.120 and 15.49 RCW and the rules adopted thereunder as related to industrial hemp seed certification.

NEW SECTION

WAC 16-305-020 Industrial hemp research program goals. (1) The department intends to study the feasibility and desirability of industrial hemp production in Washington state based on the availability of resources and funding for such studies. Potential areas for the department's studies and research include the following:

- (a) Growing industrial hemp grain;
- (b) Growing industrial hemp fiber; and
- (c) Developing a seed certification program.

(2) The industrial hemp research program deems the agricultural goals specific to crop production to be of high importance. These goals include:

- (a) Variety trials;
- (b) Pollen flow studies;
- (c) Plant genetics;
- (d) Pest and disease management;
- (e) Beneficial insects;
- (f) Soil quality;
- (g) Phytoremediation and bioremediation; and
- (h) Certified industrial hemp seed production.

(3) The main marketing and processing goals of the industrial hemp research program include:

- (a) Animal bedding;
- (b) Cosmetic or beauty products from seed oil;
- (c) Fiber products;
- (d) Biofuels;
- (e) Bioplastics;
- (f) Food and beverage additives from seeds and seed oil;
- (g) Industrial hemp grain and grain products;
- (h) Industrial hemp seed oil;
- (i) Construction materials;

- (j) Compost;
- (k) Insulation; and
- (l) Bio-char and soil amendment technologies.

NEW SECTION

WAC 16-305-030 Definitions. "Applicant" means a person who submits an application for a license to participate in the industrial hemp research program as required under this chapter.

"Approved seed" means a variety of industrial hemp seed that is approved by the department for growing industrial hemp.

"Authorized representative" means any person identified in writing by a licensee who may act as agent on behalf of the licensee for purposes of the license subject to any limitations stated in writing by the licensee. The licensee remains responsible for compliance with the license requirements irrespective of the acts or omissions of an authorized representative.

"Certified seed" means an industrial hemp seed variety that has been bred to comprise satisfactory genetic purity and varietal identity or has been accepted by Association of Seed Certifying Agencies (AOSCA), Organization for Economic Cooperation and Development (OECD) or other certifying entity as determined by the department.

"Contiguous land area" means a specific field with designated boundaries that is planted with industrial hemp. Separate parcels connected only by thin or narrow plantings of industrial hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means annual licenses renewed in such a way that the licensee is continuously operating under a valid license.

"DEA" means the federal Drug Enforcement Administration.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or another manner approved by the department.

"Devitalization" means the process of sterilizing viable industrial hemp seed in such a way that the seed is unable to grow into new plants. Devitalization may happen through steam sterilization, dehulling, pressing, or another method approved by the department. If using steam sterilization, the seeds must be steamed to one hundred eighty degrees Fahrenheit for at least fifteen minutes.

"Field" means a contiguous land area, registered with the department, on which a licensee plans to grow industrial hemp.

"Grain" means any devitalized industrial hemp seeds that are not intended for replanting, but will be used for food, feed, fiber, oil or other products.

"Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, containing a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not

include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101.

"Industrial hemp research program" means the department's "agricultural pilot program" established under chapter 15.120 RCW, this chapter, and the industrial hemp seed rules under chapters 16-302 and 16-303 WAC.

"Leadership position" means any board member, manager, or leader in a business or organization who will provide oversight and monitoring of subordinates.

"Licensee" means any person who holds a license from the department to grow, produce, possess, process, or exchange or sell industrial hemp. A licensee may be a person who is authorized to carry out department supervised research on the feasibility and desirability of industrial hemp production in Washington state.

"Processing area" means any area, building, plant or facility registered with and approved by the department in which a licensee will make industrial hemp into a marketable product. For the purposes of this definition, a person's domicile, home or residence is not considered a processing area.

"Registered land area" means a contiguous land area, including greenhouses, processing areas and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, processing area or storage area so long as those fields, greenhouses, processing areas or storage areas are at the same physical address.

"Report" means any data, statistics or information required to be provided to the department by a licensee under an industrial hemp license.

"Seed distributor" means any person licensed by the department to distribute or sell viable industrial hemp seed.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store industrial hemp.

"THC concentration" means the percent of total tetrahydrocannabinol, which is the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the genera *Cannabis*.

"Volunteer plant" means an industrial hemp plant that results from a previous crop.

NEW SECTION

WAC 16-305-040 Industrial hemp license application. (1) A person wishing to participate in the industrial hemp research program must submit a license application on a form provided by the department. A person wishing to obtain an application form for an industrial hemp research license may contact the department at: 509-249-6950, hemp@agr.wa.gov, 21 North 1st Avenue, Suite 203, Yakima, WA 98902 or download the application form from the department's web site at <http://agr.wa.gov/>. The department will post on its web site any deadline for submitting an application.

(2) Each applicant for a license to grow, produce, possess, process, or market or exchange industrial hemp shall submit a signed, complete, accurate, and legible application on a form provided by the department. Applications must be

submitted at least thirty days prior to commencing industrial hemp operations regulated under this chapter. To maintain continuous licensing, an applicant must submit an application for a renewal license at least thirty days prior to the expiration of the previous license. The application must include the following information:

- (a) The name and business address of the applicant;
 - (b) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;
 - (c) If applicable, the legal description (section, township, and range) in which any proposed registered land area is located;
 - (d) The global positioning location coordinates taken at the approximate center of any proposed registered land area;
 - (e) The results of a soil quality test for each field, which, at a minimum, provides test results on the soil for pH, nitrogen, phosphorus and potassium. This requirement is not applicable for greenhouses;
 - (f) A map of the proposed registered land area, showing the boundaries and dimensions of the proposed registered land area in acres or square feet, and the proposed location of any variety of industrial hemp crop to be grown in the registered land area(s); and
 - (g) The applicant's signature accepting the license terms and conditions including the following:
 - (i) That the applicant agrees to collect, retain and transmit to the department data gathered while conducting each licensed activity as specified in the license for use by the department in studying the feasibility and desirability of industrial hemp production in Washington state. Such information shall be retained and transmitted to the department in a schedule and a format identified in each license;
 - (ii) That the applicant agrees to allow the department to inspect and sample any industrial hemp, or inspect any registered lands, facilities, and records required of the licensee under the terms of each license;
 - (iii) That the applicant is responsible to pay any fees adopted under the department's rules applicable to the licensed activities;
 - (iv) If applicable, the applicant must have the legal right which includes, but is not limited to, a valid deed or lease, to the registered land area, including the legal authority to grant the department access for inspection and sampling; and
 - (v) That the individual grower or combination license applicant or any member of the applicant's business occupying a leadership position has not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in the United States or any other country within ten years of the date of the application.
- (3) In addition to the completed application form, each applicant must submit a nonrefundable application fee. If the application fee does not accompany the application, the application will be deemed incomplete.

(4) An application may be deemed incomplete if the applicant does not include information sufficient for the department to make a determination about the nature and scope of the applicant's proposed uses or activities.

(5) The department may deny an application where the applicant seeks to conduct activities or uses outside the scope of these rules and chapter 15.120 RCW; where the applicant has not met a material requirement identified in the application requirements; or where the applicant proposes a use or activity in conflict with local, state, or federal law. An application may be denied should the application contain goals or information that the department could reasonably conclude would be out of conformance with state or federal laws.

NEW SECTION

WAC 16-305-050 Qualifications of applicants. (1) For any type of license, the applicant must include a signed declaration indicating whether the applicant has ever been convicted of a felony or misdemeanor.

(2) A person with a prior felony drug conviction within ten years of applying for a grower or combination license is not eligible for the license. Associations, corporations and other business entities employing persons in leadership positions with a prior felony drug conviction within ten years of applying for a grower or combination license are not eligible for the license under this felony drug conviction limitation.

INDUSTRIAL HEMP LICENSES

NEW SECTION

WAC 16-305-060 Industrial hemp grower license. (1) A person must obtain an industrial hemp grower license prior to planting or growing any industrial hemp in this state, including growing any industrial hemp seed crop. A licensed grower may sell or exchange industrial hemp produced under the license to any licensed industrial hemp processor or grower. A fit for commerce certificate issued by the department under WAC 16-305-130 must be obtained by a grower prior to transporting any industrial hemp from the grower's registered land area.

(2) Any information obtained by the department regarding a grower's growth of industrial hemp may be provided to law enforcement agencies and fire and rescue agencies by the department without further notice to the licensee.

(3) The department may inspect and sample a grower's licensed operations and must have unrestricted access to all industrial hemp plants, plant parts, grain and seeds within a registered land area whether growing or not, and all land and facilities used by a grower for the growing and storage of industrial hemp, pesticide storage or housing, and all documents and records pertaining to the licensee's industrial hemp business operations.

(4) The licensee must pay all applicable fees adopted under this chapter and under the industrial hemp seed rules for any required inspections and testing. Samples may be taken at the department's discretion for testing.

(5) No registered land area or storage area may contain cannabis plants or parts thereof that the licensee knows or has reason to know are of a variety that will produce a plant that when tested will produce more than three-tenths of one percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of industrial hemp.

(6) Industrial hemp may not be grown within four miles of any field or facility being used to grow marijuana as licensed under chapter 314-55 WAC. For calculation purposes, for outdoor fields licensed under chapter 314-55 WAC, four miles means from any field border of any registered land area, and for indoor facilities licensed under chapter 314-55 WAC, four miles means from any exterior or interior border wall.

(7) All licenses are valid for one year from date of issuance, and may be renewed in successive years. Each annual renewal shall require the payment of application renewal fees and license renewal fees.

(8) Unless approved by the department for continuous licensing, any plant material that is not harvested during the license period in which it was planted must be destroyed.

(9) Any licensee that wishes to change the registered land area(s) after issuance of the license, must submit to the department for approval an updated legal description, global positioning system location, and map specifying the proposed changes to the registered land area(s), pay fees and obtain the department's approval documented as an amendment to the license. The department may deny the requested change for good cause. The fee to change the registered land area(s) after issuance of the license is two hundred dollars.

(10) A copy of each license issued by the department under this section shall be forwarded by the department to the sheriff of each county where the industrial hemp is licensed to be grown.

(11) Signs provided by the department must be posted by each grower stating that the grower is a licensed industrial hemp research program participant. The grower must post such signs on at least each side of every field listed on the application, including the principal entry point(s) of each field.

(12) Licensees growing industrial hemp for seed certification must also follow the requirements in chapter 16-302 WAC.

NEW SECTION

WAC 16-305-070 Industrial hemp processor and marketer license. (1) A person shall obtain an industrial hemp processor and marketer license prior to obtaining industrial hemp for processing or marketing purposes.

(2) The department may inspect and sample and must have unrestricted access to all industrial hemp plants, parts, grain, seeds and products within a registered land area, and all documents and records pertaining to the licensee's industrial hemp business. A person's domicile, home or residence may not be used as a processing area.

(3) An inspection of a licensee's facilities may be conducted at least once by the department during a license period. The inspection activities may include:

- (a) An inspection of the licensee's facilities, including any processing and storage areas;
- (b) An inspection of all industrial hemp in the possession of the licensee;
- (c) Sampling of industrial hemp for testing;
- (d) An inspection of any industrial hemp products being produced under the license; and

(e) An inspection of any records and reports pertaining to the licensee's industrial hemp business.

(4) Any licensee that wishes to change the registered land area(s) after issuance of the license must submit to the department for approval an updated legal description, global positioning system location, and map specifying the proposed changes to registered land area(s), pay fees and obtain the department's approval documented as an amendment to the license. The department may deny the requested change for good cause. The fee to change the registered land area(s) after issuance of the license is two hundred dollars.

(5) A processor and marketer must obtain industrial hemp from a licensed Washington grower or from legally imported sources of industrial hemp. Each licensee must obtain a copy of the grower's license and fit for commerce certificate (WAC 16-305-130) from any licensed Washington grower with whom the processor and marketer conducts business before processing or marketing the industrial hemp.

(6) It is the duty of any processor to devitalize any industrial hemp seed received.

NEW SECTION

WAC 16-305-080 Industrial hemp combination license. (1) A person wishing to grow and process or market industrial hemp in this state may apply for separate licenses or for a combination license. A person who is granted a combination license is subject to all applicable requirements in this chapter, including under WAC 16-305-060 and 16-305-070.

(2) Under a combination license, industrial hemp seed harvested and processed without transporting the seed from the registered land area must be devitalized.

NEW SECTION

WAC 16-305-090 Industrial hemp distributor license. (1) Any person wishing to solely distribute or sell viable industrial hemp seed or propagules in Washington state must be licensed by the department as an industrial hemp distributor. A person must obtain an industrial hemp distributor license prior to exchanging, distributing, selling or reselling viable industrial hemp seed or propagules in Washington state.

(2) This license type may not be combined with licenses described in WAC 16-305-060, 16-305-070, or 16-305-080.

(3) Where appropriate, licensed industrial hemp distributors shall follow seed certification rules in chapter 16-302 WAC.

NEW SECTION

WAC 16-305-100 Industrial hemp importer certificate. Any person wishing to import viable industrial hemp seed or propagules into the state must obtain an importer certificate from the department. Only those persons holding a valid license issued by the department may obtain an importer certificate. There is no charge for this certificate.

NEW SECTION

WAC 16-305-110 Industrial hemp business licenses and taxes. (1) Licensees must maintain all proper state, county and local business licenses and permits and comply with all applicable zoning regulations.

(2) Licensees must comply with business and occupation tax requirements set forth in chapter 82.04 RCW and regulations adopted thereunder.

NEW SECTION

WAC 16-305-120 Suspension of industrial hemp licenses for noncompliance with a child support order. (1) If the department receives notice under RCW 74.20A.320 that a licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's industrial hemp license(s) until the department of social and health services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all industrial hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate or otherwise extend the licensee's industrial hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

NEW SECTION

WAC 16-305-130 Fit for commerce certification. (1) A fit for commerce certificate is a document issued by the department attesting that industrial hemp has been tested for THC concentration and is in compliance with this chapter.

(2) No industrial hemp may leave a registered land area identified on a license without a fit for commerce certificate.

(3) No processor may acquire or process industrial hemp grown within the state of Washington without acquiring a legible copy of all fit for commerce certificates issued by the department to the grower or growers with whom the processor conducts business and specific to the industrial hemp purchased.

(4) A person who is issued an applicable combination license must obtain fit for commerce certificates before any industrial hemp may be processed.

(5) For the purposes of this section, "processing" does not include drying industrial hemp if the drying takes place on the registered land area as identified in the license.

(6) Industrial hemp plants, pieces or parts from different fields or registered land areas may not be combined into one lot until a fit for commerce certificate for each field or registered land area is issued. Industrial hemp seeds and grain are excluded from this restriction.

(7) Processor licensees using industrial hemp which was obtained from outside of the state of Washington must maintain a bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported into the state.

NEW SECTION

WAC 16-305-140 Transporting industrial hemp. (1) Industrial hemp subject to any applicable license issued under this chapter may not be transported from a registered land area as identified on the license until a fit for commerce certificate (WAC 16-305-130) is obtained by the applicable licensee prior to transport. During transport of industrial hemp off a grower's registered land area, including to a processor, the person in possession of the industrial hemp during transport must have in his or her possession either:

(a) Copies of the industrial hemp license and fit for commerce certificates, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to industrial hemp.

(2) Any industrial hemp from a licensed Washington grower that is found in Washington state at any location off the premises of a registered land area of a licensee without a fit for commerce certificate (WAC 16-305-130) is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the license.

NEW SECTION

WAC 16-305-150 Industrial hemp seed and propagules. (1) A licensee must use approved varieties of certified industrial hemp seed or propagules.

(2) A licensee may only obtain industrial hemp capable of propagation as follows:

(a) From a licensed distributor of industrial hemp seed or propagules under WAC 16-305-090; or

(b) Directly from the department as outlined in subsection (3) of this section.

(3) If an approved industrial hemp seed variety cannot be acquired within the state of Washington, a licensee may request in writing that the department import the approved seed under the department's DEA registration number. If the licensee does not currently hold an importer certificate (WAC 16-305-100), the licensee must request such a certificate in writing from the department.

(4) If the department agrees to request the importation of industrial hemp seed on behalf of the licensee, the licensee agrees to the following conditions:

(a) That the department is not liable for and does not warrant that the seed is fit for any purpose;

(b) That the industrial hemp seed shall be a certified seed variety;

(c) That the licensee must pay when due all costs associated with the importation of such industrial hemp seed; and

(d) That upon suspension, revocation, expiration or non-renewal of a licensee's license, any industrial hemp seed that is not used by a licensee must be transported to a DEA approved storage facility without charge or reimbursement. Continuous licensing is required. If a licensee fails to renew their license, any industrial hemp seed in the licensee's possession will become the property of the department without

charge or reimbursement. At the department's discretion, and before the termination of the licensing period, the licensee may request in writing the department hold, on behalf of the licensee, the viable industrial hemp seed at a DEA approved storage location for a period of no greater than six months from the expiration of the license.

(5) Industrial hemp seed imported under the department's DEA registration number may either be stored in a DEA approved storage facility under the industrial hemp research program or it may be delivered directly to the licensee's address as identified on the license.

(6) Industrial hemp seed delivered directly to the grower's address must be planted immediately upon receipt or transported to a DEA approved storage facility.

(7) Industrial hemp seed collected by a grower from a DEA approved seed storage facility must be planted or returned to a DEA approved storage facility within twenty-four hours of receipt. The grower must provide a signed declaration on a form provided by the department declaring all the seed will be planted, returned to a DEA approved storage facility or destroyed within twenty-four hours of receipt.

(8) Before collecting from storage or receiving industrial hemp seed at the licensee's address, a licensee must make arrangements with the department to have a department representative present to verify the receipt of the industrial hemp seed.

(9) During industrial hemp seed collection, the licensee must present to the department:

- (a) A valid industrial hemp license;
- (b) A valid form of photo identification;
- (c) A signed declaration on a form provided by the department declaring the grower will take all steps necessary to prevent diversion;
- (d) If applicable, a valid industrial hemp importer certificate (WAC 16-305-100);
- (e) Copies of all seed importation documents; and
- (f) Other documents as required by the department.

NEW SECTION

WAC 16-305-160 Industrial hemp data and reporting requirements. (1) The licensee shall submit all reports required by the department in the format and by the due dates specified in the terms and conditions of each license. The data to be retained and transmitted to the department by each licensee will be used by the department to study the feasibility and desirability of industrial hemp production in Washington state.

(2) Each field inspection or processing area inspection may include an audit of the licensee's records and data, including the system used by the licensee to preserve required classes of records and data in a timely manner, using a format that facilitates meeting the terms and conditions of the license.

(3) The department may require a licensee to submit responses to a questionnaire or survey at the end of each licensing period. This questionnaire must be completed and returned to the department within thirty business days of transmittal to the licensee by the department. A licensee's failure to return the completed questionnaire or survey may

be good cause for the department to deny a license renewal application.

(4) The licensee must maintain records regarding the sale of any industrial hemp grown under the license.

NEW SECTION

WAC 16-305-170 Records retention. Records, data and reports required to be collected or maintained by the licensee or provided by the licensee to the department must be retained by the licensee for a period of three years from the expiration date of the license that was in effect at the time the records were generated.

NEW SECTION

WAC 16-305-180 Industrial hemp for human consumption. Industrial hemp processed for human consumption must follow food safety requirements as set forth in chapters 69.04, 69.07 and 69.10 RCW and regulations adopted thereunder. As provided under RCW 15.120.020, "processing any part of industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans is prohibited."

NEW SECTION

WAC 16-305-190 Industrial hemp inspection and sampling criteria. (1) All licensees are subject to inspection by the department. The department's inspections of the registered land area may include the following:

- (a) Inspections for unauthorized plant growth;
- (b) Inspections for industrial hemp in any form on the registered land area;
- (c) Inspections for rogue, volunteer, or off-type industrial hemp plants;
- (d) Identification of any industrial hemp activities not listed on the license;
- (e) Audits of existing business data and reports related to industrial hemp;
- (f) Identifying compliance with required signage (WAC 16-305-060);
- (g) Assessing compliance with other applicable licensing terms and conditions; and
- (h) Obtaining samples for lab testing.

(2) Registered land areas under a grower or combination license must be inspected by the department no less than two times during each license period. Registered land areas may be inspected by the department for a period of three hundred sixty-five days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants. Industrial hemp samples from registered land areas licensed under a grower or combination license must be taken by the department no less than once during any growing period. Industrial hemp samples from registered land areas shall be tested by the department for THC concentration at least once during any growing period.

(3) Registered land areas licensed under a processor and marketer or combination license must be inspected by the department no less than once during each license period.

Industrial hemp seed being stored under a processor and marketer or combination license will be inspected by the department for devitalization practices no less than once per year.

NEW SECTION

WAC 16-305-200 Industrial hemp lab testing criteria. (1) Industrial hemp will be tested in a department run or contracted laboratory as determined by the department using testing methods approved by the department.

(2) Industrial hemp seed stored under a processor and marketer or combination license may be sampled and tested by the department for viability. The licensee will be required to reimburse the department for the actual costs incurred by the department for conducting such tests.

(3) Industrial hemp for food for human consumption must be tested for nonapproved pesticide or herbicide use. The grower or combination licensee will be required to reimburse the department for the actual costs incurred by the department for conducting such tests.

(4) Industrial hemp testing will take place at times and on dates determined by the department.

NEW SECTION

WAC 16-305-210 Industrial hemp testing fees. (1) Fees for industrial hemp tests are the responsibility of the licensee.

(2) No fit for commerce certificates (WAC 16-305-130) will be issued until all test fees due the department are paid in full.

(3) No renewal licenses will be issued until all test fees due the department are paid in full.

(4) THC concentration testing fees for industrial hemp production are established on a sliding rate scale. THC concentration testing will be scheduled by the department based on the availability of laboratory resources. Individual samples may be batched with samples from the same or different licensees in order to reduce the overall cost of the testing. For the purposes of this section, "batch" means a group of samples that are tested by the department on the same day, using the same equipment calibration and testing supplies to test each sample independently from other samples in the batch. The department will bill each licensee for the samples that licensee provides, based on batch size at the time of testing as shown in the following table:

Batch Size	Testing Fee Per Sample
Batch of 1 sample	\$2,000
Batch of 2 samples	\$1,000
Batch of 3 samples	\$667
Batch of 4 samples	\$500
Batch of 5 samples	\$400
Batch of 6 samples	\$333
Batch of 7 samples	\$286
Batch of 8 samples	\$250
Batch of 9 samples	\$222
Batch of 10 samples	\$200

NEW SECTION

WAC 16-305-220 Industrial hemp license fees.

License Type	Annual Application Fee	Initial License Fee	Renewal License Fee	THC Testing Fee	Other Testing Fee	Other Fee	Inspection Fee
Combination	\$800	\$300 /1	\$300 /1	/2	\$400 pesticide testing fee /3	\$200 per additional field	\$200 fee + travel time and mileage /4
Distributor	\$450	\$300	\$300 /1	/2	N/A	N/A	\$200 fee + travel time and mileage /4
Grower	\$450	\$300 /1	\$300 /1	/2	\$400 pesticide testing fee /3	\$200 per additional field	\$200 fee + travel time and mileage /4
Processor and Marketer	\$450	\$300	\$300	/2	/5	N/A	\$200 fee + travel time and mileage /4
Specialty Grower - Seed Certification	\$450	\$300 /1	\$300 /1	/6	/6	/6	/6

- /1 Fee includes one field.
- /2 See WAC 16-305-210 for THC concentration testing fees.
- /3 Applicable if growing industrial hemp for human consumption.
- /4 See WAC 16-303-250 for travel time and mileage rates.
- /5 See WAC 16-303-200 for seed testing fees.
- /6 See WAC 16-303-320 for seed certification fees.

NEW SECTION

WAC 16-305-230 Industrial hemp noncompliance for THC concentration. (1) If a licensee's industrial hemp tests higher than three-tenths of one percent THC concentration, the licensee may be subject to suspension or revocation of the license. The crop must be destroyed or utilized on-site in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appropriate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant industrial hemp.

(2) If a licensee's industrial hemp tests higher than three-tenths of one percent but less than one percent THC concentration, the department may run appropriate genetic tests, at the licensee's expense, to verify the industrial hemp was from a variety of approved seed. If the industrial hemp was from a variety of approved seed, at the licensee's expense the licensee may either request a THC retest within thirty days or resampling of the same field.

(3) If at any time a licensee's industrial hemp tests higher than one percent THC concentration, the licensee may be subject to revocation or suspension of the license. The licensee, or any legal entity subsequently employing the licensee, may be ineligible for a license to grow or process industrial hemp for a period of three years from the termination date of the license held at the time of noncompliance.

NEW SECTION

WAC 16-305-240 Noncompliance conditions. Licensees may be subject to license suspension or revocation for any violation of chapter 15.120 RCW or this chapter.

NEW SECTION

WAC 16-305-250 License denial, suspension or revocation and right to adjudicative proceeding. Upon notice by the department to an applicant to deny a license or notice to a licensee to suspend or revoke a license, or upon receipt of a crop destruction order, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act.

NEW SECTION

WAC 16-305-260 Venue for legal action. The venue for any legal action under this chapter shall be Thurston County, Washington.