

WSR 11-05-068
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 14, 2011, 9:56 a.m., effective February 26, 2011]

Effective Date of Rule: February 26, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Under RCW 74.46.380(3) a rule may become effective earlier than thirty-one days after filing when the agency establishes that effective date in the adopting order and finds that the earlier effective date is necessary because of imminent peril to the public health, safety, or welfare. Section 23, chapter 34, Laws of 2010 1st sp. sess. and section 958, chapter 37, Laws of 2010 1st sp. sess., declared the act necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately. The rules of this adopting order are necessary to implement chapters 34 and 37, Laws of 2010 1st sp. sess. and thus, are necessary to avoid imminent peril to the public health, safety, or welfare. The rules have been in effect since July 1, 2010, through emergency adoptions, see WSR 10-14-050 and 10-22-068.

Purpose: The amendments or adoptions to chapter 388-96 WAC to implement ESSB 6872 include but are not limited to the following: (1) The effect of bed banking on rates; (2) financing allowance component rate allocation minimum facility occupancy of licensed beds, regardless of how many beds are set up or in use at eighty-five percent for essential community providers, ninety percent for small nonessential community providers, and at ninety-two percent for large nonessential community providers; (3) to increase the categories for exceptional care rates; and (4) adopt new rules for pay-for-performance supplemental rates. The department will amend or adopt new rules to implement ESSB 6444, section 206 that include but are not limited to WAC 388-96-766(3) to implement no rate add-ons to nursing facility medicaid payment rates for capital improvements not requiring a certificate of need and a certificate of capital authorization for fiscal year 2011. On September 2, 2009, in WSR 09-17-003, <http://apps.leg.wa.gov/documents/laws/wsr/2009/17/09-17-003.htm>, the department indicated specific sections of chapter 388-96 WAC that it would amend. Also, the department stated that all sections may be amended to clarify regulations by codifying current policies and practices and editing previous codifications for substance and form.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-202, 388-96-740, 388-96-741, 388-96-742 and 388-96-749; and amending WAC 388-96-010, 388-96-108, 388-96-217, 388-96-218, 388-96-366, 388-96-384, 388-96-534, 388-96-535, 388-96-536, 388-96-542, 388-96-559, 388-96-561, 388-96-565, 388-96-585, 388-96-708, 388-96-709, 388-96-747, 388-96-748, 388-96-758, 388-96-759, 388-96-766, 388-96-776, 388-96-781, 388-96-782, 388-96-802, 388-96-803, 388-96-901, and 388-96-904.

Statutory Authority for Adoption: Chapter 74.46 RCW.

Other Authority: Chapter 34, Laws of 2010 1st sp. sess. and section 958, chapter 37, Laws of 2010 1st sp. sess.

Adopted under notice filed as WSR 10-20-171 on October 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. **"Large nonessential community provider" and "small nonessential community providers"**: Both definitions used, nonessential community provider to define what a nonessential community provider is. Whether large or small, the "nonessential community provider" definition should indicate that it is any facility that does not meet the definition of an "essential community provider.["] The department will make the following change to both large and small definition: **"Large nonessential community providers" are not essential community providers and have more than sixty licensed beds... "Small nonessential community providers" are not essential community providers and have sixty or fewer licensed beds...**

2. **WAC 388-96-217**: The department will change "shall" to the permissive "may."

3. The department withdraws [withdraws] the change in WAC 388-96-366(3): The facility shall deposit any resident's personal funds in excess of (~~fifty~~) ~~one hundred~~ dollars in an interest-bearing resident personal fund account or accounts, separate from any of the facility's operating accounts, and credit all interest earned on an account to the account.

4. **WAC 388-96-559 (1)(A)**, has a typo - should that be five percent of the historical value.

The following correction will be made: (A) Excluding computers and televisions, (~~five~~) five percent of the historical value for each noncloth item included in moveable equipment;

5. **WAC 388-96-585 (2)(vv)**: The department agrees that consultant expense directly related to implementing MDS 3.0 will be allowable. The department will delete WAC 388-96-585 (2)(vv). The department is removing this disallowance. Consulting expenses incurred in implementing MDS 3.0 will be allowable.

6. **WAC 388-96-776 (15)(ii)**, reads in part (last line of page 49) "number of licensed beds time ninety percent occupancy percent for..." The 2nd percent is redundant and should be removed. The redundant "percent" will be changed to read as "percentage."

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 25, Amended 28, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 25, Amended 28, Repealed 0.

Date Adopted: February 10, 2011.

Katherine I. Vasquez
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-010 Definitions. Unless the context indicates otherwise, the following definitions apply in this chapter.

"Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

- (1) Decision making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"Accrual method of accounting" is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Administration and management" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"Allowable costs" (~~means~~) are documented costs that are necessary, ordinary, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

"Allowable depreciation costs" (~~means~~) are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in (~~RCW 74.46-330~~) WAC 388-96-552.

"Assignment of contract" means:

- (1) A new nursing facility licensee has elected to care for medicaid residents;
- (2) The department finds no good cause to object to continuing the medicaid contract at the facility; and
- (3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

"Bad debts" are amounts considered to be uncollectible from accounts and notes receivable.

"Beneficial owner" is:

(1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose of effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting

of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter:

(3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(a) Through the exercise of any option, warrant, or right;

(b) Through the conversation of an ownership interest;

(c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in (3)(a), (3)(b), or (3)(c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledgee agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged ownership interest; or

(ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

"Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

"Cash method of accounting" means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

"Change of ownership" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

"Charity allowance" means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

"Component rate allocation(s)" means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Contract" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"Cost report" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"Courtesy allowances" ((means)) are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"Department" means department of social and health services and its employees.

"Direct care supplies (DCS)" are those supplies:

(1) Used by staff providing direct care to residents;

(2) Consumed during a single accounting period; and

(3) Expensed in that accounting period. Supplies excluded from DCS include but are not limited to the following:

(1) medical equipment (such as IV poles);

(2) Items covered by medicaid fee-for-service system; and

(3) Administrative supplies used by direct care staff (such as pencils, pens, paper, office supplies, etc).

"Donated asset" means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

(1) Made even a nominal payment in acquiring the asset; or

(2) Used donated funds to purchase the asset.

"Essential community provider" means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

"Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital ((as)) defined ((in this section)) as current assets minus current liabilities.

"Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

"Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

"Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

"Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

"Intangible asset" is an asset that lacks physical substance but possesses economic value.

"Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"Joint facility costs" are any costs that benefit more than one facility, or one facility and any other entity.

"Large nonessential community providers" are not essential community providers and have more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.

"Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

"Nonadministrative wages and benefits" ~~((means))~~ are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

"Nonallowable costs" ~~((means))~~ are the same as **"unallowable costs."**

"Nonrestricted funds" ~~((means))~~ are funds ~~((which))~~ that are not restricted to a specific use by the donor, e.g., general operating funds.

"Nursing facility occupancy percentage" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under chapter 70.38 RCW, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period ((is divided by the product)). ~~((When the nursing facility under chapter 70.38 RCW reinstates or reduces the number of licensed beds, then under WAC 388-96-708 or 388-96-709 the number of licensed beds after reinstatement or reduction will be used. In all determinations that require a nursing facility occupancy percentage, the department will use the greater of either a nursing facility's occupancy percentage or eighty-five percent.))~~

"Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

"Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

"Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

"Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

"Recipient" means a medicaid recipient.

"Related care" ~~((includes))~~ means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

- (1) The director of nursing services;
- (2) ~~((Activities and social services programs))~~ Nursing direction and supervision;
- (3) ~~((Medical and medical records specialists))~~ Activities and social services programs; ~~((and))~~
- (4) ~~((Consultation provided by:~~
 - ~~(a) Medical directors; and~~
 - ~~(b) Pharmacists))~~ Medical and medical records specialists.
- (5) Consultation provided by:
 - (a) Medical directors; and

~~(b) Pharmacists.~~

"Relative" includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) Adopted child or adoptive parent;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (6) Grandparent or grandchild; and
- (7) Uncle, aunt, nephew, niece, or cousin.

"Related organization" means an entity that is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

"Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

"Small nonessential community providers" are not essential community providers and have sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.

"Start up costs" ~~((means))~~ are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

Start up costs do not include expenditures for capital assets.

"Total rate allocation" means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Unallowable costs" ~~((means))~~ are costs ~~((which))~~ that do not meet every test of an allowable cost.

"Uniform chart of accounts" ~~((means a list of))~~ are account titles identified by code numbers established by the department for contractors to use in reporting costs.

"Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

NEW SECTION

WAC 388-96-011 Conditions of participation. In order to participate in the nursing facility medicaid payment system established by this chapter and chapter 74.46 RCW,

the person or legal entity responsible for operation of a facility shall:

- (1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 C.F.R. where required;
- (2) Hold the appropriate current license;
- (3) Hold current Title XIX certification;
- (4) Hold a current contract to provide services under this chapter and chapter 74.46 RCW;
- (5) Comply with all provisions of the contract and all applicable statutes and regulations, including but not limited to the provisions of this chapter and chapter 74.46 RCW; and
- (6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds.

NEW SECTION

WAC 388-96-012 Public disclosure. (1) Cost reports and final audit reports filed by the contractor shall be subject to public disclosure pursuant to chapter 42.56 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the department pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the department, upon written request, to the legislature and to federal, state, or local agencies or law enforcement officials who have an official interest in the contents thereof.

NEW SECTION

WAC 388-96-022 Due dates for cost reports. (1) The contractor shall submit annually a complete report of costs and financial conditions of the contractor prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) Not later than March 31st of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(3) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor shall submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(4) If the cost report is not properly completed or if it is not received by the due date established in subsection (2) or (3) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

(5) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection (2) or (3) of this section.

NEW SECTION

WAC 388-96-099 Completing cost reports and maintaining records. (1) To determine reported costs, nursing facility contractors shall use generally accepted accounting principles, the provisions of this chapter, and chapter 74.46 RCW. In the event of conflict, chapter 74.46 RCW, this chapter, and instructions issued by the department take precedence over generally accepted accounting principles.

(2) A nursing facility's records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. All revenue and expense accruals shall be reversed against the appropriate accounts unless they are received or paid, respectively, within one hundred twenty days after the accrual is made. However, if the contractor can document a good faith billing dispute with the supplier or vendor, the period may be extended, but only for those portions of billings subject to good faith dispute. Accruals for vacation, holiday, sick pay, payroll, and real estate taxes may be carried for longer periods, provided the contractor follows generally accepted accounting principles and pays this type of accrual when due.

NEW SECTION

WAC 388-96-102 Requirements for retention of records by the contractor. (1) The contractor shall specify a location in the state of Washington at which the contractor shall retain all records supporting the cost reports for a period of four years following the filing of the required cost reports. Also, at the same location, for a period of four years, for each calendar year, the contractor shall retain all records supporting trust funds established under WAC 388-96-366(2) and account receivables. For example, supporting records for 2009 trust funds and accounts receivables must be kept through 2013.

(2) When there is (are) an unresolved issue(s) on a cost report, the department may direct supporting records to be retained for a longer period. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the centers for medicare and medicaid services (CMS).

(3) When a contract is terminated or assigned, all payments due the terminating or assigning contractor will be withheld until accessibility and preservation of the records within the state of Washington are assured.

NEW SECTION

WAC 388-96-105 Retention of cost reports and resident assessment information by the department. The department will retain cost reports for one year after final settlement or reconciliation, or the period required under chapter 40.14 RCW, whichever is longer. Resident assessment information and records shall be retained as provided in statute or by department rule.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-108 Failure to submit final reports. (1)

If a nursing facility's contract is terminated or assigned, and the nursing facility does not submit a final cost report as required by ((RCW 74.46.040)) WAC 388-96-022, the nursing facility shall return to the department all payments made to the terminating or assigning contractor relating to the period for which a report has not been received within sixty days after the terminating or assigning contractor receives a written demand from the department.

(2) Effective sixty days after the terminating or assigning contractor receives a written demand for payment, interest will begin to accrue payable to the department on any unpaid balance at the rate of one percent per month.

NEW SECTION

WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

(e) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department shall determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments shall be subject to review under WAC 388-96-901 and WAC 388-96-904.

(4) Audits of resident trust funds and receivables shall be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor shall:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(c) Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals shall have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records shall be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department shall notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

NEW SECTION

WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The department shall reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor shall make any payment owed the department as determined by reconciliation and/or settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations within sixty days after the department notifies the contractor of the amount owed.

(3) The department shall pay the contractor within sixty days after it notifies the contractor of an underpayment.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest shall be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department shall withhold funds from the contractor's payment for services and shall take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and WAC 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

NEW SECTION

WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates.

(1) Contractors shall submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department shall accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(2) Contractors shall not be required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (4) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" shall be defined by federal survey regulations.

(4) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit

in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.

(5) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW shall represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-217 Civil fines. (1) ~~((When the department finds that a current or former contractor, or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent))~~ The department may deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee has failed or refused to comply with any requirement of chapters 74.46 RCW or 388-96 WAC ~~((, the department may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. Every day of noncompliance with any requirement of chapters 74.46 RCW or 388-96 WAC is a separate violation)).~~

(2) The department may fine a contractor or former contractor or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent for the following but ~~((is))~~ not limited to the following ~~((in its fine assessments))~~:

(a) Failure to file a mathematically accurate and complete cost report, including a final cost report, on or prior to the applicable due date established by this chapter or authorized by extension granted in writing by the department; ~~((or))~~

(b) Failure to permit an audit authorized by this chapter or to grant access to all records and documents deemed necessary by the department to complete such an audit;

(c) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter and/or chapter 74.46 RCW;

(d) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home;

(e) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter and/or chapter 74.46 RCW; or

(f) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or chapter 74.46 RCW.

(3) Every day of noncompliance with any requirement of subsection (1) and/or (2) of this section is a separate violation.

~~((3))~~ (4) The department shall send notice of a fine assessed under subsection (1) and/or (2) of this section by certified mail return receipt requested to the current contractor, administrator, or former contractor informing the addressee of the following:

(a) The fine shall become effective the date of receipt of the notice by the addressee; and

(b) If within two weeks of the date of receipt of the notice by the addressee, ~~((an acceptable cost report is received by the department; an audit is allowed; or access to documentation is allowed, as applicable))~~ the addressee complies with the requirement(s) of subsection (1) and (2), the department may waive the fine.

~~((4)(a) The department may fine a current or former contractor, or any partner, officer, director, owner of a current or former corporate contractor, or managing agent for failure to comply with RCW 74.46.630.~~

~~(b) The department shall send notice of a fine assessed under (a) of this subsection by certified mail, to the current contractor, administrator, or former contractor informing the addressee that the fine shall become effective upon receipt of notice by the addressee:))~~

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-218 Proposed, preliminary, and final settlements. (1) For each component rate, the department shall calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter ~~((and chapter 74.46 RCW))~~ and chapter 74.46 RCW.

(2) As part of the cost report, the proposed settlement report is due in accordance with ~~((RCW 74.46.040))~~ WAC 388-96-022. In the proposed preliminary settlement report, a contractor shall compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. ~~((In accordance with RCW 74.46.100, 74.46.155 and 74.46.165))~~ In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor shall take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

(a) The department will:

(i) Review the proposed preliminary settlement report for accuracy; and

(ii) Accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement report shall

become the preliminary settlement report. If rejected, the department shall issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(b) When the department receives the proposed preliminary settlement report:

(i) By the cost report due date specified in ~~((RCW 74.46.040))~~ WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date; or

(ii) After the cost report due date specified in ~~((RCW 74.46.040))~~ WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

(c) In its discretion, the department may designate a date later than the dates specified in subsection (2)(b)(i) and (ii) of this section to issue preliminary settlements.

(d) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(3) The department shall issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(a) The department shall prepare a final settlement by component payment rate allocation and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department shall take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department shall compare:

(i) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

(ii) Audited allowable costs for the reporting period; or

(iii) Reported costs for the nonaudited reporting period.

(b) A contractor shall have twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement, the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(c) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to ~~((RCW 74.46.100))~~ WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance

dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

(4)(a) In computing a preliminary or final settlement, a contractor must comply with the requirements of ~~((RCW 74.46.165 (2), (3), and (4)))~~ WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(b) The nursing facility contractor shall refund all amounts due the department within sixty days after ~~((the date of decision or termination plus))~~ the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance ~~((after sixty days))~~ will accrue at one percent per month.

(c) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(5) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of ~~((RCW 74.46.165))~~ WAC 388-96-211, the following rules shall apply:

(a) Federal or state survey officials shall determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status shall be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture shall occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture shall occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

~~((6)(a) For calendar year 1998, the department will calculate two settlements covering the following periods:~~

- ~~(i) January 1, 1998 through September 30, 1998; and~~
- ~~(ii) October 1, 1998 through December 31, 1998.~~

~~(b) The department will use medicaid rates weighted by total patient days (i.e., medicaid and non-medicaid days) to divide 1998 costs between the two settlement periods identified in subsection (6)(a) of this section.~~

~~(c) The department will net the two settlements for 1998 to determine a nursing facility's 1998 settlement).~~

AMENDATORY SECTION (Amending Order 3070, filed 9/28/90, effective 10/1/90)

WAC 388-96-366 Facility records and handling of resident moneys. (1) A nursing facility may not require residents to deposit personal funds with the facility. A facility may hold a resident's personal funds only if the resident or resident's guardian provides written authorization.

(2) Once a nursing facility accepts the written authorization of the resident or resident's guardian, the facility shall hold, safeguard, and account for such personal funds under an established system in accordance with this chapter and chapter 74.46 RCW. For all resident moneys entrusted to the contractor and received by the contractor for the resident, the nursing facility shall establish and maintain ((as a service to the residents)) a bookkeeping system~~((;))~~ incorporated into the business records and adequate for audit~~((; for all resident moneys received by the facility)).~~

(3) The nursing facility shall maintain the resident's or guardian's written authorization in the resident's file. The facility shall deposit any resident's personal funds in excess of fifty dollars in an interest-bearing resident personal fund account or accounts, separate from any of the facility's operating accounts, and credit all interest earned on an account to the account. With respect to any other personal funds, the facility shall keep such funds in a noninterest-bearing account or petty cash fund maintained for residents.

(4) The facility shall give the resident at least a quarterly reporting of all financial transactions involving personal funds held for the resident by the facility. Also, the facility shall send the representative payee, the guardian, or other designated agents of the resident a copy of the quarterly accounting report.

(5) The nursing facility shall further maintain a written record of all personal property deposited with the facility for safekeeping by or for the resident. The facility shall issue or obtain written receipts upon taking possession or disposing of such property and retain copies and/or originals of such receipts. The facility shall maintain records adequate for audit.

(6) The facility shall purchase a surety bond, or otherwise provide assurances or security satisfactory to the department, to assure the security of all personal funds of residents deposited with the facility.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-384 Liquidation or transfer of resident personal funds. (1) Upon the death of a resident, the facility shall ~~((promptly))~~ convey within thirty days the resident's personal funds held by the facility with a final accounting of such funds to the department of social and health services office of financial recovery (or successor office) or to the individual or probate jurisdiction administering the resident's estate.

(a) ~~((H))~~ When the deceased resident was a recipient of long-term care services paid for in whole or in part by the ~~((state of Washington))~~ department, then the personal funds held by the facility and the final accounting shall be sent to

~~((the state of Washington,))~~ department of social and health services(~~(;))~~ office of financial recovery (or successor office).

~~(b) ((The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the thirtieth day after the date of the resident's death.~~

~~(i))~~ When the personal funds of the deceased resident are to be paid to the ((state of Washington)) department, ((those funds shall be paid by)) the facility shall:

~~(i) Pay with a check, money order, certified check or cashier's check made payable to the secretary, department of social and health services((, and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507 9501, or such address as may be directed by the department in the future:));~~

~~(ii) Complete a transmittal of resident personal funds form (DSHS form 18-544) for each deceased resident;~~

~~(iii) Place the name and social security number of the deceased individual from whose personal funds account the moneys are being paid on the check, money order, certified check or cashier's check ((or)) and the ((statement accompanying the payment shall contain the name and Social Security number of the deceased individual from whose personal funds account the moneys are being paid)) transmittal of resident personal funds form (DSHS form 18-544); and~~

~~(iv) Mail the check or money order and the DSHS 18-544 to the office of financial recovery, estate recovery unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.~~

~~(c) The department of social and health services, office of financial recovery, estate recovery unit shall establish a release procedure for use of funds necessary for burial expenses.~~

~~(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:~~

~~(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:~~

- ~~(i) Friends,~~
- ~~(ii) Relatives,~~
- ~~(iii) Police,~~
- ~~(iv) The guardian, and~~
- ~~(v) The home and community services office in the area.~~

~~(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.~~

~~(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:~~

~~(a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;~~

~~(b) Provide the new operator with a written accounting of all resident funds being transferred; and~~

~~(c) Obtain a written receipt for those funds from the new operator.~~

NEW SECTION

WAC 388-96-499 Principles of allowable costs. (1)

The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable under this chapter and/or chapter 74.46 RCW are to be allowable.

(3) Costs of providing therapy care are allowable, subject to any applicable limit contained in this chapter and/or chapter 74.46 RCW, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

(4) The payment for property usage is to be independent of ownership structure and financing arrangements.

(5) Allowable costs shall not include costs reported by a contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate.

(6) Any costs deemed allowable under this chapter are subject to the provisions of RCW 74.46.421. The allowability of a cost shall not be construed as creating a legal right or entitlement to reimbursement of the cost.

NEW SECTION

WAC 388-96-528 Payments to related organizations—Limits—Documentation. (1)

Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the department. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented.

AMENDATORY SECTION (Amending WSR 97-17-040, filed 8/14/97, effective 9/14/97)

WAC 388-96-534 Joint cost allocation disclosure (JCAD). (1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor shall demonstrate in such disclosure:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) The contractor shall make such disclosure not later than September 30th for the following year; except, a new contractor shall submit the first year's disclosure together

with the submissions required by WAC 388-96-026. Within this section, the meaning of the:

(a) "Effective date" is the date the department will recognize allocation per an approved JCAD; and

(b) "Implementation date" is the date the facility will begin or began incurring joint facility costs.

(4) The department shall ~~((determine the acceptability of))~~ approve or reject the JCAD ~~((methodology))~~ not later than December 31 of each year for all JCADs received by September 30th. The effective date of an approved JCAD received:

(a) ~~((The effective date of an acceptable JCAD that was received))~~ By September 30th is January 1st.

(b) ~~((The effective date of an acceptable JCAD that was received))~~ After September 30th shall be ninety days from the date the JCAD was received by the department.

(5) The contractor shall submit to the department for approval an amendment or revision to an approved JCAD ~~((methodology))~~ at least thirty days prior to the implementation date of the amendment or revision. For amendments or revisions received less than thirty days before the implementation date, the effective date of approval will be thirty days from the date the JCAD is received by the department.

(6) When a contractor, who is not currently incurring joint facility costs, begins to incur joint facility costs during the calendar year, the contractor shall provide the information required in subsections (1) and (2) of this section at least ninety days prior to the implementation date. If the JCAD is not received ninety days before the implementation date, the effective date of the approval will be ninety days from the date the JCAD is received by the department.

(7) Joint facility costs not disclosed, allocated, and reported in conformity with this section are ~~((nonallowable))~~ unallowable costs. Joint facility costs incurred before the effective dates of subsections (4), (5), and (6) of this section are unallowable. Costs disclosed, allocated, and reported in conformity with a department-approved JCAD ~~((methodology))~~ must undergo review and be determined allowable costs for the purposes of rate setting and audit.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-535 Management agreements, management fees, and central office services. (1) The contractor shall disclose to the department the nature and purpose of ~~((the))~~ all management agreements, including an organizational chart showing the relationship ~~((between))~~ among the contractor, management company and all related organizations. The department may request additional information or clarification.

(2) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must be received by the department at least thirty days in advance of the date it is to become effective. Failure to meet these deadlines will result in the unallowability of cost incurred more than sixty days prior to submitting a management agreement and more than thirty days prior to submitting an amendment.

(3) Management fees will be allowed only when:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the service contracted for were actually delivered; and

(c) The scope of services performed under a management agreement are not so extensive that the manager or managing entity is substituted for the contractor in fact, substantially relieving the contractor/licensee of responsibility for operating the facility.

(4) Acceptance of a management agreement ~~((may))~~ shall not be construed as a determination that all management fees or costs are allowable in whole or in part. Management fees or costs not disclosed or approved in conformity with chapter 74.46 RCW and this section are unallowable. When necessary for the health and safety of medical care recipients, in writing, the department may waive the sixty-day or thirty-day advance notice requirement of ~~((RCW 74.46.280 in writing))~~ subsection (2) of this section.

~~((3))~~ (5)(a) Management fees are allowable only for necessary, nonduplicative services that are of the nature and magnitude that prudent and cost-conscious management would pay((—Costs of services, facilities, supplies and employees furnished by the management company are subject to RCW 74.46.220)); and

(b) Management fees paid to or for the benefit of a related organization will be allowable to the extent they not exceed the lower of the:

(i) Actual cost to the related organization of providing necessary services related to patient care under the agreement; or

(ii) The cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with WAC 388-96-534.

~~((4))~~ (6) Allowable fees for all general management services of any kind referenced in this section, including corporate or business entity management and management fees not allocated to specific services, are subject to any applicable cost center limit established in chapter 74.46 RCW and this chapter.

~~((5))~~ (7) Central office costs, owner's compensation, and other fees or compensation, including joint facility costs((;)) for general administrative and management services, ~~((including))~~ and management expense not allocated to specific services((;)) shall be subject to any cost center limit established by chapter 74.46 RCW and chapter 388-96 WAC.

~~((6))~~ (8) Necessary travel and housing expenses of non-resident staff working at a contractor's nursing facility shall be considered allowable costs if the visit does not exceed three weeks.

~~((7))~~ (9) Bonuses paid to employees at a contractor's nursing facility or management company shall be considered compensation.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-536 Does the department limit the allowable compensation for an owner or relative of an owner? (1) ~~((The department shall limit))~~ Total compensation ((~~of~~) including compensation received from a related or unrelated organization or company paid to an owner or relative of an owner shall be limited to ordinary compensation for necessary services actually performed.

(a) Compensation is ordinary if it is the amount usually paid for comparable services in a comparable facility to an unrelated employee, and does not exceed any applicable limits set out in chapter 74.46 RCW and this chapter.

(b) A service is necessary if it is related to patient care and would have had to be performed by another person if the owner or relative had not done it.

(2) If the service provided would require licensed staff, e.g., RN, then the same license standard must be met when performed by an owner, relative or other administrative personnel.

(3) The contractor, in maintaining customary time records adequate for audit, shall include such records for owners and relatives who receive compensation.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-542 Home office or central office. (1) ~~((The department shall audit the home office or central office whenever a nursing facility receiving such services is audited))~~ When calculating the median lid on home and central office costs and determining which home and central office costs to test against the median lid, the department will include all allowable, reported home/central office costs including all costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of medical and personal care services to authorized patients.

(2)(a) Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, shall not be included in net invested funds or in the calculation of property payment for the nursing facility.

(b) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.

(c) The allocated costs of (b) of this subsection may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

(3) Home office or central office costs must be allocated and reported in conformity with the department-approved JCAD methodology as required by WAC 388-96-534.

(4) Home office or central office costs are subject to the limitation specified in ~~((RCW 74.46.410))~~ WAC 388-96-585.

NEW SECTION

WAC 388-96-552 Depreciable assets. Tangible assets of the following types in which a contractor has an interest through ownership or leasing are subject to depreciation:

(1) Building - the basic structure or shell and additions thereto;

(2) Fixed equipment - attachments to buildings, including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(a) Affixed to the building and not subject to transfer; and

(b) A fairly long life, but shorter than the life of the building to which affixed.

(3) Movable equipment including, but not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved as distinguished from build-up equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life greater than one year.

(4) Movable equipment including, but not limited to, waste baskets, bed pans, syringes, catheters, silverware, mops, and buckets which are properly capitalized. No depreciation shall be taken on items which are not properly capitalized as directed in WAC 388-96-533. The general characteristics of this equipment are:

(a) In general, no fixed location and subject to use by various departments;

(b) Small in size and unit cost;

(c) Subject to inventory control;

(d) Large number in use; and

(e) Generally, a useful life of one to three years.

(5) Land improvements including, but not limited to, paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, and walls where replacement is the responsibility of the contractor; and

(6) Leasehold improvements - betterments and additions made by the lessee to the leased property, which become the property of the lesser after the expiration of the lease.

NEW SECTION

WAC 388-96-556 Initial cost of operation. (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other

organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(4) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.

NEW SECTION

WAC 388-96-558 Depreciation expense. Depreciation expense on depreciable assets which are required in the regular course of providing patient care will be an allowable cost. It shall be computed using the depreciation base, lives, and methods specified in this chapter and chapter 74.46 RCW.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-559 Cost basis of land and depreciation base. (1) For all partial or whole rate periods (~~after December 31, 1984~~) unless otherwise provided or limited by this chapter (~~or by this section, chapter 388-96 WAC~~) or chapter 74.46 RCW, the total depreciation base of depreciable assets and the cost basis of land shall be (~~the lowest of:~~

(a) ~~The contractor's appraisal, if any;~~

(b) ~~The department's appraisal obtained through the department of general administration of the state of Washington, if any; or~~

(c) ~~the historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation, if applicable, incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with WAC 388-96-561, 388-96-565, chapter 388-96 WAC, and chapter 74.46 RCW.~~

(a) Where the straight-line or sum-of-the-years digits method of depreciation is used, the contractor:

(i) May deduct salvage values from historical costs for each cloth based item, e.g., mattresses, linen, and draperies; and

(ii) Shall deduct salvage values from historical costs of at least:

(A) ~~Excluding computers and televisions, five percent of the historical value for each noncloth item included in moveable equipment; and~~

(B) Twenty-five percent of the historical value for each vehicle.

(2) Unless otherwise provided or limited by this chapter or by chapter 74.46 RCW, the department shall, in determining the total depreciation base of a depreciable real or per-

sonal asset owned or leased by the contractor, deduct depreciation relating to all periods subsequent to the more recent of:

(a) The date such asset was first used in the medical care program; or

(b) The most recent date such asset was acquired in an arm's-length purchase transaction which the department is required to recognize for medicaid cost reimbursement purposes.

(c) No depreciation shall be deducted for periods such asset was not used in the medical care program or was not used to provide nursing care.

(3) ~~((The department may have the fair market value of the asset at the time of purchase established by appraisal through the department of general administration of the state of Washington if))~~ When:

(a) The department challenges the historical cost of an asset(~~;~~) or

~~((b))~~ the contractor cannot or will not provide the historical cost of a leased asset and the department is unable to determine such historical cost from its own records or from any other source, the department may have the fair market value of the asset at the time of purchase established by an appraisal.

~~((The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.))~~

~~((If))~~ (b) An appraisal is conducted, the depreciation base of the asset and cost basis of land will not exceed the fair market value of the asset. ((An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious)) The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.

(4) ~~((If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:~~

(a) ~~Documented actual cost of the builder; or~~

(b) ~~The approved amount of the certificate of need issued to the builder.~~

~~When the builder is unable or unwilling to document its costs, the cost basis and the depreciation base shall be the approved amount of the certificate of need.~~

~~((5))~~ For leased assets, the department may examine documentation in its files or otherwise obtainable from any source to determine:

(a) The lessor's purchase acquisition date; or

(b) The lessor's historical cost at the time of the last arm's-length purchase transaction.

If the department is unable to determine the lessor's acquisition date by review of its records or other records, the department, in determining fair market value as of such date, may use the construction date of the facility, as found in the state fire marshal's records or other records, as the lessor's purchase acquisition date of leased assets.

(5) If a contractor cannot or will not provide the lessor's purchase acquisition costs of assets leased by the contractor and the department is unable to determine historical purchase

cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arms-length transaction since January 1, 1980, under subsection (9) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used.

(6) For all rate periods past or future, where depreciable assets or land are acquired from a related organization, the contractor's depreciation base and land cost basis shall not exceed the base and basis the related organization had or would have had under a contract with the department.

~~(7) ((If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, under subsection (9) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used))~~ If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:

(a) Documented actual cost of the builder; or

(b) The approved amount of the certificate of need issued to the builder. When the builder is unable or unwilling to document its cost, the cost basis and the depreciation base shall be the approved amount of the certificate of need.

(8) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of the additional land acquired for the new or replacement construction or for substantial building additions to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the *Uniform Standards of Professional Appraisal Practice (USPAP)* and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The department shall obtain a USPAP appraisal that meets FIRREA first from:

(i) An arms'-length lender that has accepted the ordered appraisal; or

(ii) If the department is unable to obtain from the arms'-length lender a lender-approved appraisal meeting USPAP and FIRREA standards or if the contractor or lessor is unable or unwilling to provide or cause to be provided a lender-approved appraisal meeting USPAP and FIRREA standards, then:

(A) The department shall order such an appraisal; and

(B) The contractor shall immediately reimburse the department for the costs incurred in obtaining the USPAP and FIRREA appraisal.

(9) Except as provided for in subsection (8) of this section, for all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such acquisition or which would have existed had the assets continued in use under the previous medicaid contract with the department; except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care program or were not in use in or as a nursing care facility.

(10)(a) Subsection (9) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ten years or more after the previous arm's-length transfer of ownership nor shall subsection (9) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the medicaid program before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and state statutory amendments, and under RCW 74.46.840, for all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable or nondepreciable assets, occurring on or after July 18, 1984, leaving subsection (9) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (10)(b) and (11) of this section.

(b) For all rates after July 17, 1984, subsection (8)(a) shall apply, however, to transfers of ownership of assets:

(i) Occurring before January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related party lease; or

(ii) Under written and enforceable purchase and sale agreements dated before July 18, 1984, which are documented and submitted to the department before January 1, 1988.

(c) For purposes of medicaid cost reimbursement under this chapter, an otherwise enforceable agreement to purchase a nursing home dated before July 18, 1984, shall be considered enforceable even though the agreement contains:

(i) No legal description of the real property involved; or

(ii) An inaccurate legal description, notwithstanding the statute of frauds or any other provision of law.

(11)(a) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:

(i) Provisions of subsection (10) of this section apply to the purchase; or

(ii) Component rate allocations for property and financing allowance calculated under the provisions of this chapter and chapter 74.46 RCW. Component rate allocations will be based upon provisions of the lease in existence on the date of the purchase, but only if the purchase date meets the criteria of ~~((RCW 74.46.360 (6)(c)(ii)(A) through (D)))~~ this subsection.

(b) The lessee/contractor may select the option in subsection (11)(a)(ii) of this section only when the purchase date meets one of the following criteria. The purchase date is:

(i) After the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(ii) Within one year of the lease expiration or renewal date contained in the lease;

(iii) After a rate setting for the facility in which the reimbursement rate set, under this chapter and under chapter 74.46 RCW, no longer is equal to or greater than the actual cost of the lease; or

(iv) Within one year of any purchase option in existence on January 1, 1988.

(12) For purposes of establishing the property and financing allowance component rate allocations, the value of leased equipment, if unknown by the contractor, may be estimated by the department using previous department of general administration appraisals as a data base. The estimated value may be adjusted using the *Marshall and Swift Valuation Guide* to reflect the value of the asset at the lessor's purchase acquisition date.

NEW SECTION

WAC 388-96-560 Land, improvements—Depreciation. Land is not depreciable. The cost of land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a nondepreciable nature, and the

cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending Order 2970, filed 4/17/90, effective 5/18/90)

WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets. (1) The historical cost ~~((basis or depreciation base of land or depreciable assets, either donated[,] or))~~ of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, ~~((with))~~ shall be the lesser of:

(a) Fair market value at the date of donation or death ~~((; less goodwill, provided the estimated salvage value shall be deducted from fair market value where the straight-line or sum-of-the-years-digits method of depreciation is used))~~; or

(b) The historical cost base of the owner last contracting with the department, if any.

(2) When the donation or distribution is between related organizations, the base shall be the lesser of:

(a) Fair market value, less goodwill and, where appropriate, salvage value; or

(b) The depreciation base or cost basis the related organization had or would have had for the asset under a contract with the department.

(3) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, for all rates after July 17, 1984, neither the depreciation base of depreciable assets nor the cost basis of land shall increase for reimbursement purposes if the asset is donated or acquired through testate or intestate distribution on or after July 18, 1984, the enactment date of the Deficit Reduction Act of 1984.

NEW SECTION

WAC 388-96-562 Depreciable assets—Disposed—Retired. (1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, fire, or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken.

NEW SECTION

WAC 388-96-564 Methods of depreciation. (1) Buildings, land improvements, and fixed equipment shall be depreciated using the straight-line method of depreciation. For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of years as the life

of the building to which it is affixed. Equipment shall be depreciated using either the straight-line method, the sum-of-the-years' digits method, or declining balance method not to exceed one hundred fifty percent of the straight line rate. Contractors who have elected to take either the sum-of-the-years' digits method or the declining balance method of depreciation on equipment may change to the straight-line method without permission of the department.

(2) The annual provision for depreciation shall be reduced by the portion allocable to use of the asset for purposes which are neither necessary nor related to patient care.

(3) No further depreciation shall be claimed after an asset has been fully depreciated unless a new depreciation base is established pursuant to WAC 388-96-559.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-565 Lives. (1)(a) New buildings, replacement buildings, major remodels, and major repair projects are those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW. Except for new buildings replacement buildings, major remodels and major repair projects (~~as defined in subsection (5) of this section~~), ~~((t))~~ the contractor will compute allowable depreciation (~~(, the contractor must use)~~) using lives (~~(reflecting)~~) that reflect the estimated actual useful life of the assets (e.g., land improvements, buildings, including major remodels and major repair projects, equipment, leasehold improvements, etc.). However the lives used must not be shorter than guidelines lives in the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc.

(b) Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arms-length acquisition of the asset, whichever is more recent. In cases where WAC 388-96-559 (9) and (10) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) For asset acquisitions and new facilities, major remodels, and major repair projects that begin operations on or after July 1, 1997, the department shall use the most current edition of estimated useful lives of depreciable hospital assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings receiving certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, is forty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(a) To compute allowable depreciation for major remodels and major repair projects (~~as defined in subsection (5) of this section that began operating~~

~~((a))~~) before July 1, 1997, the contractor must use the shortest lives in the most recently published lives for construction classes as defined and described in the *Marshall Valuation Service* published by the Marshall Swift Publication Company; ~~((e))~~ and

(b) ~~((After July 1, 1997, the contractor must use the shortest lives of the guideline lives in the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc))~~ To compute allowable depreciation for new buildings and replacement buildings that began operating before July 1, 1997, the contractor must use the construction classes as defined and described in Marshall Valuation Service published by the Marshall Swift Publication Company; provided that, thirty years is the shortest life that may be used.

(3) ~~((To compute allowable depreciation for new buildings and replacement buildings as defined in subsection (5) of this section that:~~

(a) ~~Began operating before July 1, 1997, the contractor must use the construction classes as defined and described in *Marshall Valuation Service* published by the Marshall Swift Publication Company; provided that, thirty years is the shortest life that may be used;~~

(b) ~~Began operating on or after July 1, 1997, the contractor must use the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc.; provided that, thirty years is shortest life that may be used; and~~

(c) ~~Received certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, the contractor must use the most current edition of *Estimated Useful Lives of Depreciable Assets* published by American Hospital Publishing, Inc.; provided that, forty years is the shortest life that may be used.~~

(4)) To compute allowable depreciation, the contractor must:

(a) Measure lives from the most recent of either the date on which the assets were first used in the medical care program or the last date of purchase of the asset through an arm's-length acquisition; and

(b) Extend lives to reflect periods, if any, during which assets were not used in a nursing facility or as a nursing facility.

~~((5) New buildings, replacement buildings, major remodels, and major repair projects are those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.~~

~~((6))~~ (4) Contractors shall depreciate building improvements other than major remodels and major repairs (~~defined in subsection (5) of this section~~) over the remaining useful life of the building, as modified by the improvement, but not less than fifteen years.

~~((7))~~ (5) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement in accordance with American Hospital Association guidelines.

~~((8))~~ (6) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

~~((9))~~ (7) For new or replacement building construction or for major renovations ~~((receiving))~~, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the ~~((department will))~~ number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed.

NEW SECTION

WAC 388-96-574 New or replacement construction—Property tax increases. If a contractor experiences an increase in state or county property taxes as a result of new building construction, replacement building construction, or substantial building additions that require the acquisition of land, then the department shall adjust the contractor's prospective rates to cover the medicaid share of the tax increase. The rate adjustments shall only apply to construction and additions completed on or after July 1, 1997. The rate adjustments authorized by this section are effective on the first day of the month following the month that the increased tax payment is due. Rate adjustments made under this section are subject to all applicable cost limitations contained in this chapter and chapter 74.46 RCW.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-585 Unallowable costs. (1) ~~((The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.))~~ Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) ~~((The department shall))~~ Unallowable costs include(;) but are not ~~((limit, unallowable costs))~~ limited to the following:

(a) ~~((Costs in excess of limits or violating principles set forth in this chapter;~~

(b) ~~Costs resulting from transactions or the application of accounting methods circumventing principles set forth in this chapter;~~

(c) ~~Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:~~

~~(i) The debt is related to covered services;~~

~~(ii) It arises from the recipient's required contribution toward the cost of care;~~

~~(iii) The provider can establish reasonable collection efforts were made;~~

~~(iv) The debt was actually uncollectible when claimed as worthless; and~~

~~(v) Sound business judgment established there was no likelihood of recovery at any time in the future.~~

~~Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients;~~

~~(d) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;~~

~~(e) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:~~

~~(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or~~

~~(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or~~

~~(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or~~

~~(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered;~~

~~(f) All interest costs not specifically allowed in this chapter or chapter 74.46 RCW; and~~

~~(g) Increased costs resulting from a series of transactions between the same parties and involving the same assets, e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment)) costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;~~

~~(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;~~

~~(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;~~

~~(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;~~

~~(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;~~

~~(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;~~

~~(g) Costs in excess of limits or in violation of principles set forth in this chapter;~~

~~(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the~~

payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of nonTitle XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of nonTitle XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) Televisions acquired prior to July 1, 2001;

(v) Federal, state, and other income taxes;

(w) Costs of special care services except where authorized by the department;

(x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(y) Expenses of profit-sharing plans;

(z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(aa) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

(bb) All expenses of maintaining professional licenses or membership in professional organizations;

(cc) Costs related to agreements not to compete;

(dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ff) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

(gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

(hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(ii) All rental or lease costs other than those provided for in WAC 388-96-580;

(jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(ww) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(xx) Tax expenses that a nursing facility has never incurred;

(yy) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

(zz) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department shall be unallowable; and

(aaa) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment).

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-708 ((Reinstatement of beds previously)) Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate. (1) ~~((After removing))~~ When a contractor removes beds from service (banked) under the provisions of chapter 70.38 RCW, the ((contractor may bring back into service beds that were previously)) number of licensed beds used in rate determinations under this chapter and chapter 74.46 RCW will not be reduced by the number of beds banked.

(2)(a) ~~((When the contractor returns to service beds banked under the provisions of chapter 70.38 RCW,))~~ Effective July 1, 2010, licensed beds include any beds banked under chapter 70.38 RCW and thus, the department will ((recalculate)) calculate the contractor's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the ((new)) number of licensed beds including banked beds times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times

the number of calendar days in the cost report period on which the rate being ~~((recalculated))~~ calculated is based.

(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(i) Essential community providers - eighty-five percent;

(ii) Small nonessential community providers - ninety percent;

(iii) Large nonessential community providers - ninety-two percent.

(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

~~(3) ((The effective date of the recalculated prospective rate for beds returned to service shall be the first of the month))~~ For the purpose of rates determination, when a contractor:

(a) ((In which the banked beds returned to service when the beds are returned to service on the first of the month)) Permanently relinquishes banked beds or some of its licensed beds, the department will reduce the number of licensed beds by the number of beds relinquished; or

(b) ((Following the month in which the banked beds returned to service when the beds are returned to service after the first of the month)) Acquires new beds under chapter 70.38 RCW, the department will increase the number of licensed beds by the number of new beds.

~~(4) ((The recalculated))~~ Prospective payment rate shall comply with all the provisions of rate setting contained in chapter 74.46 RCW or in this chapter, including all lids and maximums unless otherwise specified in this section.

~~(5) ((The recalculated))~~ Prospective medicaid payment rate shall be subject to adjustment if required by RCW 74.46.421.

~~((6) After the department recalculates the contractor's prospective medicaid component rate allocations using the increased number of licensed beds, the department will use the increased number of licensed beds in all post-unbanking rate settings, until under chapter 74.46 RCW and/or this chapter, the post-unbanking number of licensed beds changes.))~~

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds by means other than "banking" pursuant to chapter 70.38 RCW. (1) For the purpose of minimum occupancy calculation banked beds are included in the number of licensed beds. The department will recalculate a contractor's prospective medicaid payment rate when the contractor permanently reduces the number of its licensed beds and:

(a) Provides a copy of the new bed license (~~(and)~~, if issued, documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any, and the letter from the department of health (DOH) confirming the number of beds relinquished and the date they were relinquished; and

(b) Requests a rate revision.

(2) ~~((For facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001,))~~ The department will revise medicaid rates ~~((shall be revised upward,))~~ in accordance with ~~((department rules, in direct care, therapy care, support services, and variable return components only, by))~~ this chapter and chapter 74.46 RCW using the facility's decreased licensed bed capacity to ~~((recalculate))~~ calculate minimum occupancy for rate setting. ~~((No rate upward revision shall be made to operations, property, or financing allowance.))~~

(3) ~~((The requested revised prospective medicaid payment rate will be effective the first of the month.))~~

(a) ~~((The new license is effective))~~ When the new license is effective the first day of the month or when the DOH letter confirms the beds were relinquished the first day of the month, the revised prospective payment rate will be effective the first day of the month; or

(b) ~~((Following))~~ When the new license is effective after the first day of the month or when the DOH letter confirms the beds were relinquished after the first day of the month, the revised prospective payment rate will be effective the first day of the month following the month the new license ((is)) was effective ((when the new license is effective after the first day of the month it is issued)) or the DOH letter confirmed beds were relinquished after the first day of the month.

(4)(a) The department will recalculate a nursing facility's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds including banked bed times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being recalculated is based.

(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(i) Essential community providers - eighty-five percent.

(ii) Small nonessential community providers - ninety percent.

(iii) Large nonessential community providers - ninety-two percent.

(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

(5) The revised prospective medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

~~((6) After the department recalculates the contractor's prospective medicaid component rate allocations using the decreased number of licensed beds, the department will use the decreased number of licensed beds in all post-banking rate settings, until under chapter 74.46 RCW and/or this chapter, the post-banking number of licensed beds changes.))~~

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-747 Constructed, remodeled or expanded facilities. (1) When a facility is constructed, remodeled, or expanded after obtaining a certificate of need or exemption from the requirements for certificate of need for the replacement of existing nursing home beds pursuant to RCW 70.38.115 (13)(a), the department shall determine actual and allocated allowable land cost and building construction cost. Payment for such allowable costs, determined pursuant to the provisions of this chapter, shall not exceed the maximums set forth in this subsection ~~((and in subsections (2) and (7) of this section))~~. The department shall determine construction class and types through examination of building plans submitted to the department and/or on-site inspections. The department shall use definitions and criteria contained in the Marshall and Swift Valuation Service published by the Marshall and Swift Publication Company. Buildings of excellent quality construction shall be considered to be of good quality, without adjustment, for the purpose of applying these maximums.

(2) Construction costs shall be final labor, material, and service costs to the owner or owners and shall include:

(a) Architect's fees;

(b) Engineers' fees (including plans, plan check and building permit, and survey to establish building lines and grades);

(c) Interest on building funds during period of construction and processing fee or service charge;

(d) Sales tax on labor and materials;

(e) Site preparation (including excavation for foundation and backfill);

(f) Utilities from structure to lot line;

(g) Contractors' overhead and profit (including job supervision, workmen's compensation, fire and liability insurance, unemployment insurance, etc.);

(h) Allocations of costs which increase the net book value of the project for purposes of medicaid payment;

(i) Other items included by the Marshall and Swift Valuation Service when deriving the calculator method costs.

(3) The department shall allow such construction costs, at the lower of actual costs or the maximums derived from the sum of the basic construction cost limit plus the common use area limit which corresponds to the type, class and number of total nursing home beds for the new construction, remodel or expansion. The maximum limits shall be calculated using the most current cost criteria contained in the *Marshall and Swift Valuation Service* and shall be adjusted forward to the mid-

point date between award of the construction contract and completion of construction.

(4) When some or all of a nursing facility's common-use areas are situated in a basement, the department shall exclude some or all of the per-bed allowance for common-use areas to derive the construction cost lid for the facility. The amount excluded will be equal to the ratio of basement common-use areas to all common-use areas in the facility times the common-use area limits determined in accordance with subsection (3) of this section. In lieu of the excluded amount, the department shall add an amount calculated using the calculator method guidelines for basements in nursing homes published in the *Marshall and Swift Valuation Service*.

(5) Subject to provisions regarding allowable land contained in this chapter, allowable costs for land shall be the lesser of:

(a) Actual cost per square foot, including allocations;

(b) The average per square foot land value of the ten nearest urban or rural nursing facilities at the time of purchase of the land in question. The average land value sample shall reflect either all urban or all rural facilities depending upon the classification of urban or rural for the facility in question. The values used to derive the average shall be the assessed land values which have been calculated for the purpose of county tax assessments; or

(c) Land value for new or replacement building construction or substantial building additions requiring the acquisition of land that commenced to operate on or after July 1, 1997, determined in accordance with ~~((RCW 74.46.360 (2) and (3)))~~ WAC 388-96-559 (8), (9) and (10).

(6) If allowable costs for construction or land are determined to be less than actual costs pursuant to subsections (1) and (7) of this section, the department may increase the amount if the owner or contractor is able to show unusual or unique circumstances having substantially impacted the costs of construction or land. Actual costs shall be allowed to the extent they resulted from such circumstances up to a maximum of ten percent above levels determined under subsections (3), (4), and (5) of this section for construction or land. An adjustment under this subsection shall be granted only if requested by the contractor. The contractor shall submit documentation of the unusual circumstances and an analysis of its financial impact with the request.

(7) ~~((H))~~ When a capitalized addition or retirement of an asset will result in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement, the department shall use ~~((the facility's anticipated resident occupancy level subsequent to the increase in licensed bed capacity as long as the occupancy for the increased number of beds is at or above eighty-five percent. Subject to the provisions of this chapter and chapter 74.46 RCW, in no case shall the department use less than eighty-five percent occupancy of the facility's increased licensed bed capacity))~~ minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations of:

(a) Eighty-five percent for essential community providers;

(b) Ninety percent for small nonessential community providers; or

(c) Ninety-two percent for large nonessential community providers.

If a capitalized addition, replacement, or retirement results in a decreased licensed bed capacity, WAC 388-96-709 will apply.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-748 Financing allowance component rate allocation. (1) ~~((Beginning July 1, 1999,))~~ For each medicaid nursing facility, the department will establish a financing allowance component rate allocation. The financing allowance component rate allocation will be rebased annually, effective July 1st, in accordance with this chapter and chapter 74.46 RCW. Effective July 1, 2010, for the purpose of calculating minimum occupancy, licensed beds include the nursing facility's banked beds.

(2) The department will determine the financing allowance component rate allocation by:

(a) Multiplying the net invested funds of each nursing facility by the applicable factor identified in subsection (3) of this section; and

(b) Dividing the sum of the products by the greater of:

(i) A nursing facility's total resident days from the most recent cost report period; or

(ii) Resident days calculated on:

(A) Eighty-five percent facility occupancy for essential community providers;

(B) Ninety percent facility occupancy for small nonessential community providers; and

(C) Ninety-two percent facility occupancy for large nonessential providers.

(3)(a) The multiplication factor required by subsection (2) (a) of this section is determined by the acquisition date of the tangible fixed asset(s). For each nursing facility, the department will multiply the net invested funds for assets acquired:

(i) Before May 17, 1999 by a factor of .10; and/or

(ii) On or after May 17, 1999 by a factor of .085.

(b) The department will apply the factor of .10 to the net invested funds pertaining to new construction or major renovations:

(i) That received certificate of need approval before May 17, 1999;

(ii) That received an exemption from certificate of need requirements under chapter 70.38 RCW before May 17, 1999; or

(iii) For which the nursing facility submitted working drawings to the department of health for construction review before May 17, 1999.

(c) For a new contractor as defined under WAC 388-96-026 (1)(c), assets acquired from the former contractor will retain their initial acquisition dates when determining the new contractor's financing allowance under this section.

(4) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in WAC 388-96-555, 388-96-559, 388-96-561, 388-96-562, 388-96-564 and 388-96-565, including owned and leased

assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to WAC 388-96-559 and 388-96-561.

(5) The financing allowance rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 09-08-081, filed 3/30/09, effective 4/30/09)

WAC 388-96-758 Add-on for low-wage workers. (1) ~~((Under section 206, chapter 329, Laws of 2008, effective July 1, 2008;))~~ The department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on ((by May 30, 2008)) pursuant to subsection (7) of this section. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year ~~((2006))~~ 2008, according to cost report data. The department has determined that the additional categories of workers qualify under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that ~~((received effective July 1, 2008))~~ receives a low-wage add-on ~~((under chapter 329, Laws of 2008))~~ shall report to the department its expenditure of that add-on by:

- (a) Completing Cost Report Schedule L 1; and
- (b) Returning it to the department by January 31~~((, 2009))~~.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with

the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

~~(7) ((If the legislature extends the low wage worker add-on in the state fiscal year 2010 budget, nursing home providers will have the opportunity again to elect whether they wish to receive the add-on in their July 1, 2009 rates))~~ Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.

AMENDATORY SECTION (Amending WSR 09-08-081, filed 3/30/09, effective 4/30/09)

WAC 388-96-759 Standards for low-wage workers add-on. (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. ~~((For the first year, that date is July 1, 2008. It))~~ The low wage add-on may be used to increase staffing levels for certified nurse aides only. ((The)) Nursing home contractors receiving the low wage add-on may not ((be used after July 1)) use it to pay for increases ((beginning before that date)) for time periods that they were not receiving the low wage worker add-on.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for

example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410 (2)(x).

(7) The low wage add-on payments calculated in accordance with WAC 388-96-758 and this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-766 Notification. (1)(a) The contractor must inform the department of its current electronic mail (e-mail) address at which it wants to receive rate notifications. It is the responsibility of the contractor to inform the department of any changes to the e-mail address at which it wants to receive notice of the department's actions. The department ((will)) may notify each contractor ((in writing)) by email using the contractor's supplied email address of its prospective medicaid payment rate allocation and/or any actions that result in a change to the contractor's prospective medicaid payment rate allocation. The date of the department's notification e-mail will be used to determine whether the notification and the contractor's response met any legal requirements, irrespective of when the contractor read the e-mail.

(b) When the contractor seeks to appeal or take exception to a department action taken under authority of this chapter or chapter 74.46 RCW and eligible for administrative review under WAC 388-96-901, it shall comply with WAC 388-96-904 when requesting an administrative review conference.

(2)(a) Unless otherwise specified at the time it is issued, the medicaid payment rate allocation and/or component rate allocation(s) will be effective from the first day of the month in which it (they) is (are) issued. When the department amends a medicaid payment rate allocation and/or component rate allocation(s) as the result of an appeal in accordance with WAC 388-96-904, the amended rate will have the same effective date as the appealed rate.

~~((2)-H)~~ (b) When a total medicaid component payment rate allocation and/or rate allocation(s) is (are) adjusted, updated or amended after the calendar year in which the adjustment or update was effective, then the department will account for any amounts owed through the settlement process.

(3)(a) When the department has sent written notice by post, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used. Proof of date of receipt of department's notification must be from an independent source that has no stake in the outcome.

(b) When the department has sent notice by certified letter, the department shall deem the contractor to have received the department's notice five calendar days after the date the U.S. Post Office first attempts to deliver the certified letter containing the notice of the department's action(s).

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-776 Add-ons to the property and financing allowance payment rate—Capital improvements. (1) For new or replacement building construction or major renovation projects begun after July 1, 2001, the contractor must have a certificate of capital authorization (CCA) issued pursuant to WAC 388-96-783 and chapter 74.46 RCW.

(2)(a) Beginning July 1, 2001, the department shall grant an add-on to a prospective payment rate for capitalized improvements done under RCW 74.46.431(12) for all new or replacement building construction or major renovation projects; provided, the department granted the contractor a certificate of capital authorization (CCA) pursuant to WAC 388-96-783 for the fiscal year in which the contractor will complete the project and the net rate effect is ten cents per patient day or greater.

(b) Rate add-on requests filed with the department or approved by the certificate of need unit of the department of health for projects commencing before July 1, 2001 and finishing after July 1, 2001, are not subject to CCA requirements set forth in this chapter and chapter 74.46 RCW.

(3) The department may grant a rate add-on to a payment rate for capital improvements not requiring a CON and a CCA per subsections (1) and (2) of this section. However, the capital improvement must have a net rate effect of ten cents per patient day or greater. For fiscal year 2011, the department shall grant no rate add-ons to payment rates for capital improvements not requiring a CON and a CCA.

(4) Rate add-ons for all construction and renovation projects granted pursuant to subsection (1) or (2) of this section shall be limited to the total legislative authorization for capital construction and renovation projects for the fiscal year (FY) of the biennium in which the construction or renovation project will be completed. Rate add-ons are subject to the provisions of RCW 74.46.421.

(5) When physical plant improvements made under subsection (1) or (2) of this section are completed in phases, the department shall:

(a) Grant a rate add-on in accordance with subsection (6) of this section for any addition, replacement or improvement when each phase is completed and certified for occupancy for the purpose for which it was intended;

(b) Limit the rate add-on to the actual cost of the depreciable tangible assets meeting the criteria of ((RCW 74.46.330)) WAC 388-96-552;

(c) Add-on construction fees as defined in WAC 388-96-747 and other capitalized allowable fees and costs for the completed phase of the project; and

(d) Make the effective date for the rate add-on for the completed phase the quarterly rate change immediately following the completion and certification for occupancy of the phase. When the date of the written request for a phase add-on rate falls after the first quarter immediately following the completion and certification for occupancy of the phase, the department will issue the rate add-on retroactive to the first of the quarter in which the department received a complete written request.

(6) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (7) of this section using the date the class was improved.

(7) The contractor requesting a rate add-on under subsection (1), (2) or (3) of this section shall submit a written request to the department separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per ((RCW 74.46.360)) WAC 388-96-559;

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter; and

(f) When the rate increase is requested pursuant to subsection (3) of this section, a written justification for granting the rate increase.

(8) For rate add-on requests for projects not completed in phases that are approved pursuant to subsection (7) of this section and the written request is received:

(a) Within sixty calendar days following the completion and certification of occupancy of the new or replacement construction, major renovation, or the acquisition and installation (if applicable) of a capital improvement made under

subsection (3) of this section, the effective date of the rate add-on will be the first of the month following the month in which the project was completed and certified for occupancy or acquired and installed; or

(b) More than sixty days following the completion and certification for occupancy of the new or replacement construction, major renovation project, or the acquisition and installation (if applicable) of a capital improvement made under subsection (3) of this section, the effective date of the rate add-on will be the first of the month following the month in which the written request was received.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen calendar days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen calendar days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits another written request for a rate add-on for the same project the date of receipt for the purpose of applying subsection (8) of this section will depend upon whether the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8) of this section; or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) of this section even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty calendar days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department immediately shall have the right to recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) of this section result in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter and chapter 74.46 RCW.

(14) ((Effective July 1, 2002, except for essential community providers,)) The medicaid share of nursing facility new construction or refurbishing projects shall be based upon a minimum facility occupancy ((of ninety percent for the operations, property, and financing allowance component rate allocations. For essential community providers, the medicaid share of nursing facility new construction or refurbishing project will be based upon a minimum facility occupancy of eighty-five percent for operations, property, and financing allowance component rate allocations)). For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked

under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(a) Essential community providers - eighty-five percent.

(b) Small nonessential community providers - ninety percent.

(c) Large nonessential community providers - ninety-two percent.

(15) When a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement:

(a) The department shall determine a nursing facility's prospective medicaid:

(i) Property payment rate allocation by dividing the property costs using the greater of actual days from the cost report period on which the rate being recalculated is based or days calculated by multiplying the new number of licensed beds times ninety percent for small nonessential community providers and ninety-two percent for large nonessential community providers times the number of calendar days in the cost report period on which the rate being recalculated is based. For essential community providers, the department shall use eighty-five percent to calculate days to compare with actual days; and

(ii) Financing allowance payment rate allocation by multiplying the net invested funds by the applicable factor in WAC 388-96-748(3) and dividing by the greater of the facility's actual days from the cost report period on which the rate being recalculated is based or on days calculated by multiplying the new number of licensed beds times ninety percent occupancy percentage for small nonessential community providers and ninety-two percent for large nonessential community providers times the calendar days in the cost report period on which the rate being recalculated is based. For essential community providers, the department shall use eighty-five percent occupancy to calculate days to compare to actual days.

AMENDATORY SECTION (Amending WSR 00-12-098, filed 6/7/00, effective 7/8/00)

WAC 388-96-781 Exceptional (~~direct~~) care (~~component~~) rate (~~allocation~~) add-on—Covered medicaid residents. A nursing facility (NF) may receive an increase in its direct care and/or therapy component rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children(~~and~~

~~(2))~~ and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to the NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care and/or therapy payment;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS 2 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care and/or therapy payment.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-782 Exceptional therapy care and exceptional direct care—Payment. (1) For WAC 388-96-781(1) residents, the department will pay the ((resident's total rate in effect on December 31, 1999, inflated by the industry weighted average economic trends and conditions adjustment factor)) Oregon medicaid rate.

(2) For WAC 388-96-781 (4), (5) and (6) residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

(3)(a) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care shall be for rate setting, settlement, and other purposes deemed appropriate by the department; or

(b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid.

NEW SECTION

WAC 388-96-784 Expense for construction interest. Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care but shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.

NEW SECTION

WAC 388-96-785 Supplemental payments. To the extent the federal government approves such payments under the state's plan for medical assistance, and only to the extent

that funds are specifically appropriated for this purpose in the biennial appropriations act, the department shall make supplemental payments to nursing facilities operated by public hospital districts. The payments shall be calculated and distributed in accordance with the terms and conditions specified in the biennial appropriations act. The payments shall be supplemental to the component rate allocations calculated in accordance with Part E of chapter 74.46 RCW and the related sections of this chapter neither the provisions of Part E of chapter 74.46 RCW nor the settlement provisions of this chapter apply to these supplemental payments.

NEW SECTION

WAC 388-96-786 Pay for performance add-on. (1)

When based on the cost report for the calendar year immediately preceding July 1, the nursing facility has more than seventy-five percent direct staff turnover, the department will reduce a nursing facility's total rate by one percent.

(2) When based on the cost report for the calendar year immediately preceding July 1, the nursing facility has seventy-five percent or less direct staff turnover, the department will pay an add-on to a nursing facility's total rate and not to any component rate allocation.

(3) When there have been no reductions under subsection (1), there will be no pay for performance add-ons.

(4) The department will not settle the pay for performance add-on.

(5) The pay for performance add-ons calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-802 ~~((May the nursing facility (NF) contractor bill the department for a medicaid resident's day of death, discharge, or transfer from the NF?))~~ **Bill-ing/payment.** ~~((No, the NF contractor may bill the department))~~ (1) The department will pay nursing facility (NF) contractors for the first day of a medicaid resident's stay but not the last day.

(2) The department will pay a contractor for service rendered under the facility contract and billed in accordance with the department's billing procedure. The amount paid will be computed using the appropriate rates assigned to the contractor. For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by WAC 388-96-803.

(3) A NF contractor shall not bill the department for service provided to a medicaid recipient until an award letter of eligibility for the recipient under rules established under the authority of chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-803 ~~((When a nursing facility (NF) contractor becomes aware of a change in the medicaid resident's income and/or resources, must he or she report it?))~~ **Notification of participation—Responsibility to collect—Reporting medicaid recipient's changes in income/resources—Rate payment in full for services.** ~~((Yes,))~~ (1) The department will notify a contractor of the amount each medical recipient is required to participate in the cost of his or her care and the effective date of the required participation. The contractor must collect the participation from the patient and to account for any authorized reductions from the participation.

(2) Within seventy-two hours of becoming aware of a change in the medicaid resident's income and/or resources, the NF contractor will report the change in writing to the home and community services office serving the area in which the NF is located. When reporting the change, the NF contractor will include copies of any available documentation of the change in the medicaid resident's income and/or resources.

(3) For each medicaid resident, the contractor shall accept the payment rates established by the department multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth in WAC 388-96-803(1) as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services.

NEW SECTION

WAC 388-96-805 Suspension of payments. (1) The department may withhold payments to a contractor in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service prior to termination or assignment of a contract will be held in the absence of adequate alternate security acceptable to the department pending settlement of all periods when the contract is terminated or assigned; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, when a contractor's net medicaid

overpayment liability for one or more nursing facilities or other debt to the department, as determined by settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding. Neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish by rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment.

NEW SECTION

WAC 388-96-808 Change of ownership—Assignment of department's contract. (1) On the effective date of a change of ownership the department's contract with the old owner shall be automatically assigned to the new owner, unless:

(a) The new owner does not desire to participate in medicaid as a nursing facility provider;

(b) The department elects not to continue the contract with the new owner; or

(c) The new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 C.F.R., for the new owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of intent to change ownership and assign.

(2) If the new owner desires to participate in the nursing facility medicaid payment system, it shall meet the conditions specified in WAC 388-96-011. The facility contract with the new owner shall be effective as of the date of the change of ownership.

NEW SECTION

WAC 388-96-809 Change of ownership—Final reports—Settlement securities. (1) When there is a change of ownership for any reason, final reports shall be submitted as required by WAC 388-96-022.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of pro-

spective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

(a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;

(b) An assignment of funds to the department;

(c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;

(d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;

(e) A promissory note secured by a deed of trust; or

(f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

(a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and

(b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with WAC 388-96-022, which shall be examined by the department in accordance with WAC 388-96-205.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-901 Disputes. (1) ~~((#))~~ When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor shall pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility; or
- (v) ~~((Refusing to contract with a nursing facility))~~ Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;

(ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which shall be limited to separate administrative review under the provisions of WAC 388-96-905;

(iii) Quarterly and semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;

(iv) Actions taken under exceptional direct and therapy care program codified at WAC 388-96-781 and 388-96-782; ~~((and))~~

(v) Actions taken under WAC 388-96-218 (2)(c); and

(vi) Actions taken under WAC 388-96-786.

(2) The administrative review process prescribed in WAC 388-96-904 shall not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer shall dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by 42 U.S.C. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and disability services administration, for example, entitlement to or payment for durable medical equipment or other services.

(3) If a contractor wishes to challenge the legal validity of a statute ~~((or regulation)), rule, or contract provision~~ relating to the nursing facility medicaid payment system~~((;))~~ or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor may not use this section or WAC 388-96-904 for such purposes. This prohibition shall apply irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1)(a) A contractor((s)) seeking ((to appeal or take exception to)) an administrative review of an adverse

action or determination of the department ~~(-)~~ taken under authority of this chapter or chapter 74.46 RCW ~~((relating to the contractor's payment rate, audit or settlement, or otherwise affecting the level of payment to the contractor, or seeking to appeal or take exception to any other adverse action taken under authority of this chapter or chapter 74.46 RCW))~~ and eligible for administrative review under ~~((this section))~~ WAC 388-96-901, shall file a written request for an administrative review conference ~~((in writing))~~ with the office of rates management within twenty-eight calendar days after receiving notice of the department's action or determination.

(b) When the department has sent written notice by United States mail, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's request for an administrative review conference. When the department has electronically mailed (e-mail) written notice, the date of the department's notification e-mail will be the date of receipt by the contractor irrespective of when the contractor reads the e-mail.

(c) The contractor's request for administrative review shall:

~~((a))~~ (i) Be signed by the contractor or by a partner, officer, or authorized employee of the contractor;

~~((b))~~ (ii) State the particular issues raised; and

~~((c))~~ (iii) Include all necessary supporting documentation or other information.

(2) After receiving a request for administrative review conference that meets the criteria in subsection (1) of this section, the department shall schedule an administrative review conference. The conference may be conducted by telephone.

(3) At least fourteen calendar days prior to the scheduled date of the administrative review conference, the contractor must supply any additional or supporting documentation or information upon which the contractor intends to rely in presenting its case. In addition, the department may request at any time prior to issuing a determination any documentation or information needed to decide the issues raised, and the contractor must comply with such a request within fourteen calendar days after it is received. The department may extend this period up to fourteen additional calendar days for good cause shown if the contractor requests an extension in writing received by the department before expiration of the initial fourteen-day period. The department shall dismiss issues that cannot be decided or resolved due to a contractor's failure to provide requested documentation or information within the required period.

(4) The department shall, within sixty calendar days after conclusion of the conference, render a determination in writing addressing the issues raised. If the department is waiting for additional documentation or information promised by or requested from the contractor pursuant to subsection (3) of this section, the sixty-day period shall not commence until the department's receipt of such documentation or information or until expiration of the time allowed to provide it. The determination letter shall include a notice of dismissal of all issues which cannot be decided due to a contractor's failure to

provide documentation or information promised or requested.

(5)(a) A contractor seeking further review of a determination issued pursuant to subsection (4) of this section shall ~~((apply))~~ within twenty-eight calendar days after receiving the department's administrative review conference (ARC) determination letter file a written application for an adjudicative proceeding ~~((, in writing,))~~ signed by one of the individuals authorized by subsection (1) of this section ~~((, within twenty-eight calendar days after receiving the department's administrative review conference determination letter. A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding))~~ with the department's board of appeals.

(b) When the department has sent the ARC determination letter by United States mail, the department shall deem the contractor to have received the department's determination five calendar days after the date of the administrative review determination letter, unless proof of the date of receipt of the letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's application for an adjudicative proceeding. When the department has electronically mailed (e-mail) the ARC determination letter, the date of the department's e-mail containing the ARC determination letter or to which the ARC determination letter is attached will be the date of receipt by the contractor irrespective of when the contractor reads the e-mail.

(c) The contractor shall attach to its application for an adjudicative proceeding the department's administrative review conference determination letter. When the department delivered the ARC determination letter by e-mail either in the body of the e-mail or as an attachment to the e-mail, the contractor must include a copy of the e-mail with the contractor's application for an adjudicative proceeding. A contractor's application for an adjudicative proceeding shall be addressed to the department's board of appeals. The board of appeals date stamp on the application for an administrative proceeding shall be used to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the date stamped on the application received by fax will only be used to determine timeliness when the application is postmarked the same date as the faxed application.

(6) A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding. Except as authorized by subsection (7) of this section, the scope of an adjudicative proceeding shall be limited to the issues specifically raised by the contractor at the administrative review conference and addressed on the merits in the department's administrative review conference determination letter. The contractor shall be deemed to have waived all issues or claims that could have been raised by the contractor relating to the challenged determination or action, but which were not pursued at the conference and not addressed in the department's administrative review conference determination letter. In its request for an adjudicative proceeding or as soon as practicable, the contractor must specify its issues.

(7) If the contractor wishes to have further review of any issue not addressed on its merits, but instead dismissed in the

department's administrative review conference determination letter, for failure to supply needed, promised, or requested additional information or documentation, or because the department has concluded the request was untimely or otherwise procedurally defective, the issue shall be considered by the presiding officer for the purpose of upholding the department's dismissal, reinstating the issue and remanding for further agency staff action, or reinstating the issue and rendering a decision on the merits.

(8) An adjudicative proceeding shall be conducted in accordance with this chapter, chapter 388-02 WAC and chapter 34.05 RCW. In the event of a conflict between hearing requirements in chapter 74.46 RCW and chapter 388-96 WAC specific to the nursing facility medicaid payment system and general hearing requirements in chapter 34.05 RCW and chapter 388-02 WAC, the specific requirements of chapter 74.46 RCW and chapter 388-96 WAC shall prevail. The presiding officer assigned by the department's board of appeals to conduct an adjudicative proceeding and who conducts the proceeding shall render the final agency decision.

(9) At the time an adjudicative proceeding is being scheduled for a future time and date certain, or at any appropriate stage of the prehearing process, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to compel either party to identify specific issues remaining to be litigated.

(10) If the presiding officer determines there is no material issue(s) of fact to be resolved in a case, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to decide the issue(s) presented without convening or conducting an in-person evidentiary hearing. In such a case, the decision may be reached on documentation admitted to the record, party admissions, written or oral stipulation(s) of facts, and written or oral argument.

(11) The board of appeals shall issue an order dismissing an adjudicative proceeding requested under subsection (5) of this section, unless within two hundred seventy calendar days after the board of appeals receives the application for an adjudicative proceeding:

(a) All issues have been resolved by a written settlement agreement between the contractor and the department signed by both and filed with the board of appeals; or

(b) An adjudicative proceeding has been held for all issues not resolved and the evidentiary record, including all rebuttal evidence and post-hearing or other briefing, is closed.

This time limit may be extended one time thirty additional calendar days for good cause shown upon the motion of either party made prior to the expiration of the initial two hundred seventy day period. It shall be the responsibility of the contractor to request that hearings be scheduled and ensure that settlement agreements are signed and filed with the board of appeals in order to comply with the time limit set forth in this subsection.

(12) Any party dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for reconsideration within ten calendar days after the decision or order of dismissal is served on such party. The petition shall state the specific grounds upon which relief is sought. The

time for seeking reconsideration may be extended by the presiding officer for good cause upon motion of either party. The presiding officer shall rule on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence if deemed necessary. Filing a petition for reconsideration shall not be a requisite for seeking judicial review; however, if a petition is filed by either party, the agency decision shall not be deemed final until a ruling is made by the presiding officer.

(13) A contractor dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for judicial review pursuant to RCW 34.05.570(3) or other applicable authority.

NEW SECTION

WAC 388-96-906 Section captions. Section captions as used in this chapter do not constitute any part of the rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-96-202	Scope of audit or department audit.
WAC 388-96-740	Medicaid case mix index— When a facility does not meet the ninety percent minimum data set (MDS) threshold as identified in RCW 74.46.501.
WAC 388-96-741	When the nursing facility does not have facility average case mix indexes for the four quarters specified in RCW 74.46.501 (7)(b) for determining the cost per case mix unit, what will the department use to determine the nursing facility's cost per case mix unit?
WAC 388-96-742	Licensed beds to compute the ninety percent minimum data set (MDS) threshold rather than a nursing facility's quarterly average census.
WAC 388-96-749	Variable return—Quartiles and percentages.

**WSR 11-05-085
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY**

[Filed February 15, 2011, 12:52 p.m., effective March 18, 2011]

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

Purpose: The focus of the rule change was to align ORCAA's Rule 6.2 Outdoor Burning with chapter 173-425 WAC. Language was simplified and clarified throughout the revision. Outdoor burning restrictions in the City of Hoquiam were made consistent throughout the city. Recognition of the long-standing Thurston County summer burn ban was added to the regulation.

Definitions used in Rule 6.2 Outdoor Burning were moved from Rule 1.4.

Citation of Existing Rules Affected by this Order: Amending Rules 1.4, 6.2.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-24-012 on November 18, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: February 9, 2011.

Francea L. McNair
Executive Director

AMENDED SECTION

Rule 1.4 Definitions

When used in regulations of the Olympic Region Clean Air Agency, the following definitions shall apply, unless defined otherwise in individual Regulations:

"Actual Emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with a through c of this rule.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Agency shall allow the use of a different time period upon determination that it is more representative of normal source rates, and types of materials processed, stored, or combusted during the selected time operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production period.

(b) The Agency may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For an emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

"Agency" shall mean the same as "Authority."

"Agricultural Operation" means the growing of crops, the raising of fowl or animals as gainful occupation.

"Air Contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

"Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, property, or which unreasonably interferes with enjoyment of life and property. For the purpose of these Regulations, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

"Air Pollution Episode" means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR part 60, 61, or 63;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with future compliance date.

"Alteration" means the act of altering, which means to change or make different and includes any addition to or enlargement or replacement; or change of the design, capacity, process or arrangement; or any increase in the connected loading of equipment or control facility; or any change in fuels, method of operation or hours of operation not previously approved by the Agency through a Notice of Construction Approval, which would increase or adversely affect the kind or amount of air contaminant emitted by a stationary source.

"Ambient Air" means the surrounding outside air.

"Ambient Air Quality Standard" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

"Ancillary" for the purpose of defining "stationary source" or "source," means "related."

"Approval Order" is defined in "order of approval."

"Attainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

"Authority" means the Olympic Region Clean Air Agency. "Agency" shall mean the same as "Authority."

"Authorized Permitting Agent" means either the county, county fire marshal, fire districts, or county conservation district, provided an agreement has been signed with the local air pollution control agency or Department of Ecology.

"Begin Actual Construction" means, in general, initiation of physical on-site construction activities on an emission unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities with mark the initiation of the change.

"Best Available Control Technology (BACT)" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source which the permitting agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available control technology result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 62. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

"Board" means the Board of Directors of the Olympic Region Clean Air Agency.

"Bubble" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and Rule 6.1.12 of Regulation 6.

"Commenced" as applied to "Construction" means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

For the purpose of this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

"Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

"Control Apparatus" means any device that prevents or controls the emission of any air contaminant.

"Control Officer" means the Air Pollution Control Officer of the Olympic Region Clean Air Agency. "Executive Director" means the same as "Control Officer."

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Criteria Pollutant" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CRF Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

"Daylight Hours" means the hours between official sunrise and official sunset.

"Ecology" means the Washington State Department of Ecology.

"Emission" means a release of air contaminants into the ambient air.

"Emission Point" means the location (place in horizontal plant and vertical elevation) at which an emission enters the atmosphere.

"Emission reduction credit (ERC)" means a credit granted pursuant to chapter 173-400 WAC. This is a voluntary reduction in emissions.

"Emission Standard" and "Emission Limitation" means requirements established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act, chapter 70.94 RCW.

"Emission Unit" means any part of a stationary source or source which emits or would have a potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

"EPA" means the United States Environmental Protection Agency (USEPA).

"Equipment" means any stationary or portable device, or any part thereof, capable of causing the emission of any air contaminant into the atmosphere.

"Establishment" means the act of establishing, which means creating, setting up, or putting into practice any equipment, material, fuel, or operational change.

"Excess Emission" means emissions of an air pollutant in excess of an applicable emission standard.

"Facility" means all emission units in the same industrial grouping located on contiguous or adjacent properties and under common ownership and control.

"Federal Clean Air Act (FCAA)" means the Federal Clean Air Act, as known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

"Federally Enforceable" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of

approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to Rule 6.1.12 or WAC 173-400-091.

"Fee Eligible Generating Equipment" means, for the purposes of calculating Rule 3.1 fees, any equipment or process capable of generating or emitting air contaminants except for the equipment and processes listed in a through g below:

(a) Gasoline or other fuel storage tanks located at dispensing facilities as defined in Rule 8.12.

(b) Storage tanks and other equipment located at dry cleaning facilities.

(c) Combustion units with less than 10 million BTUs per hour heat input.

(d) Process equipment with less than 5,000 ACFM flow rate.

(e) Paint spray booths and related paint spraying equipment.

(f) Mobile sources.

(g) Any other equipment or process determined appropriate for this exemption by the Agency.

"Fee Eligible Stack" means, for the purposes of calculating fees pursuant to Rule 3.1, any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct, except for the following:

(a) Emission points associated with gasoline or fuel dispensing stations.

(b) Emission points associated with dry cleaning facilities.

(c) Pipes or ducts equal to or less than six (6) inches in diameter.

(d) Any other emission point determined appropriate for this exemption by the Agency.

"Fuel Burning Equipment" means any equipment, device or contrivance used for the burning of any fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel feeding equipment, ash removal equipment, combustion controls, stacks, chimneys, etc., used for indirect heating in which the material being heated is not contacted by and adds no substances to the products of combustion.

"Fugitive Dust" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

"Fugitive Emission" means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means refuse, animal or vegetable matter as from a kitchen, restaurant or store.

"Generating Equipment" means any equipment, device, process, or system that creates any air contaminant(s) or toxic air pollutant(s).

"Good Engineering Practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

"Hogged-fuel" means wood slabs, edging, trimmings, etc., which have been put through a "hog" to reduce them to a uniform small size, and also includes shavings from planing mills, sawdust from saw-kerfs, bits of bark, chips and

other small recovered products from the manufacture of wood products or any combination thereof.

"Incinerator" means a furnace used primarily for the thermal destruction of waste.

"In Operation" means engaged in activity related to the primary design function of the source.

"Installation" means the act of installing, which means placing, assembling or constructing equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

"Light Detection and Ranging (LIDAR)" means the EPA alternate method 1 determination of the opacity of emissions from stationary sources remotely by LIDAR

"Lowest Achievable Emission Rate (LAER)" means for any stationary source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of stationary source.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

"Major Modification" is defined depending on the attainment status of the area in which the project is located, or planned to be located, as follows:

(a) Nonattainment Areas. "Major Modification" as it applies in nonattainment areas means any physical change or change in method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(2) A physical change or change in method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which: The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP

approved new source review regulation; or the stationary source is approved to use under any major new source review permit or approval order issued under Rule 6.1.4(b) or WAC 173-400-112;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose title I of the Federal Clean Air Act, if any; and

(B) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) Attainment or unclassified areas. "Major Modification" as it applies in attainment or unclassified areas means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The stationary source was capable of accommodating before January 6, 1975, unless such change would be pro-

hibited under any federally enforceable permit condition or approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(B) The stationary source is approved to use under any PSD permit;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2001) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(B) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

"Major Stationary Source" is defined depending on the attainment status of the area in which the stationary source is located, or planned to be located as follows:

(a) Nonattainment areas. "Major Stationary Source" as it applies in nonattainment areas means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(i) 70 tons per year of PM₁₀ in any "serious" nonattainment area for PM₁₀.

(ii) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary sources contribute significantly to carbon monoxide levels in the area.

(2) Any physical change that would occur at a stationary source not qualifying under (b)(1) of this rule as a major stationary source, if the change would constitute a major stationary source by itself.

(3) A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(4) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this

paragraph whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the stationary source is a major stationary source due to (b)(1)(i) or (b)(1)(ii) of this rule:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 of 113 of the Federal Clean Air Act.

(5) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, FACILITY, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or person under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, as amended.

(b) Attainment or unclassified areas. "Major Stationary Source" as it applies in attainment or unclassified areas means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

- (i) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (ii) Coal cleaning plants (with thermal dryers);
- (iii) Kraft pulp mills;

- (iv) Portland cement plants;
- (v) Primary zinc smelters;
- (vi) Iron and steel mill plants;
- (vii) Primary aluminum ore reduction plants;
- (viii) Primary copper smelters;
- (ix) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (x) Hydrofluoric, sulfuric, and nitric acid plants;
- (xi) Petroleum refineries;
- (xii) Lime plants;
- (xiii) Phosphate rock processing plants;
- (xiv) Coke oven batteries;
- (xv) Sulfur recovery plants;
- (xvi) Carbon black plants (furnace process);
- (xvii) Primary lead smelters;
- (xviii) Fuel conversion plants;
- (xix) Sintering Plants;
- (xx) Secondary metal production plants;
- (xxi) Chemical process plants;
- (xxii) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxiii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiv) Taconite ore processing plants;
- (xxv) Glass fiber processing plants; and
- (xxvi) Charcoal production plants.

(2) Regardless of the stationary source size specified in (b)(1) of this rule, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under (b)(1) or (b)(2) of this rule, as a major stationary source if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills'
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);

- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(6) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

"**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

"**Material Handling**" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant chemical or physical alteration.

"**Modification**" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that result in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

"**National Ambient Air Quality Standards (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

"**National Emission Standards for Hazardous Air Pollutants (NESHAP)**" means the federal rules in 40 CFR Part 61.

"**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

"**Net Emissions Increase**" is defined depending on the attainment status of the area in which the new stationary source or modification is located, or planned to be located, as follows:

(a) Nonattainment areas. "Net Emissions Increase" as it applies in nonattainment areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) The permitting agency has not relied on it in issuing any permit or order of approval for the stationary source under this rule or a previous SIP approved nonattainment area new source review regulation, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance to the increase from the particular change; and

(iv) The permitting agency has not relied on it in issuing any permit or order of approval under this rule or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

(6) An increase that results from a physical change at a stationary source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

(b) Attainment or unclassified areas. "Net Emissions Increase" as it applies in attainment or unclassified areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emission at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if ecology or EPA has not relied on it in issuing a PSD permit for the stationary source, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operationally only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

"New Source" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new stationary source under the Federal Clean Air Act.

"New Source Performance Standards (NSPS)" means the federal rules set forth in 40 CFR Part 60.

"Nonattainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a national ambient air quality standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

"Nonroad Engine" means:

(a) Except as discussed in (b) of this rule, a nonroad engine is any internal combustion engine:

(1) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(2) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(3) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(1) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(2) The engine is regulated by a New Source Performance Standard promulgated under section 111 or 112 of the Federal Clean Air Act; or

(3) The engine otherwise included in (a)(3) of this rule remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is a single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that operates at a single location approximately three months (or more) each year. The paragraph does not apply to an engine after the engine is removed from the location.

"Notice of Construction Application" means a written application to permit construction, installation or establishment of a new stationary source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

"Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.

"Olympic Air Pollution Control Authority (OAPCA)" is the former name of Olympic Region Clean Air Agency (ORCAA). Reference to "OAPCA" shall mean ORCAA.

"Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~("Outdoor Burning" means the combustion of material in an open fire or in an open container, without providing for the control of combustion or the control of the emissions from the combustion.)~~

~~("Open Fire" means a fire where any material is burned in the open or in a receptacle other than a furnace, incinerator or kiln.)~~

"Order" means any order issued by ecology or a local air agency pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.211, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

"Order of Approval" or "Approval Order" means a regulatory order issued by Ecology or the Agency to approve

the Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

"Owner" means person, agent, lessor, lessee, possessor, manager, supervisor, operator, or other responsible party of real property or other assets which includes equipment or control apparatus.

"Ozone Depleting Substance" means any substance listed in Appendices A and B to Subpart A of 40 CFR part 82.

"Particulate Matter" or "Particulates" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Parts Per Million (ppm)" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

"Permit" means a written warrant or license granted by the Board, Control Officer, or duly authorized Representative or Agent.

"Permitting Agency" means ecology or the local air pollution control agency with jurisdiction over the source.

"Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

"PM₁₀ Emissions" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

"Potential to Emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of Significant Deterioration (PSD)" means the program in WAC 173-400-141. Ecology is responsible for the PSD program for stationary sources in ORCAA's jurisdiction. Contact Ecology at (360) 407-6800 for more information.

"Process" means any equipment, device apparatus, chemical, natural element, procedure, effort, or any combination thereof which performs a service, function, use, or method, leading to an end of a particular performance, or manufacturing production.

"Reasonably Available Control Technology (RACT)" means the lowest emission limit that a particular stationary source or stationary source category is capable of

meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or stationary source category taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or stationary source category shall be adopted only after notice and opportunity for comment are afforded.

(("Recreational Fire" means barbecues and campfires, using charcoal, natural gas, propane, or natural wood, which occur in designated areas, or on private property. Fires used for debris disposal purposes are not considered recreational fires.))

"Refuse" means waste as defined in Rule 1.4 of this Regulation.

"Regulation" means any regulation, or any subsequently adopted additions or amendments thereto, of the Olympic Region Clean Air Agency.

"Regulatory Order" means an order issued by Ecology or an Agency to an air contaminant source that applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted there under, or, for sources regulated by a local air agency, the regulations of that agency.

"Representative" or "Agent" means any person authorized by the Control Officer of the Agency to represent him in an official and specific manner.

"Residential" means a two or single-family unit.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new modified stationary source; and,

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

"Significant" is defined depending on the attainment status of the area:

(a) Nonattainment areas. "Significant" as it applies in nonattainment areas means, in reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy

Pollutant and Emissions Rate	
PM-10:	15 tpy

(b) Attainment or unclassified areas. "Significant" as it applies in attainment or unclassified areas means:

(1) In reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter (PM)	25 tpy of PM emissions 15 tpy of PM-10 emissions
Volatile organic compounds	40 tpy
Fluorides	3 tpy
Lead	0.6 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions (measured as non-methane organic compounds)	45 megagrams per year (50 tpy)
Ozone-depleting substances (in effect on July 1, 2000)	100 tpy

(2) In reference to a new emissions increase or the stationary source's potential to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(1) of this rule does not list, any emissions rate. However, for purposes of the applicability of this rule, the hazardous air pollutants listed under section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

(3) Regardless of the definition in (b)(1) of this rule, significant means any emissions rate or any net emissions increase associated with a major stationary source or major

modification which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 microgram per cubic meter (twenty four hour average).

~~("Silvicultural Burning" means burning on any land the Department of Natural Resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.)~~

"Source" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same Major Group (i.e., which have the same two digit code) as describe in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

"Source Category" means all sources of the same type of classification.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

"Stack Height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

"Standard Conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

"Standard Cubic Foot of Gas" means that amount of the gas, which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor and at standard conditions.

"State Act" means the Washington Clean Air Act, chapter 70.94 RCW, as amended.

"State Implementation Plan (SIP)" or the "Washington SIP" in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

"Stationary Source" means any building, structure, facility, or installation, which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216(11) of the Federal Clean Air Act.

"Synthetic Minor" means any stationary source that's potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

"Temporary" means a period of time not to exceed one (1) year.

"Total Reduced Sulfur (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

"Total Suspended Particulate (TSP)" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

"Toxic Air Pollutant (TAP)" or "Toxic Air Contaminant" means any Class A or Class B toxic air pollutant listed in WAC 173-460-150 and WAC 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or WAC 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes or compounds.

"True Vapor Pressure" means the equilibrium partial pressure exerted by the stored organic compound at:

(a) The annual average temperature of the organic compound as stored; or

(b) At the local annual average temperature as reported by the National Weather Service if stored at ambient temperature.

"Unclassifiable Area" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant that is listed by EPA at 40 CFR part 81.

"United States Environmental Protection Agency (USEPA)" shall be referred to as EPA.

~~("Urban Growth Area" means an area defined by RCW 36.70A.030.)~~

"Vent" means any opening through which gaseous emissions are exhausted into the ambient air.

"Volatile Organic Compound (VOC)" means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC:

Acetone;
carbon monoxide;
carbon dioxide;
carbonic acid;
metallic carbides or carbonates;
ammonium carbonate;
dimethyl carbonate;
propylene carbonate;
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1-trichloroethane (methyl chloroform);
1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HCFC-134a);
1,1-dichloro 1-fluoroethane (HCFC-141b);
1-chloro 1,1-difluoroethane (HCFC-142b);
2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124);
pentafluoroethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);

parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;

perchloroethylene (tetrachloroethylene);
3,3-dichloro 1,1,1,2-pentafluoropropane (HCFC-225ca);

1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);

ethylfluoride (HFC-161);

1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

1,1,2,2,3-pentafluoropropane (HFC-254ca);

1,1,2,3,3-pentafluoropropane (HFC-245ea);

1,1,1,2,3-pentafluoropropane (HFC-245eb);

1,1,1,3,3-pentafluoropropane (HFC-245fa);

1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

1,1,1,3,3-pentafluorobutane (HFC-365mfc);

chlorofluoromethane (HCFC-31);

1-chloro-1-fluoroethane (HCFC-151a);

1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃);

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂(CF₂OC₂H₅);

methyl acetate and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no saturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and

(iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the Agency, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly reactive compounds in the source's emissions.

Reviser's note: The spelling errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

REPEALER

~~(RULE 6.2 OUTDOOR BURNING)~~

It is the policy of the Olympic Region Clean Air Agency (ORCAA) to achieve and maintain high levels of air quality, and, to this end, minimize to the greatest extent reasonably possible the burning of open fires. Consistent with this policy, the Board does hereby declare that such fires should be allowed only on a limited basis under strict regulation and close control, such program to be implemented by a one permit system. It is the further policy of the Board to encourage the fostering and development of an alternate technology or method of disposing of wastes, which is reasonably economical and less harmful to the environment.

~~(a) It shall be unlawful for any person to cause or allow any open fire:~~

~~(1) Containing prohibited materials which include, but are not limited to, garbage, dead animals, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, processed wood, construction debris, metal or any substance which when burned releases toxic emissions, dense smoke or obnoxious odors.~~

~~(2) During an air pollution episode or period of Impaired Air Quality as defined in chapter 70.94 RCW.~~

~~(3) In a no burn/nonattainment area or in any area which has been designated by the Board or Control Officer as an area exceeding or threatening to exceed State or Federal ambient air quality standards:~~

~~(i) It shall be unlawful for any person to cause or allow any open fire described in Rule 6.2 (b)(1) and Rule 6.2.1 in any area where the Board has prohibited burning;~~

~~(ii) Fires described in Rule 6.2 are prohibited in the following areas:~~

~~All areas within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries.~~

~~(4) In any area in which the applicable fire district, fire protection agency, city, town, county, or conservation district has determined not to issue burning permits or has determined that selected types of open burning fires are prohibited under a valid burning permit program established pursuant to RCW 70.94.745, RCW 70.94.750, RCW 70.94.775, and/or RCW 70.94.780.~~

~~(5) Within fifty (50) feet of a structure or within five hundred (500) feet of forest slash debris.~~

~~(6) In any area within the jurisdiction of this Authority all burning requires a permit as covered in WAC 173-425-070.~~

~~(7) Urban growth areas and cities with a population of ten thousand or more will ban open burning when alternatives are available, no later than the end of the year 2000.~~

~~(8) If open burning creates a nuisance the fire must be extinguished immediately.~~

~~(b) Other than the following types:~~

~~(1) Recreational fires no larger than four feet in diameter and three feet in height for campfires at designated federal, state, county or city parks and recreation areas, provided a written permit has been issued by a fire protection agency, county, or conservation district.~~

~~(2) Residential fire set for the disposal of yard and garden refuse (except cut grass) originating on lands immediately adjacent and in close proximity to a human dwelling subject however, to the following restrictions:~~

~~(i) There shall be one (1) fire only and it shall not exceed four (4) feet in diameter and three (3) feet in height.~~

~~(ii) The material may be burned only if it is of a location, nature and condition to burn without emitting dense smoke or offensive odors or creating a nuisance.~~

~~(iii) The fire is to consist only of dry leaves and prunings (except grass cuttings which produce dense smoke), and be burned on such lands by the property owner or their designee under strict conditions such as hours, dates, smoke management, etc., provided a written permit has been issued by a fire protection agency, county, or conservation district (thirty (30) days are the maximum allowed).~~

~~(iv) There shall be compliance with all laws and regulations of other governmental agencies regarding such fires.~~

~~(v) The fire is not contrary to Rule 6.2(a)~~

~~(3) Where open burning is allowed a minimum permit (general rule burn) is allowed provided that all restrictions (i through viii) are met.~~

~~(i) The fire must be attended at all times by someone with the means and capability of extinguishing the fire.~~

~~(ii) Maximum pile size is four feet by four feet by three feet in height (4x4x3).~~

~~(iii) Only one pile shall be burned at a time, and each pile must be extinguished before igniting another.~~

~~(iv) No material containing garbage, asphalt, dead animals, petroleum products, paints, rubber products, plastic, paper (other than what is necessary to start a fire), cardboard, treated wood, processed wood, construction debris, metal or any substance which when burned releases toxic emissions, dense smoke or obnoxious odors.~~

~~(v) The designated permitting authority must be called to confirm burning conditions for each day or current information on burning conditions must be obtained from another designated source.~~

~~(vi) If the fire creates a nuisance, it must be extinguished.~~

~~(vii) Permission from landowner, or owner's designated representative, must be obtained before starting an open fire.~~

~~(viii) General rule burn permits under this rule may be used for the following number of days per year:~~

1992-1994	21 days
1995-1998	14 days
1998-1999	7 days
after 2000	7 days

~~The exact dates to be implemented will be determined by the Control Officer.~~

~~(4) Fires for abating a forest fire hazard, to prevent a hazard, for instruction of public officials in methods of forest fire fighting, any silvicultural operation to improve forest lands, and silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation area, parks, and other wildlife areas, provided prior written approval has been issued by the Washington Department of Natural Resources. Fires for abating a forest~~

fire hazard, to prevent a hazard, for instruction of public officials in methods of forest fire fighting, any silvicultural operation to improve forest lands, and silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation area, parks, and other wildlife areas, provided prior written approval has been issued by the Washington Department of Natural Resources.

~~(5) Cooking fires consisting solely of charcoal, propane, natural gas or wood (provided that wood is not used in a no burn/nonattainment area) and used solely for the preparation of food.~~

~~(6) Fires for Native American ceremonies or for the sending of smoke signals if part of a religious ritual, (provided that proof of tribal affiliation is certified and a permit has been issued by the Control Officer in a no burn area).~~

~~(e) Any permit issued may be limited by the imposition of conditions to prevent air pollution as defined in Regulation 1. If it becomes apparent at any time to the authorized permitting agent that limitations need to be imposed, the authorized permitting agent shall notify the permittee; and any limitations so imposed shall be treated as conditions under which the permit is issued.~~

~~(d) Fires started in violation of this Regulation shall be extinguished by the persons responsible for the same upon notice of the authorized permitting agent.~~

~~(e) It shall be prima facie evidence that the person who owns or controls property on which an open fire occurs, has caused or allowed said open fire.~~

~~(f) Firemen training: The Control Officer, or a duly authorized agent may allow, by permit, an open fire necessary for firemen training (other than forest fire training) by a legally authorized fire control agency and may authorize the burning of petroleum products by such permit. Conditions of this permit will agree with guidelines established by the Washington Department of Ecology.~~

~~(g) Nothing contained in Rule 6.2 shall be construed to allow open fires in those areas in which open burning is prohibited by laws, ordinances, or regulations of the state or any city, county, or fire district.~~

Rule 6.2.1 Land Clearing Burning

~~Land clearing fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects, (natural vegetation can not be transported from this site to be burned at another location) under strict conditions, such as hours, dates, smoke management, etc., and provided a written permit has been issued by an approved permitting agency (thirty (30) days are the maximum allowed for permit)~~

Rule 6.2.2 Agricultural Burning

~~Burning related to agricultural operations as approved by the agency. (A permit fee shall accompany the application.))~~

REPLACEMENT SECTION

RULE 6.2 OUTDOOR BURNING

It is the policy of the Olympic Region Clean Air Agency (ORCAA) to achieve and maintain high levels of air quality, and, to this end, minimize to the greatest extent reasonably

possible the burning of outdoor fires. Consistent with this policy, the Board does hereby declare that such fires should be allowed only on a limited basis under strict regulation and close control. It is the further policy of the Board to encourage the fostering and development of an alternate technology or method of disposing of natural vegetation, which is reasonably economical and less harmful to the environment.

Rule 6.2.1 The provisions of this rule apply to:

- (a) Agricultural burning
- (b) Fire training fires
- (c) Land clearing burning
- (d) Native American ceremonial fires
- (e) Recreational fires
- (f) Residential burning
- (g) Storm and flood debris burning
- (h) Weed abatement fires

Rule 6.2.2 Definitions

When used in this Rule the following definitions shall apply:

"Agricultural burning" means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.6528 or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

"Air Pollution Episode" means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

"Burn ban" means an "air pollution episode", or a period of "impaired air quality" as defined in RCW 70.94.-473.

"Extinguish" means to put out a fire completely. It must be cool to the touch and not smoldering or smoking.

"Firewood" means clean, dry, seasoned, untreated wood used as fuel in an Indian ceremonial fire or recreational fire.

"Land Clearing Burning" means outdoor burning of trees, stumps, shrubbery or other natural vegetation from land clearing projects (i.e. projects that clear the land surface so it can be developed, used for a different purpose, or left unused).

"Outdoor Burning" means the combustion of material in an open fire or in an open container, without providing for the control of combustion or the control of the emissions from the combustion.

"Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.

"Recreational Fire" means cooking fires or campfires using firewood which occur in designated areas, or on private property. Fires used for disposal purposes are not recreational fires.

"Residential Burning" means the outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on the maintained area of residential property (i.e. lands immediately adjacent and in close proximity

to a human dwelling) and burned on such lands by the property owner and/or other responsible person.

"Urban Growth Area" (UGA) means land, generally including land associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.110.

Rule 6.2.3 No residential or land clearing burning is allowed in the following cities and/or UGAs:

Clallam	Grays Harbor	Jefferson	Mason	Pacific	Thurston
Carlsborg Clallam Bay Forks Joyce Port Angeles Sekiu Sequim	Aberdeen Hoquiam	Port Townsend	Allyn Belfair Shelton	Ilwaco Long Beach Raymond Seaview South Bend	Bucoda Grand Mound Lacey Olympia Rainier Tenino Tumwater Yelm

Rule 6.2.4 Summer Burn Restrictions.

No residential or land clearing burning is allowed in Thurston County from July 15th through October 15th.

Rule 6.2.5 Prohibitions and restrictions. (WAC 173-425-050)

(a) It shall be unlawful for any person to cause or allow an outdoor fire containing prohibited materials which include but are not limited to garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper, cardboard, treated wood, processed wood, construction/demolition debris, metal, or any substance which when burned releases toxic emissions, dense smoke, or obnoxious odors. A limited amount of paper may be used to start the fire. ORCAA may allow the limited burning of prohibited materials for fire training.

(b) It is illegal to burn vegetation originating in any area where burning is prohibited as listed in Rule 6.2.3.

(c) A person capable of extinguishing the fire must be in attendance at all times, and the fire must be extinguished before leaving it.

(d) Containers (not regulated under WAC 173-400-070(1)) used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other non-combustible material with openings not larger than one-half inch.

(e) The use of burn barrels is illegal.

(f) A fire protection agency, county, conservation district, or other governing body may enforce its own regulations that are stricter than those set forth in this rule.

(g) It shall be unlawful for any person to cause or allow an emission from outdoor burning that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

Rule 6.2.6 Curtailment (WAC 173-425-050)

(a) No outdoor fire shall be ignited in a geographical area where a burn ban has been declared.

(b) The person responsible for an outdoor fire must extinguish the fire when a burn ban is declared.

(c) Three (3) hours after a burn ban is declared smoke visible from all types of outdoor burning, except land clearing burning, will constitute prima facie evidence of unlawful outdoor burning.

(d) Eight (8) hours after a burn ban is declared smoke visible from land clearing burning will constitute prima facie evidence of unlawful outdoor burning.

Rule 6.2.7 Recreational Burning

The following burn practices shall be used for recreational burning where allowed.

(a) Maximum pile size is three (3) feet in diameter and two (2) feet high. (WAC 173-425-060)

(b) Only dry, seasoned firewood or charcoal and enough clean paper necessary to start a fire may be burned.

(c) No recreational fires are allowed within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries of these cities. Charcoal, propane, or natural gas may be used without a permit.

Rule 6.2.8 Permit Program (WAC 173-425-060)

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, or failed to contain pertinent information.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70.94.430 and RCW 70.94.431.

(c) Types of burning that require a written permit.

(1) Agricultural burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all of the following requirements are met:

(i) Fire training shall not occur during a burn ban.

(ii) The fire must be for training purposes.

(iii) The agency conducting the training fire shall obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

(3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

(4) Land Clearing Burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(5) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(6) Weed abatement fires.

(d) Where residential burning is allowed and no written burn permits are issued, burning shall abide by Rule 6.2 and the following:

(1) Maximum pile size is four (4) feet in diameter and three (3) feet high.

(2) Only one pile shall be burned at a time, and each pile must be extinguished before lighting another.

(3) Only natural vegetation may be burned.

(4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.

(5) No tree stumps may be burned.

WSR 11-06-032
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket U-100523, General Order R-563—Filed February 25, 2011, 12:33 p.m.]

In the matter of amending and adopting WAC 480-90-103, 480-90-153, 480-90-178, 480-90-179, 480-90-194, 480-100-103, 480-100-153, 480-100-178, 480-100-179, and 480-100-194, relating to paperless billing for electric and gas customers.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 10-22-112, filed with the code reviser on November 3, 2010. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

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

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

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends and adopts the following sections of the Washington Administrative Code: Amending WAC 480-90-103 Information to consumers, 480-90-153 Disclosure of private information, 480-90-178 Billing requirements and payment date, 480-90-194 Publication of proposed tariff changes to increase charges or restrict access to services, 480-100-103 Information to consumers, 480-100-153 Disclosure of private information, 480-100-178 Billing requirements and payment date and 480-100-194 Publication of proposed tariff changes to increase charges or restrict access to services; and adopting WAC 480-90-179 Electronic information and 480-100-179 Electronic information.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on April 7, 2010, at WSR 10-08-094. The statement advised interested persons that the commission was considering entering a rule making to address the use of electronic bills, notices of tariff revisions, bill inserts, documents in adjudicative proceedings, and reports required by settlement stipulations. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all regulated electric and gas utilities and the commission's list of utility attorneys. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/100523>. Pursuant to the notice, the commission received written comments.

8 On June 11, 2010, the commission issued a discussion draft of electric and gas rules to all interested persons with a July 14, 2010, deadline for filing comments.

9 The commission filed an amended CR-101 on August 4, 2010, at WSR 10-16-143.¹ This inquiry amends the original CR-101 filed at WSR 10-08-094 to also consider whether to modify existing rules in chapter 480-90 WAC, Gas companies and chapter 480-100 WAC, Electric companies, to allow utilities to obtain and retain a customer's authorization to share personal information electronically with the utility's affiliates, subsidiaries or any other third party for the purpose of marketing services or product offerings to a customer who does not already subscribe to that service or product.

¹ As a result of the extensive comments received on July 14, 2010, staff elected to file an amended CR-101 and circulate a revised draft as part of the CR-101 process.

10 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on November 3, 2010, at WSR 10-22-112. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 10-22-112 at 1:30 p.m., Tuesday, January 4, 2011, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park

Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

11 WRITTEN COMMENTS: The commission received written comments on the notice of proposed rule making from Northwest Natural Gas (NWNNG), Pacific Power & Light (PacifiCorp), Public Counsel, and Puget Sound Energy (PSE). Summaries of all written comments and commission responses are contained in Appendix A, shown below, and made part of this order.

12 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Tuesday, January 4, 2011, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from Mr. Roger Kouchi representing commission staff and Ms. Barb Coughlin representing PacifiCorp.

13 SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED: Written and oral comments suggested changes to the proposed rules. Suggested changes and the commission's reason for accepting the suggested changes are included in the staff response column to the comment matrix included in Appendix A. The following specific changes are accepted after considering the oral presentation by PacifiCorp at the adoption hearing on January 4, 2011.

14 PacifiCorp proposed that the timeframes to respond to undelivered electronic message notifications be extended to five business days. PacifiCorp stated that requiring additional delivery attempts within one business day is administratively burdensome and technologically impossible with the current third party vendor PacifiCorp uses to send e-mail bill notifications. The commission agrees to allow the additional time provided that the utility extends the due date of the bill by the number of days the electronic notification (second attempt) was delayed beyond the requirement of one business day, not to exceed five business days.

15 SUGGESTIONS FOR CHANGES THAT ARE REJECTED: Written and oral comments suggested changes to the proposed rules. Suggested changes and the commission's reason for rejecting the suggested changes are included in the staff response column to the comment matrix included in Appendix A. The following specific changes are rejected after considering the oral presentation by PacifiCorp at the adoption hearing on January 4, 2011.

16 PacifiCorp also requested that it be allowed to keep a customer on paperless billing (i.e., bills, bill inserts, and notices of tariff revisions) despite receiving undelivered electronic message notifications. PacifiCorp did not offer a sufficient reason to support making this change.

17 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR 10-22-112 with the changes described in this order.

18 CHANGES FROM PROPOSAL: The commission addressed the written comments from NWNNG, PacifiCorp, PSE, and Public Counsel earlier in this order. The suggested changes and the commission's reason for accepting or rejecting the suggested changes are discussed in paragraphs 13 through 16 of this order.

19 The utilities have ninety days from the effective date of this order to implement procedural or computer system changes required by the amendments and new rules.

20 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-90-103, 480-90-153, 480-90-178, 480-90-194, 480-100-103, 480-100-153, 480-100-178, and 480-100-194 should be amended and WAC 480-90-179 and 480-100-179 should be adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 8, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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

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

ORDER

21 THE COMMISSION ORDERS:

22 The commission amends WAC 480-90-103, 480-90-153, 480-90-178, 480-90-194, 480-100-103, 480-100-153, 480-100-178, and 480-100-194, and adopts WAC 480-90-179 and 480-100-179 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

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

DATED at Olympia, Washington, February 25, 2011.

Washington State Utilities and Transportation Commission

Jeffrey D. Goltz, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

**Appendix A
(Comment Summary Matrix)**

**U-100523 Paperless Billing Rule Making
Comment Summary Matrix**

	Section	Commenter	Comments	Staff Response
Disclosure of private information				
1.	480-90-153(2) 480-100-153(2)	Puget Sound Energy (PSE or company)	With the addition of the new subsection (3) to this rule the added sentence at the end of subsection (2) appears redundant and therefore confusing. PSE suggests deleting the last sentence: "For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information."	Staff agrees.
	480-100-153(2)	Pacific Power (PacifiCorp or company)	Subsection (3) and the last sentence included in subsection (2) are duplicative as they essentially contain the same requirement. Company recommends deleting the last sentence in subsection (2): "For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information."	Staff agrees.
	480-90-153(3) 480-100-153(3)	Puget Sound Energy (PSE or company)	Due to the addition of "disclosure" this rule has been expanded beyond the intent in subsection (1) which limited disclosures only "for the purposes of marketing services or product offerings." By including "disclosure" in the rule, the rule could be interpreted to require consent from the consumer for every disclosure. PSE offered clarifying language.	Staff agrees.
	480-100-153(4)	Northwest Natural Gas Company (NWNNG or company)	The company believes the new language could be misinterpreted. Company proposed edits that clarify that the new provisions are specific to gaining a customer's consent to "disclose or sell data regarding private consumer information to an affiliate, subsidiary or any other third party rather than a service or product.["]	Staff agrees.
		Pacific Power (PacifiCorp or company)	The company's current policy is not to release customer information. However, should the company make a change in that policy, it has concerns with the amount of data required to be stored for each account. Company recommends the deletion of subsection (4).	Staff disagrees. Staff believes that maintaining a record of the customer's consent for the disclosure of private information is appropriate and offers the necessary consumer protection. Staff would agree to eliminate the rule requirement to maintain customer consent to automatic payment and equal payment plan. The NARUC standard for recordkeeping would be sufficient consumer protection.
	480-90-153(4) 480-100-153(4)	Staff	Staff suggested changes to working to improve clarity (i.e., change word from ensure to retain; delete the word specific; insert the words "for each instance of"; insert the words "his or her").	The changes did not change the original meaning or intent.
	480-90-153 (4)(b)	Northwest Natural Gas Company (NWNNG or company)	Changes made to reflect earlier suggestion for WAC 480-90-153(3) above (i.e., add "date of that consent and the affiliates, subsidiaries, or third parties["]; and delete "service, product offering, or disclosure with respect").	Staff agrees. Changes to make the customer consent to share private customer data specific to a party rather than a service or product is more practical to manage.
Electronic information				
2.	480-100-179	Pacific Power (PacifiCorp or company)	PacifiCorp suggested adding the wording "as defined in subsection (2) of this rule."	Staff agrees.

	Section	Commenter	Comments	Staff Response
		Northwest Natural Gas Company (NWNG or company)	NWNG stated that customers appreciate having the opportunity to consent to multiple services at one time rather than filing [filling] out separate forms for each offering. Company proposed language to allow the consent section to include separate and individual opportunities for customers to consent to any utility service offered under the utility's tariff.	Staff disagrees. Staff has added language to allow automatic payment service and equal payment plan service on the same screen. Staff is willing to remove the web page restriction as long as the consent screen for electronic (i.e., paperless) billing; tariff revision notices; and bill inserts are prominent on the web page and clearly distinguishable from any other content on the screen or page.
	480-90-179 (2)(a)	PSE, PacifiCorp and NWNG	PSE, PacifiCorp and NWNG suggested broadening the requirement that no information may be combined in the same document, screen or web page except utility contact information.	Staff agrees. Staff agreed to change the language to: "For electronic consent, the customer consent section must be prominent on the web page and clearly distinguishable from any other content on the screen or page.[""]
	480-90-179 (2)(a)(i)	Puget Sound Energy (PSE or company)	PSE suggested adding the words "offered by the utility" to increase clarity.	Staff agrees.
	480-90-179 (2)(a)(ii)	Puget Sound Energy (PSE or company)	PSE suggested adding the words "offered by the utility, including one-time payment services or other automatic payment services" to increase clarity.	Staff agrees.
	480-100-179 (2)(b)	Pacific Power (PacifiCorp or company)	Company suggested changing the retention requirement to be "in accordance with the utility's record retention policies."	Staff agrees in part and disagrees in part. The consent records should be part of the customer records. It is not the intent of the rule to require permanent retention of information beyond its useful life (i.e., when the account is discontinued; when a change is made to the status; etc.). Staff agrees to eliminate the requirement in the rules regarding retention of consumer consent for on-line payment, automatic payment, and equal payment plans.
	480-90-179 (2)(b)	Northwest Natural Gas Company (NWNG or company)	NWNG suggested adding the language "to receive electronic communications" to add clarity. NWNG suggested deleting the language "as evidence of the customer's consent to receive selected documents in electronic form, or to participate in paperless billing or automatic payment services or to participate in the utility's equal payment plan.[""]	Staff agrees. Staff agrees in part and disagrees in part. Staff believes that the customer's consent documentation for paperless billing is evidence and as such the language should be retained. However, staff agrees that the language regarding retention of the customer consent to automatic payment services or to the utility's equal payment plan could be eliminated. This rule addresses paperless billing.
	480-90-179 (2)(d)	Puget Sound Energy (PSE or company)	The company interprets this section to detail what information that the customer must confirm/acknowledge and not what the utility must retain in its record of confirmation.	Staff agrees.
	480-100-179 (2)(c)	Pacific Power (PacifiCorp or company)	PacifiCorp suggested adding the term "customer" before the word consent for additional clarification.	Staff agrees.
	480-90-179 (2)(d)(ii)	Pacific Power (PacifiCorp or company)	PacifiCorp suggested changing the word "choose" to "receive" to improve wording.	Staff agrees. It is the customer's opt-in decision to receive electronic information rather than choose electronic information.

	Section	Commenter	Comments	Staff Response
	<p>480-90-179 (2)(d)(iii) 480-100-179 (2)(d)(iii)</p> <p>480-90-179 (2)(d)(v) 480-100-179 (2)(d)(v)</p> <p>480-90-179 (2)(d)(vi) 480-100-179 (2)(d)(vi)</p>	<p>Puget Sound Energy (PSE or company)</p> <p>Pacific Power (PacifiCorp or company)</p> <p>Puget Sound Energy (PSE or company)</p>	<p>Subsection (5) allows a utility to refuse to provide both electronic and paper documents on a continuous basis. PSE suggests adding the phrase "but subject to the limitations provided in this rule."</p> <p>PacifiCorp suggested changing the words "will not" to "may" to allow utilities increased flexibility.</p> <p>PSE suggested adding the following language to a new subsection: "Acknowledgement that the customer understands that utility may discontinue providing documents electronically at any time and to any customer.["]</p>	<p>Staff agrees.</p> <p>Staff agrees. In addition to the paperless bills, customers "may" receive all notices regarding service, including notices of the utility's request to increase rates and changes in service, in electronic form.</p> <p>Staff disagrees with the new suggested language. The proposed rule (see WAC 480-90/100-179(5); limit on changes to information format) already allows the utility to discontinue electronic information. Staff believes the provisions in subsection (5) of this rule spells out sufficient criteria to allow the utility to discontinue or refuse to provide electronic information.</p>
Undeliverable electronic information				
	<p>480-90-179(7) 480-100-179(7) 480-90-179 (7)(a) 480-100-179 (7)(a)</p> <p>480-90-179 (7)(a) and (b) 480-100-179 (7)(a) and (b)</p>	<p>Commission staff</p> <p>PSE, PacifiCorp, and staff</p> <p>Puget Sound Energy (PSE or company)</p> <p>Northwest Natural Gas Company (NWNNG or company)</p>	<p>Staff changed a word in the title from "documents" to "information."</p> <p>Suggested language changes to increase clarity, allow contact by telephone, change the wording from "fails" to "succeeds" for more positive approach, and refers readers to subsection (d) to address timeframes.</p> <p>This rule contains a reference only to e-mail. PSE proposes that the phrase "or other electronic address" be added as has been done in other sections.</p> <p>PSE proposed returning the customer to mail notification starting with the next following billing or other notification unless the customer requests otherwise.</p> <p>PSE proposed lengthening the timeline for subsections (a) and (b) to two business days.</p> <p>NWNNG proposed a change so that it is specific to electronically delivered bills. Subsection (7)(a) is also revised to allow a utility to either call or e-mail a customer after an e-mail bill bounces. NWNNG also proposed some edits for greater clarity and readability.</p>	<p>This matches the wording in subsection (7) of the new rule.</p> <p>Staff agrees.</p> <p>Staff agrees.</p> <p>Staff agrees. However, staff disagrees that the language needs further clarification. It already allows for this option. Staff believes that the language should be kept broad to allow for greater flexibility (i.e., mail out the electronic information immediately and without waiting for the next billing cycle).</p> <p>Staff disagrees. Staff has already included a mechanism to go to a maximum of five business days as an exception or a separate option.</p> <p>Staff agrees in part and disagrees in part. Staff agrees that a utility should be allowed to either call or e-mail a customer after a failed e-mail.</p> <p>Staff also agrees with some of the company's clarification language. Staff disagrees that subsection (7) be limited to electronic bills only. For example, notices for a rate increase are also important and the utility should take immediate action to get the information to its customer.</p>

	Section	Commenter	Comments	Staff Response
		Pacific Power (PacifiCorp or company)	<p>PacifiCorp proposed the timeframes be extended to five business days (change from the next business day) for additional delivery attempts. PacifiCorp stated that requiring additional delivery attempts within one business day is administratively burdensome and technologically impossible with the current third party vendor PacifiCorp uses to send e-mail bill notifications. Company does not impose a late payment charge on customers if they do not pay by the due date on the bill. The late payment charge is imposed if the payment is not received by the time the next statement is invoiced.</p> <p>PacifiCorp requested that it be allowed to keep a customer on paperless billing (i.e., bills, bill inserts, and notices of tariff revisions) despite receiving undelivered electronic message notification. The option of either mailing customers the returned information or providing them with instructions on how to access the information electronically. The company suggests providing the utilities the option of removing customers from the paperless billing if the second delivery attempt is returned undeliverable.</p>	<p>Staff agrees. Additional language was added to require the extension of the due date of the bill to address consumer protection concerns. Staff believes that this change allows the additional time requested by the utility while adequately protecting consumers from late payment fees, disconnects, and deposit requests which could result if the due date was not extended.</p> <p>Staff disagrees. The company did not offer a satisfactory reason to support making this change. Staff would need to see data to show why this change is necessary. PacifiCorp's reason that disallowing this change would cause its customers to be dissatisfied is insufficient.</p>
	480-90-179 (7)(b) 480-100-179 (7)(b)	Commission staff	Remove the language "A second verification is not required."	The deleted language did not add anything to the meaning.
	480-90-179 (7)(c) 480-100-179 (7)(c)	Commission staff	<p>In order to address PacifiCorp's concern about the response times for undeliverable electronic messages, staff proposed a new subsection (c) to address timing of the utilities response to undeliverable electronic messages. It provided for two options: (1) The business day following receipt of the undeliverable message; and (2) a maximum of five business days. Staff also added additional consumer protection language to require utilities to extend the due date by the number of days the electronic notification was delayed not to exceed five business days.</p>	<p>In staff's opinion, the extension of the due date will offer adequate consumer protection to preclude issues in the areas of late payment fees, disconnection of service, and deposit requests.</p>
		Puget Sound Energy (PSE or company)	PSE suggested lengthening the time line for subsections (a) and (b) to two business days because of occasional failures of electronic delivery mechanisms.	<p>Staff agrees in part and disagrees in part. Staff agrees that there should be a mechanism in the rule to address the lengthening of the time line because of occasional failures of electronic delivery mechanisms. Staff added the option of increasing the time line to a maximum of five business days (see discussion under PacifiCorp above).</p>
	480-100-179 (7)(d)	Pacific Power (PacifiCorp or company)	PacifiCorp requested that it be allowed to keep a customer on paperless billing (i.e., bills, bill inserts, and notices of tariff revisions) despite receiving undelivered electronic message notifications.	Staff agrees.
	480-90-179 (7)(d)(i) 480-100-179 (7)(d)(i) 480-90-179 (7)(d)(ii) 480-100-179 (7)(d)(ii)	Commission staff	<p>Staff added two conditions if the utility keeps a customer on paperless billing despite receiving undelivered electronic message notifications. The conditions include: (1) The utility must exhaust all reasonable attempts to correct the malfunctioning electronic address; and (2) the utility must obtain the customer's written or electronic consent to continue paperless billing even though the customer's electronic notification is returned to the utility as undeliverable.</p>	This is intended to provide adequate consumer protection when the utility keeps a customer on paperless billing even though the utility is receiving undelivered electronic message notifications.

AMENDATORY SECTION (Amending Docket No. UG-990294, General Order No. R-484, filed 5/3/01, effective 6/3/01)

WAC 480-90-103 Information to consumers. (1) Each gas utility must make available at each of its listed business offices information regarding rates, rules, and regulations needed for its customers and applicants to obtain adequate and efficient service.

(2) The utility must maintain a toll-free telephone number available for its applicants and customers during business hours to receive information relating to services and rates, to accept and process orders for service, to explain charges on customer bills, to adjust charges made in error, to respond to customer inquiries and complaints, and to generally act as representatives of the utility.

(3) The utility must provide to each applicant relevant rate information and a brochure that explains the rights and

responsibilities of a utility customer. The brochure must include, at a minimum, information about the utility's regular business hours, the utility's mailing address, the utility's toll-free number, the twenty-four hour emergency number(s), and an explanation of the utility's processes to establish credit, deposits, billing, delinquent accounts, disconnection of service initiated by the utility, cancellation of service by the customer, the dispute resolution process, and the commission's informal complaint procedures to be followed if the customer remains dissatisfied with the utility's dispute process. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(4) At least once each year, the utility must directly advise each of its customers how to obtain:

(a) A copy of the consumer brochure described in subsection (3) of this section;

(b) A copy of the customer's applicable rate information;

(c) A copy of the gas rules, chapter 480-90 WAC; and

(d) A copy of the utility's current rates and regulations.

(5) The utility must provide an applicant, upon request, the high and low bills for the requested service premises during the prior calendar year, if such data is available.

(6) The utility must provide a customer, upon request, a detailed account of the customer's actual natural gas usage at the service premises for the previous twelve-month period, if such data is available.

(7) The utility must provide customers information comparing energy usage for the current month and the same billing month of the previous year, if available, either on the customers' bills or upon request as follows:

(a) Number of days in billing period;

(b) Therms used; and

(c) Average therms used per day.

(8) The utility must provide the commission with electronic or paper copies of all pamphlets, brochures, and bill inserts of regulated service information at the same time the utility delivers such material to its customers.

AMENDATORY SECTION (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

WAC 480-90-153 Disclosure of private information.

(1) A gas utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written or electronic permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

(3) The utility must obtain a customer's prior permission for each instance of disclosure or sale of his or her private customer information to an affiliate, subsidiary or other third

party for purposes of marketing services or products that the customer does not already subscribe to and maintain a record of each instance of permission for disclosing his or her private customer information.

(4) The utility will retain the following information for each instance of a customer consent for disclosure of his or her private customer information if provided electronically:

(a) The confirmation of consent for the disclosure of private customer information;

(b) A list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of his or her private customer information; and

(c) A confirmation that the name, service address, and account number exactly matches the utility record for such account.

~~((3))~~ (5) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

~~((4))~~ (6) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

~~((5))~~ (7) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

AMENDATORY SECTION (Amending Docket No. UG-990294, General Order No. R-484, filed 5/3/01, effective 6/3/01)

WAC 480-90-178 Billing requirements and payment date. (1) Customer bills must:

(a) Be issued at intervals not to exceed two one-month billing cycles, unless the utility can show good cause for delaying the issuance of the bill. The utility must be able to show good cause if requested by the commission;

(b) Show the total amount due and payable;

(c) Show the date the bill becomes delinquent if not paid;

(d) Show the utility's business address, business hours, and toll-free telephone number and emergency telephone number by which a customer may contact the utility;

(e) Show the current and previous meter readings, the current read date, and the total amount of therms used;

(f) Show the amount of therms used for each billing rate, the applicable billing rates per therm, the basic charge or minimum bill;

(g) Show the amount of any municipal tax surcharges or their respective percentage rates;

(h) Clearly identify when a bill has been prorated. A prorated bill must be issued when service is provided for a fraction of the billing period. Unless otherwise specified in the utility's tariff, the charge must be prorated in the following manner:

(i) Flat-rate service must be prorated on the basis of the proportionate part of the period that service was rendered;

(ii) Metered service must be billed for the amount metered. The basic or minimum charge must be billed in full;

(i) Clearly identify when a bill is based on an estimation.

(i) A utility must detail its method(s) for estimating customer bills in its tariff;

(ii) The utility may not estimate for more than four consecutive months unless the cause of the estimation is inclement weather, terrain, or a previous arrangement with the customer; and

(j) Clearly identify determination of maximum demand. A utility providing service to any customer on a demand basis must detail in its filed tariff the method of applying charges and of ascertaining the demand.

(2) The minimum time allowed for payment after the bill's mailing date must be fifteen days, if mailed from within the states of Washington, Oregon, or Idaho, or eighteen days if mailed from outside the states of Washington, Oregon, and Idaho.

(3) The utility must allow a customer to change a designated payment-due date when the customer has a satisfactory reason for the change. A satisfactory reason may include, but is not limited to, adjustment of a designated payment-due date to parallel receipt of income. The preferred payment date must be prior to the next billing date.

(4) With the consent of the customer, a utility may provide billings in electronic form if the bill meets all the requirements for the use of electronic information in this chapter. The utility must maintain a record of the consent as a part of the customer's account record, and the customer may change from electronic to printed billing upon request, as provided in this chapter. The utility must complete the change within two billing cycles of the request.

NEW SECTION

WAC 480-90-179 Electronic information. With the prior consent (as defined in subsection (2) of this section) of the customer or applicant, a utility may provide the following by electronic means, instead of in paper copy sent to the customer's mailing address:

- Bills;
- Notices of tariff revisions; and
- Bill inserts containing information required to be provided to customers or applicants by statute, rule, or commission order.

The provision of this electronic information to a customer will be considered compliant with any statute, rule, commission order, or tariff provision that refers to the mailing of bills, notices of tariff revisions or bill inserts when a customer has consented to receive the information in electronic form as agreed to by the customer. The electronic form must provide a link to the electronic information, or otherwise advise the customer of the electronic location of such information.

(1) **Format of electronic communications.** All information provided in electronic form must meet the requirements for format, due dates, calculation of due dates, minimum time frames, and any other requirements specified in this chapter. Electronic information will be treated the same as documents that are mailed from a location within the state of Washington for the purposes of calculating due dates and minimum time frames.

(2) **Obtaining and documenting customer consent.**

The utility must obtain prior written or electronic consent to provide bills, notices of tariff revisions and bill inserts in electronic form (customer consent). The customer consent must be obtained directly from the customer of record and comply with the following:

(a) The consent section on the document, screen, or web page may also offer the customer separate, individual opportunities to consent to:

(i) Paperless billing offered by the utility.

(ii) Automatic payment services offered by the utility, including one-time payment services or other automatic payment services.

(iii) Equal payment plan.

For electronic consent, the customer consent section must be prominent on the web page and clearly distinguishable from any other consent on the screen or page. No information other than as provided in this section, may be combined in the same customer consent section except utility contact information. The consent section must not have consent boxes or spaces already filled in. The customer must personally check each box or space giving his or her consent to one or more services. Each service requires a separate, affirmative consent.

(b) The utility must retain a record of the customer's consent to receive electronic communications as a part of the customer's account records as evidence of the customer's consent to receive selected documents in electronic form, or to participate in paperless billing service.

(c) Documentation of the customer consent must be made available to the customer and to the commission at no charge, if requested.

(d) At a minimum, the customer consent must include the following:

(i) The name, service address, and account number that exactly matches the utility record for such account;

(ii) The customer's opt-in decision to receive electronic information;

(iii) Confirmation that the customer understands the utility will provide, upon request but subject to the limitations in this section, a paper copy of any document sent electronically at no additional charge and that the customer may opt out of receiving information electronically at any time and revert to paper format through the mail at no additional charge;

(iv) Confirmation that the customer understands it is their responsibility to notify the utility of any change to their e-mail or other electronic address; and

(v) Confirmation that the customer understands that in addition to the paperless bills they may receive all notices regarding service, including notices of the utility's request to increase rates and changes in service, in electronic form.

(3) **Distribution of electronic notices.**

(a) Electronic notices of proposed tariff changes, including increased rates or restriction of access to services, and public hearings will be marked prominently "IMPORTANT NOTICE REGARDING YOUR GAS SERVICE." (Note: For combined service customers the caption must read "ELECTRIC AND GAS SERVICES.")

(b) If the utility elects to send the notices of proposed tariff changes or public hearings separate from the bill, it will

also include a copy of the electronic notice with the electronic bill as an attachment or link. The attachment or link will include the electronic address designated by the commission where customers may file public comment(s) regarding the proposed tariff changes or restriction of access to service.

(4) **Documents requiring paper delivery.** The following documents may not be provided solely by electronic means:

(a) Notices of disconnection; and

(b) Information regarding the winter moratorium on disconnection of low-income heating customers, including written copies, if any, of extended payment plans under the winter low-income payment program.

(5) **Limit on changes to information format.** A utility is not obligated to provide both paper documents and electronic information to a customer on a continuous basis. A utility may limit a customer who has consented to electronic delivery to three requests for paper documents in a twelve-month period. A utility may require that a customer who requests an electronic bill also receive all bill inserts electronically. If a customer is unable to properly receive, view or understand electronic information provided by the utility, the utility may refuse to provide that information in electronic form.

(6) **Specialized electronic format.** When a utility provides electronic billing information in a specialized format, such as, but not limited to, the electronic data interchange (EDI), where the utility incurs a cost that is offset by not sending statements using mail, the utility may offer customers the choice of the specialized format or paper bill. In the event of a disputed bill, the customer may request and the utility shall provide customers receiving bills in a specialized format with billing details understandable by a person who will be reviewing the bills.

(7) **Undeliverable electronic information.**

(a) If any electronic information allowed in this rule is returned to the utility as undeliverable or the utility is made aware by other means that such electronic information did not reach the customer, the utility must take the following steps to ascertain and correct the problem causing the return of the information as undeliverable. It must, within the time specified in (c) of this subsection, either resend the electronic information to the customer-provided electronic address or contact the customer by telephone.

(b) If the utility fails to correct the problem within the required time, it must send the customer the information by mail and return the customer to mail notification. It also must include in the mailed information an explanation that the e-mail address or other electronic address is not functioning and indicate that future information will be sent via mail until the customer provides to the utility a functioning e-mail or other functioning electronic address.

(c) The utility must take the steps required in (a) and (b) of this subsection by either:

(i) The business day following receipt of the undeliverable message; or

(ii) If the utility extends the bill due date by five business days, within five business days.

AMENDATORY SECTION (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

WAC 480-90-194 Publication of proposed tariff changes to increase charges or restrict access to services.

Each gas utility offering service under tariff must publish or provide electronically all proposed changes to its tariff for at least thirty days, as required by RCW 80.28.060. For any proposed tariff change that would increase recurring charges, except purchased gas adjustment (PGA) filings as provided in subsection (5) of this section, or restrict access to services (e.g., discontinue a service, or limit access to service by imposing a new usage level on existing services), a utility must fulfill the requirements of subsection (1), (2), or (3) of this section. For any other proposed tariffs, the utility must fulfill the requirements of WAC 480-90-195. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

The utility will not be required to accomplish publication under this section if it has agreed to suspend its tariff filing and to provide notice as provided under WAC 480-90-197.

(1) **Thirty-day notice to individual customers.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, mail or provide electronically the posting to each customer that would be affected by the proposed change. The posting must include the information listed in subsection (4) of this section. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(2) **Published notice.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, publish notice of the proposed change within the geographical areas where it offers service. To meet minimum publication requirements, a utility must:

(a) Distribute copies of the published notice to community agencies and organizations in the geographic area where the utility offers service for posting and publication by the agency or organization. The utility must include in its distribution list any agency or organization that requests these notices;

(b) Cause to be printed in large print, as a paid advertisement, a complete copy of the published notice in the daily newspaper of general circulation with the greatest number of subscribers in each geographic area or each of the areas affected by the proposed tariff;

(c) Provide to the news editor of every newspaper, television station, and radio station, in the geographic area within which it offers service a news release or public service announcement summarizing the published notice. The release or announcement must include a toll-free number that customers can use to obtain more information from the utility. The commission will maintain a list of area newspapers, television, and radio stations and will provide it on request to any utility; and

(d) Post a complete copy of the published notice on an Internet web site accessible to the public using generally available browser software.

(3) **Reduced publication with shortened notice to individual customers.** To comply under this method, the utility must:

(a) Mail or provide electronically the posting to each customer that would be affected by the proposed change at least fifteen days before the stated effective date of the proposed change. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information;

(b) At the time of the utility's filing with the commission, distribute copies of the published notice in the same manner as provided in subsection (2)(a) of this section;

(c) At the time of the utility's filing with the commission, provide news media notice in the same manner as provided in subsection (2)(c) of this section; and

(d) At the time of the utility's filing with the commission, post a complete copy of the published notice in the same manner as provided in subsection (2)(d) of this section.

(4) **Content of postings.** The published notice required by this rule must include, when applicable:

(a) The date the notice is issued;

(b) The utility's name and address;

(c) A brief explanation of the reason(s) the utility has requested the rate change (e.g., increase in labor costs, recovery of new plant investment, and increased office expenses, such as postage and customer billing);

(d) A comparison of current and proposed rates by service;

(e) An example showing the monthly increase of the average customer's bill based on the proposed rates (e.g., "based on the proposed rates, a typical gas customer using an average of eighty therms per month would see an average monthly increase of \$2.74.");

(f) When the rates will be billed (i.e., monthly or bimonthly);

(g) The requested effective date and, if different, the implementation date;

(h) A statement that the commission has the authority to set final rates that may vary from the utility's request, which may be either higher or lower depending on the results of the investigation;

(i) A description of how customers may contact the utility if they have specific questions or need additional information about the proposal; and

(j) Public involvement language. A utility may choose from:

(i) Commission-suggested language that is available from the commission's designated public affairs officer; or

(ii) Utility-developed language that must include the commission's mailing address, toll-free number, and docket number, if known, and a brief explanation of:

(A) How to participate in the commission's process by mailing or faxing a letter, or submitting an e-mail; and

(B) How to contact the commission for process questions or to be notified of the scheduled open meeting at which the proposal will be considered by the commission.

(5) **Optional method of publication for purchase gas adjustment (PGA).** A utility that publishes notice of a PGA filing pursuant to this subsection is not required to publish

notice of the filing pursuant to subsection (1), (2), or (3) of this section.

(a) The utility must provide notice to affected customers before and after final commission disposition. Notice before commission disposition is to educate customers of a potential increase in natural gas prices. Notice after commission disposition is to inform customers of the new rates.

(b) Prior PGA notice. The notice must:

(i) Clearly define what a PGA is and explain how it works;

(ii) State whether the utility expects an increase or decrease in the upcoming filing; and

(iii) Include a utility contact phone number for additional information.

(c) The utility must ~~((mail))~~ provide the notice to each affected customer by mail or by electronic means consistent with the provisions in this chapter governing the use of electronic information. The utility must also send the notice or a press release about the increase to every daily paper within its service territory.

(d) A newsletter, bill insert, bill message, or separate mailing to customers is permitted for prior notice.

(e) Customer notice after final commission disposition must be provided pursuant to WAC 480-90-195.

AMENDATORY SECTION (Amending Docket No. UE-990473, General Order No. R-482, filed 5/3/01, effective 6/3/01)

WAC 480-100-103 Information to consumers. (1) An electric utility must make available at each of its listed business offices information regarding rates, rules, and regulations needed for its customers and applicants to obtain adequate and efficient service.

(2) The utility must maintain a toll-free telephone number available for its applicants and customers during business hours to receive information relating to services and rates, to accept and process orders for service, to explain charges on customer bills, to adjust charges made in error, to respond to customer inquiries and complaints, and to generally act as representatives of the utility.

(3) The utility must provide to each applicant relevant rate information and a brochure that explains the rights and responsibilities of a utility customer. The brochure must include, at a minimum, information about the utility's regular business hours, the utility's mailing address, the utility's toll-free number, the twenty-four hour emergency number(s), and an explanation of the utility's processes to establish credit, deposits, billing, delinquent accounts, disconnection of service initiated by the utility, cancellation of service by the customer, the dispute resolution process, and the commission's informal complaint procedures to be followed if the customer remains dissatisfied with the utility's dispute process. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(4) At least once each year, the utility must directly advise each of its customers how to obtain:

(a) A copy of the consumer brochure described in subsection (3) of this section;

(b) A copy of the customer's applicable rate information;
 (c) A copy of the electric rules, chapter 480-100 WAC;
 and

(d) A copy of the utility's current rates and regulations.

(5) The utility must provide an applicant, upon request, the high and low bills for the requested service premises during the prior calendar year, if such data is available.

(6) The utility must provide a customer, upon request, a detailed account of the customer's actual electric usage at the service premises for the previous twelve-month period, if such data is available.

(7) The utility must provide customers information comparing energy usage for the current month and same billing month of the previous year, if available, either on the customers' bills or upon request, as follows:

(a) Number of days in billing period;

(b) Kilowatt hours used; and

(c) Average kilowatt hours used per day.

(8) The utility must provide the commission with electronic or paper copies of all pamphlets, brochures, and bill inserts of regulated service information at the same time the utility delivers such material to its customers.

AMENDATORY SECTION (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

WAC 480-100-153 Disclosure of private information.

(1) An electric utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written or electronic permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

(3) The utility must obtain a customer's prior permission for each instance of disclosure or sale of his or her private customer information to an affiliate, subsidiary or other third party for purposes of marketing services or products that the customer does not already subscribe to and maintain a record of each instance of permission for disclosing his or her private customer information.

(4) The utility will retain the following information for each instance of a customer consent for disclosure of his or her private customer information if provided electronically:

(a) The confirmation of consent for the disclosure of private customer information;

(b) A list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of his or her private customer information;
and

(c) A confirmation that the name, service address, and account number exactly matches the utility record for such account.

~~((3))~~ (5) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

~~((4))~~ (6) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

~~((5))~~ (7) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

AMENDATORY SECTION (Amending Docket No. UE-990473, General Order No. R-482, filed 5/3/01, effective 6/3/01)

WAC 480-100-178 Billing requirements and payment date. (1) Customer bills must:

(a) Be issued at intervals not to exceed two one-month billing cycles, unless the utility can show good cause for delaying the issuance of the bill. The utility must be able to show good cause if requested by the commission;

(b) Show the total amount due and payable;

(c) Show the date the bill becomes delinquent if not paid;

(d) Show the utility's business address, business hours, and a toll-free telephone number and an emergency telephone number by which a customer may contact the utility;

(e) Show the current and previous meter readings, the current read date, and the total amount of kilowatt hours used;

(f) Show the amount of kilowatt hours used for each billing rate, the applicable billing rates per kilowatt hour, the basic charge or minimum bill;

(g) Show the amount of any municipal tax surcharges or their respective percentage rates;

(h) Clearly identify when a bill has been prorated. A prorated bill must be issued when service is provided for a fraction of the billing period. Unless otherwise specified in the utility's tariff, the charge must be prorated in the following manner:

(i) Flat-rate service must be prorated on the basis of the proportionate part of the period the service was rendered;

(ii) Metered service must be billed for the amount metered. The basic or minimum charge must be billed in full.

(i) Clearly identify when a bill is based on an estimation.

(i) The utility must detail its method(s) for estimating customer bills in its tariff;

(ii) The utility may not estimate for more than four consecutive months, unless the cause of the estimation is inclement weather, terrain, or a previous arrangement with the customer;

(j) Clearly identify determination of maximum demand. A utility providing service to any customer on a demand basis must detail in its filed tariff the method of applying charges and of ascertaining the demand.

(2) The minimum time allowed for payment after the bill's mailing date must be fifteen days, if mailed from within the states of Washington, Oregon, or Idaho, or eighteen days

if mailed from outside the states of Washington, Oregon, and Idaho.

(3) The utility must allow a customer to change a designated payment-due date when the customer has a satisfactory reason for the change. A satisfactory reason may include, but is not limited to, adjustment of a designated payment-due date to parallel receipt of income. The preferred payment date must be prior to the next billing date.

(4) With the consent of the customer, a utility may provide billings in electronic form if the bill meets all the requirements for the use of electronic information in this chapter. The utility must maintain a record of the consent as a part of the customer's account record, and the customer may change from electronic to printed billing upon request, as provided in this chapter. The utility must complete the change within two billing cycles of the request.

NEW SECTION

WAC 480-100-179 Electronic information. With the prior consent (as defined in subsection (2) of this section) of the customer or applicant, a utility may provide the following by electronic means, instead of in paper copy sent to the customer's mailing address:

- Bills;
- Notices of tariff revisions; and
- Bill inserts containing information required to be provided to customers or applicants by statute, rule, or commission order.

The provision of this electronic information to a customer will be considered compliant with any statute, rule, commission order, or tariff provision that refers to the mailing of bills, notices of tariff revisions or bill inserts when a customer has consented to receive the information in electronic form as agreed to by the customer. The electronic form must provide a link to the electronic information, or otherwise advise the customer of the electronic location of such information.

(1) **Format of electronic communications.** All information provided in electronic form must meet the requirements for format, due dates, calculation of due dates, minimum time frames, and any other requirements specified in this chapter. Electronic information will be treated the same as documents that are mailed from a location within the state of Washington for the purposes of calculating due dates and minimum time frames.

(2) **Obtaining and documenting customer consent.** The utility must obtain prior written or electronic consent to provide bills, notices of tariff revisions and bill inserts in electronic form (customer consent). The customer consent must be obtained directly from the customer of record and comply with the following:

(a) The consent section on the document, screen, or web page may also offer the customer separate, individual opportunities to consent to:

- (i) Paperless billing offered by the utility.
- (ii) Automatic payment services offered by the utility, including one-time payment services or other automatic payment services.
- (iii) Equal payment plan.

For electronic consent, the customer consent section must be prominent on the web page and clearly distinguishable from any other content on the screen or page. No information other than as provided in this section, may be combined in the same customer consent section except utility contact information. The consent section must not have consent boxes or spaces already filled in. The customer must personally check each box or space giving his or her consent to one or more services. Each service requires a separate, affirmative consent.

(b) The utility must retain a record of the customer's consent to receive electronic communications as a part of the customer's account records as evidence of the customer's consent to receive selected documents in electronic form, or to participate in paperless billing service.

(c) Documentation of the customer consent must be made available to the customer and to the commission at no charge, if requested.

(d) At a minimum, the customer consent must include the following:

- (i) The name, service address, and account number that exactly matches the utility record for such account;
- (ii) The customer's opt-in decision to receive electronic information;
- (iii) Confirmation that the customer understands the utility will provide, upon request but subject to the limitations in this section, a paper copy of any document sent electronically at no additional charge and that the customer may opt out of receiving information electronically at any time and revert to paper format through the mail at no additional charge;
- (iv) Confirmation that the customer understands it is their responsibility to notify the utility of any change to their e-mail or other electronic address; and

(v) Confirmation that the customer understands that in addition to the paperless bills they may receive all notices regarding service, including notices of the utility's request to increase rates and changes in service, in electronic form.

(3) Distribution of electronic notices.

(a) Electronic notices of proposed tariff changes, including increased rates or restriction of access to services, and public hearings will be marked prominently "IMPORTANT NOTICE REGARDING YOUR ELECTRIC SERVICE." (Note: For combined service customers the caption must read "ELECTRIC AND GAS SERVICES.")

(b) If the utility elects to send the notices of proposed tariff changes or public hearings separate from the bill, it will also include a copy of the electronic notice with the electronic bill as an attachment or link. The attachment or link will include the electronic address designated by the commission where customers may file public comment(s) regarding the proposed tariff changes or restriction of access to service.

(4) **Documents requiring paper delivery.** The following documents may not be provided solely by electronic means:

- (a) Notices of disconnection; and
- (b) Information regarding the winter moratorium on disconnection of low-income heating customers, including written copies, if any, of extended payment plans under the winter low-income payment program.

(5) **Limit on changes to information format.** A utility is not obligated to provide both paper documents and electronic information to a customer on a continuous basis. A utility may limit a customer who has consented to electronic delivery to three requests for paper documents in a twelve-month period. A utility may require that a customer who requests an electronic bill also receive all bill inserts electronically. If a customer is unable to properly receive, view or understand electronic information provided by the utility, the utility may refuse to provide that information in electronic form.

(6) **Specialized electronic format.** When a utility provides electronic billing information in a specialized format, such as, but not limited to, the electronic data interchange (EDI), where the utility incurs a cost that is offset by not sending statements using mail, the utility may offer customers the choice of the specialized format or paper bill. In the event of a disputed bill, the customer may request and the utility shall provide customers receiving bills in a specialized format with billing details understandable by a person who will be reviewing the bills.

(7) **Undeliverable electronic information.**

(a) If any electronic information allowed in this rule is returned to the utility as undeliverable or the utility is made aware by other means that such electronic information did not reach the customer, the utility must take the following steps to ascertain and correct the problem causing the return of the information as undeliverable. It must, within the time specified in (c) of this subsection, either resend the electronic information to the customer-provided electronic address or contact the customer by telephone.

(b) If the utility fails to correct the problem within the required time, it must send the customer the information by mail and return the customer to mail notification. It also must include in the mailed information an explanation that the e-mail address or other electronic address is not functioning and indicate that future information will be sent via mail until the customer provides to the utility a functioning e-mail or other functioning electronic address.

(c) The utility must take steps required in (a) and (b) of this subsection by either:

(i) The business day following the receipt of the undeliverable message; or

(ii) If the utility extends the bill due date by five business days, within five business days.

AMENDATORY SECTION (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

WAC 480-100-194 Publication of proposed tariff changes to increase charges or restrict access to services. Each electric utility offering service under tariff must publish or provide electronically all proposed changes to its tariff for at least thirty days, as required by RCW 80.28.060. For any proposed tariff change that would increase recurring or per-occurrence charges or restrict access to services (e.g., discontinue a service, or limit access to service by imposing a new usage level on existing services), a utility must fulfill the requirements of subsection (1), (2), or (3) of this section. For

any other proposed tariffs, the utility must fulfill the requirements of WAC 480-100-195. The utility will not be required to accomplish publication under this section if it has agreed to suspend its tariff filing and to provide notice as provided under WAC 480-100-197. The utility may provide the information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(1) **Thirty-day notice to individual customers.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, mail or provide electronically the posting to each customer that would be affected by the proposed change. The posting must include the information listed in subsection (4) of this section. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(2) **Published notice.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, publish notice of the proposed change within the geographical areas where it offers service. To meet minimum publication requirements, a utility must:

(a) Distribute copies of the published notice to community agencies and organizations in the geographic area where it offers service for posting and publication by the agency or organization. The utility must include in its distribution list any agency or organization that requests these notices;

(b) Cause to be printed in large print, as a paid advertisement, a complete copy of the published notice in the daily newspaper of general circulation with the greatest number of subscribers in each geographic area or each of the areas affected by the proposed tariff;

(c) Provide to the news editor of every newspaper, television station, and radio station in the geographic area within which it offers service a news release or public service announcement summarizing the published notice. The release or announcement must include a toll-free number that customers can use to obtain more information from the electric utility. The commission will maintain a list of area newspapers, television, and radio stations and will provide it on request to any utility; and

(d) Post a complete copy of the published notice on an Internet web site accessible to the public using generally available browser software.

(3) **Reduced publication with shortened notice to individual customers.** To comply under this method, the utility must:

(a) Mail or provide electronically the posting to each customer that would be affected by the proposed change at least fifteen days before the stated effective date of the proposed change. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information;

(b) At the time of the utility's filing with the commission, distribute copies of the published notice in the same manner as provided in subsection (2)(a) of this section;

(c) At the time of the utility's filing with the commission, provide news media notice in the same manner as provided in subsection (2)(c) of this section; and

(d) At the time of the utility's filing with the commission, post a complete copy of the published notice in the same manner as provided in subsection (2)(d) of this section.

(4) **Content of postings.** The published notice required by this rule must include, when applicable:

(a) The date the notice is issued;

(b) The utility's name and address;

(c) A brief explanation of the reason(s) the utility has requested the rate change (e.g., increase in labor costs, recovery of new plant investment, and increased office expenses, such as postage and customer billing);

(d) A comparison of current and proposed rates by service;

(e) An example showing the monthly increase of the average customer's bill based on the proposed rates (e.g., "based on the proposed rates, a typical electric customer using an average of 1,500 kwhs per month would see an average monthly increase of \$10.38.");

(f) When the rates will be billed (i.e., monthly or bimonthly);

(g) The requested effective date and, if different, the implementation date;

(h) A statement that the commission has the authority to set final rates that may vary from the utility's request, which may be either higher or lower depending on the results of the investigation;

(i) A description of how customers may contact the utility if they have specific questions or need additional information about the proposal; and

(j) Public involvement language. A utility may choose from:

(i) Commission-suggested language that is available from the commission's designated public affairs officer; or

(ii) Utility-developed language that must include the commission's mailing address, toll-free number, and docket number, if known, and a brief explanation of:

(A) How to participate in the commission's process by mailing or faxing a letter, or submitting an e-mail; and

(B) How to contact the commission for process questions or to be notified of the scheduled open meeting at which the proposal will be considered by the commission.

WSR 11-07-002

PERMANENT RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed March 2, 2011, 4:58 p.m., effective April 2, 2011]

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

Purpose: WAC 246-808-133 provides for a temporary practice permit to be issued to an otherwise qualified chiropractic applicant while a fingerprint background check is completed. To receive the temporary practice permit, the applicant must meet all other licensing requirements, qualifications, and have no criminal record in Washington. The rule provides for qualified chiropractic applicants to work within the full scope of practice for up to one hundred eighty days.

Statutory Authority for Adoption: RCW 18.25.0171, 18.130.064, 18.130.075.

Adopted under notice filed as WSR 10-22-110 on November 2, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: December 9, 2010.

Ronald G. Rogers, DC

Chair

NEW SECTION

WAC 246-808-133 Background check—Temporary practice permit. The chiropractic quality assurance commission (CQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The CQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active chiropractic license in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary practice permit grants the individual the full chiropractic scope of practice.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted chiropractic license from another state that has substantially equivalent licensing standards to those in Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 11-07-014
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 8, 2011, 9:17 a.m., effective April 8, 2011]

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

Purpose: The community services division is amending WAC 388-406-0015 Can I get Basic Food right away?, 388-472-0005 What are my rights and responsibilities?, and 388-492-0050 How do I apply for WASHCAP?

The department is amending the expedited processing requirement for Basic Food applications from five calendar days to seven calendar days to be consistent with federal regulations for the supplemental nutrition assistance program (SNAP) under 7 C.F.R. 273.2(i).

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0015, 388-472-0005, and 388-492-0050.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08.010.

Adopted under notice filed as WSR 11-03-077 on January 18, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 7, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-22-075, filed 10/31/05, effective 12/1/05)

WAC 388-406-0015 Can I get Basic Food right away? (1) When the department gets your Basic Food application, we look at your circumstances at the time you applied to see if you can get benefits within (~~five~~) seven calendar days. This is called "expedited service."

(2) To get expedited service, you must provide proof of who you are and meet one of the following conditions:

(a) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, of under one hundred fifty dollars **and** have available cash of one hundred dollars or less; or

(b) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, **plus** available cash of less than your total shelter costs (rent or mortgage and the utility allowance you are eligible for under WAC 388-450-0195); or

(c) Be a destitute migrant or seasonal farm worker household, under WAC 388-406-0021, **and** your household's available cash is one hundred dollars or less.

(3) If you are eligible for expedited service and are not required to have an office interview under WAC 388-452-0005, you can have a telephone interview and still get benefits within (~~five~~) seven days.

(4) If you are applying for Basic Food, "day one" of your (~~five-day~~) seven-day expedited service period starts on the:

(a) Day after the date you filed your application;

(b) Date you are released from a public institution; or

(c) Date of your interview if you:

(i) Waived your expedited interview and we decide you are eligible for expedited service during your rescheduled interview; or

(ii) Were screened as ineligible for expedited service and we later determine you are eligible for the service during your interview.

(5) If you get expedited service, we only require verification of your identity to provide your first benefit issuance within (~~five~~) seven days. Other required verifications may be postponed.

(6) All postponed verification must be provided for your ongoing eligibility to be determined and any additional benefits to issue. If you applied:

(a) On or before the 15th of the month, we issue one month's benefits and you have up to thirty days from the date of application to give us any postponed verification; or

(b) On or after the 16th of the month, we issue two months' benefits and you have until the end of the second month to give us any postponed verification.

(7) If we can determine ongoing eligibility at your interview and do not need to postpone any required verifications, we will assign you a regular certification period as described in WAC 388-416-0005.

(8) If you have received expedited service in the past, you can get this service again if you meet the requirements listed in subsection (2) above and you:

(a) Gave us all the information we needed to determine ongoing eligibility for your last expedited service benefit period; or

(b) Were certified under normal processing standards after your last expedited certification.

(9) If you reapply for benefits:

(a) Before your certification period ends, you are not eligible for expedited service;

(b) After your certification period ends, your ~~((five-day))~~ seven-day expedited service period is the same as a new application;

(c) While you receive transitional food assistance as described in chapter 388-489 WAC, you are not eligible for expedited service.

(10) If you are denied expedited service, you can ask for a department review of our decision. We review the decision within two working days.

AMENDATORY SECTION (Amending WSR 08-18-007, filed 8/22/08, effective 9/22/08)

WAC 388-472-0005 What are my rights and responsibilities? For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, food or medical assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(c) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(d) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within ~~((five))~~ seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

(ii) If you are pregnant and otherwise eligible, you get medical within fifteen working days.

(iii) ~~((General assistance (GAU)))~~ Disability lifeline (DL), alcohol or drug addiction treatment (ADATSA), or medical assistance may take up to forty-five days; and

(iv) Medical assistance requiring a disability decision may take up to sixty days.

(e) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(f) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(g) Ask us not to collect child support or medical support if you fear the noncustodial parent may harm you, your children, or the children in your care;

(h) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(i) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(j) Ask for ~~((a fair))~~ an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(k) Have interpreter or translator services given to you at no cost and without delay;

(l) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(m) Get help from us to register to vote.

(2) If you get cash, food, or medical assistance, you are responsible to:

(a) Tell us if you are pregnant, in need of immediate medical care, experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support or medical support unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) Give your medical identification card or letter of eligibility from us to your medical care provider; and

(k) Cooperate with the quality control review process.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

WAC 388-492-0050 How do I apply for WASHCAP?

(1) You apply for WASHCAP food benefits at the Social

Security Administration (SSA) when you apply for Supplemental Security Income (SSI).

(2) If you want food benefits, your SSA worker will ask you WASHCAP food eligibility questions when you have your SSI interview.

(3) If you are eligible for WASHCAP food benefits, your benefits will start the first of the month after the month you apply and are eligible for ongoing SSI benefits.

(4) If you need food benefits in ~~((five))~~ seven days or less, you must apply for expedited services at:

(a) Any community services office (CSO);

(b) Any home and community services office (HCS) if you get long-term care services; or

(c) Any SSA office if you give them an application for Basic Food expedited services when you apply for SSI. SSA forwards the Basic Food application to the local CSO to process.

(5) If you want Basic Food benefits before you get SSI, you must apply at:

(a) SSA if you give them a Basic Food application when you apply for SSI;

(b) Any CSO; or

(c) Any HCS office if you get long-term care services.

(6) If you already receive SSI and want WASHCAP food benefits, you can apply at:

(a) Any SSA office;

(b) Any CSO;

(c) Any HCS office if you get long-term care services.

(7) If you get Basic Food benefits, these benefits will continue:

(a) Through the end of your certification period; or

(b) Through the month before your WASHCAP food benefits start.

(8) If your Basic Food benefits end before you are eligible for WASHCAP food benefits, you must reapply to continue these benefits.

(9) If you get Basic Food benefits and you become eligible for WASHCAP food benefits, we will automatically change your Basic Food benefits to WASHCAP food benefits.

WSR 11-07-015

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-01—Filed March 8, 2011, 10:40 a.m., effective April 8, 2011]

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

Purpose: The proposed rule repeals the annual March 31 filing requirement of geographic network reports.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-43-220 (3) and (4).

Statutory Authority for Adoption: RCW 48.02.060.

Other Authority: RCW 48.43.510 and 48.43.515.

Adopted under notice filed as WSR 11-02-067 on January 5, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended [1], Repealed 1 [0].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended [1], Repealed 1 [0].

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended [1], Repealed 1 [0].

Date Adopted: March 8, 2011.

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-17, filed 8/13/08, effective 9/13/08)

WAC 284-43-220 Network reports—Format. Each health carrier must file with the commissioner a Provider Network Form A((-)) and a Network Enrollment Form B ~~((and Geographic Network Report))~~.

(1) **Provider Network Form A.** A carrier must file an electronic report of all participating providers by network. This report must contain all data items shown in Provider Network Form A prescribed by and available from the commissioner. Updated reports must be filed each month. Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describes changes in the provider network.

(2) **Network Enrollment Form B.** By March 31, 2004, and every year thereafter, a carrier must prepare an electronic report showing the total number of covered persons who were entitled to health care services during each month of the year, excluding nonresidents. A separate report must be filed for each network by line of business. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

(3) ~~((**Geographic Network Report.** By March 31st of every year, a carrier also must file an electronic or hard copy paper report meeting the standards below. The carrier must update the reports whenever a material change in the carrier's provider network occurs that significantly affects the ability of covered persons to access covered services. Each carrier must file for each network, using a network accessibility analysis system, such as GeoNetworks or any other similar system:~~

~~((a) A map showing the location of covered persons and primary care providers with a differentiation between single and multiple provider locations;~~

~~((b) An access table illustrating the relationship between primary care providers and covered persons as of December of each year by county, including at a minimum:~~

~~((i) Total number of covered persons;~~

~~(ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);~~

~~(iii) Number of covered persons meeting the carrier's self defined access standard;~~

~~(iv) Percentage of covered persons meeting the carrier's self defined access standard; and~~

~~(v) Average distance to at least one primary care provider for its covered persons; and~~

~~(e) An alphabetical list by county and city showing:~~

~~(i) Total number of covered persons;~~

~~(ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);~~

~~(iii) Total number of obstetric and women's health care providers;~~

~~(iv) Total number of specialists;~~

~~(v) Total number of nonphysician providers by license type;~~

~~(vi) Total number of hospitals; and~~

~~(vii) Total number of pharmacies.~~

~~(4) A carrier may vary the method of reporting required under subsection (3) of this section upon written request and subsequent written approval by the commissioner. In the request, the carrier must show that the carrier does not use or does not have easy access to electronic or data systems permitting the method of reporting required without incurring substantial costs.~~

~~(5)) For purposes of this section:~~

~~(a) "Line of business" means either individual, small group or large group coverage;~~

~~(b) "Network" means the group of participating providers and facilities providing health care services to a particular line of business.~~

WSR 11-07-025

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 10, 2011, 8:51 a.m., effective April 10, 2011]

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

Purpose: The department is creating this chapter to formalize the due process rights and abuse reporting requirements for individuals working in state residential habilitation centers (RHCs) that are also intermediate care facilities for persons with intellectual disabilities (ICFs/ID).

Vulnerable adult abuse reporting requirements and due process rights are codified in chapters 388-78A and 388-97 WAC, and chapters 74.34 and 34.05 RCW for individuals working in ICFs/ID that are licensed boarding homes or nursing homes. All staff working in ICFs/ID, including state RHCs is [are] subject to the requirements in chapter 74.34 RCW.

The department is proposing new sections: WAC 388-111-0001 Definitions, 388-111-0010 Mandated reporting to the department, 388-111-0020 Mandated reporting to law

enforcement, 388-111-0030 Mandated reporting policies and procedures, 388-111-0040 Resident and client protection program—Investigation of reports of abandonment, abuse, neglect, or financial exploitation, 388-111-0050 Resident and client protection program—Notice to individual of preliminary findings, 388-111-0060 Resident and client protection program—Notice to others of preliminary findings, 388-111-0070 Resident and client protection program—Disputing a preliminary finding, 388-111-0080 Resident and client protection program—Disputing a preliminary finding—Hearing procedures, 388-111-0090 Resident and client protection program—Finalizing the preliminary finding, 388-111-0100 Resident and client protection program—Reporting final findings, 388-111-0110 Resident and client protection program—Appeal of administrative law judge's initial order or finding, 388-111-0120 Resident and client protection program—Disclosure of investigative and finding information, 388-111-0130 Notice—Service complete, and 388-111-0140 Notice—Proof of service.

Statutory Authority for Adoption: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.030.

Adopted under notice filed as WSR 11-02-073 on January 5, 2011.

A final cost-benefit analysis is available by contacting John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 15, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 15, Amended 0, Repealed 0.

Date Adopted: March 9, 2011.

Susan N. Dreyfus
Secretary

Chapter 388-111 WAC

RESIDENTIAL HABILITATION CENTERS—COMPLIANCE STANDARDS

NEW SECTION

WAC 388-111-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical or physical restraints unless the restraint is consistent with certification requirements.

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives an individual an opportunity to appeal a finding of abandonment, abuse, neglect or financial exploitation of a resident.

"Administrative law judge (ALJ)" means an impartial decision maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Department" means the department of social and health services (DSHS).

"Facility":

(1) Except as defined in subsection (2) of this definition, the term "facility" means an intermediate care facility for persons with intellectual disabilities (ICF/ID).

(2) When used in the definition of "mandated reporter", the term "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any individual for his or her profit or advantage.

"Individual" means anyone used by the facility to provide services to residents, who is alleged to have abandoned,

abused, neglected, misappropriated property of, or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors and volunteers. "Individual" also includes a person used by the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Intermediate care facility for persons with intellectual disabilities (ICF/ID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, unless the facility is licensed as a nursing home under chapter 18.51 RCW or as a boarding home under chapter 18.20 RCW.

"Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

"Neglect" means that an individual or entity with a duty to care for residents has:

(1) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare or safety; or

(2) Through conduct or inaction, or a pattern of conduct or inaction, failed to provide a resident with the goods and services that maintain physical or mental health of a vulnerable adult, or that failed to avoid or prevent physical harm, pain, mental anguish, or mental illness.

"Resident" means an individual residing in a facility or in the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Willful" means the deliberate, or nonaccidental, action or inaction by an individual that he or she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

NEW SECTION

WAC 388-111-0010 Mandated reporting to the department. Mandated reporters, including the facility and staff:

(1) Must comply with reporting requirements under chapter 74.34 RCW and this chapter;

(2) Must immediately make mandated reports to the department's centralized toll free complaint telephone number or fax number when:

(a) There is reasonable cause to believe that a vulnerable adult, as defined in chapter 74.34 RCW, has been abandoned, abused, neglected, or financially exploited; or

(b) There is a reason to suspect physical or sexual assault.

(3) Must make any other written and oral reports as required by the department; and

(4) Must protect the alleged victim and others from further abuse, neglect, abandonment, and financial exploitation.

NEW SECTION

WAC 388-111-0020 Mandated reporting to law enforcement. Mandated reporters, including the facility and staff, must immediately report to the appropriate law enforcement agency if there is reason to suspect that any of the following has occurred:

- (1) Sexual assault - Any alleged or suspected sexual assault;
- (2) Physical assault (nonclient to client) - Any suspected physical assault as well as any act that causes fear of imminent harm; and
- (3) Physical assault (client to client) - Any suspected physical assault that causes bodily injury requiring more than first aid, or in the event of:
 - (a) Injuries that appear on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;
 - (b) Fractures;
 - (c) Choking attempts;
 - (d) Patterns of physical assault between the same vulnerable adults or involving the same vulnerable adults;
 - (e) A reasonable cause to believe that an act has caused fear of imminent harm; and
 - (f) Any incident, regardless of injury, if requested by the client, his/her legal representative, or family member.

NEW SECTION

WAC 388-111-0030 Mandated reporting policies and procedures. (1) The facility must develop, train staff on, and implement written policies and procedures for:

- (a) Immediately reporting mandated reporting incidents to:
 - (i) The department and law enforcement;
 - (ii) The facility; and
 - (iii) The alleged victim's legal representative.
 - (b) Protecting clients;
 - (c) Preserving evidence when necessary; and
 - (d) Initiating an outside review or investigation.
- (2) The facility must not have or implement any policies or procedures that interfere with a mandated reporter's obligation to report.

NEW SECTION

WAC 388-111-0040 Resident and client protection program—Investigation of reports of abandonment, abuse, neglect, or financial exploitation. (1) The department will review all allegations that an individual abandoned, abused, neglected, or financially exploited a resident as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

- (2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, then the department will initiate an investigation.
- (3) The department's investigation may include, but is not limited to:
 - (a) The review of facility and state agency records;

- (b) Interviews with anyone who may have relevant information about the allegation; and

- (c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-111-0050 Resident and client protection program—Notice to individual of preliminary findings.

- (1) The department will serve notice of the preliminary finding as provided in WAC 388-111-0130.
- (2) The department may establish proof of service as provided in WAC 388-111-0140.

NEW SECTION

WAC 388-111-0060 Resident and client protection program—Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

- (1) Other divisions within the department;
- (2) The facility where the incident occurred;
- (3) The employer or program that is currently associated with the individual;
- (4) Law enforcement;
- (5) Other entities as authorized by law, including chapter 74.34 RCW and this chapter; and
- (6) The appropriate licensing agency.

NEW SECTION

WAC 388-111-0070 Resident and client protection program—Disputing a preliminary finding.

(1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings and include the following information:

- (a) The individual's full legal name, current mailing address and the telephone number;
- (b) A brief explanation of why the individual disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign language or sign interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding, except under the circumstances described in WAC 388-111-0080.

NEW SECTION

WAC 388-111-0080 Resident and client protection program—Disputing a preliminary finding—Hearing procedures.

(1) If an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good

cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

(2) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC.

(3) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

NEW SECTION

WAC 388-111-0090 Resident and client protection program—Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-111-0080.

(b) The individual requests an administrative hearing to appeal the preliminary finding and the administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding.

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in subsection (3) of this section.

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:

(a) The department determines the finding was made in error;

(b) The finding is rescinded following judicial review; or

(c) The department is notified of the individual's death.

NEW SECTION

WAC 388-111-0100 Resident and client protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect or financial exploitation of a resident, within ten working days to the following:

(1) The individual;

(2) The current superintendent of the facility in which the incident occurred;

(3) The superintendent or administrator of the facility that currently employs the individual, if known;

(4) The department's registry;

(5) The appropriate licensing authority; and

(6) Any other lists maintained by a state or federal agency, as appropriate.

NEW SECTION

WAC 388-111-0110 Resident and client protection program—Appeal of administrative law judge's initial

order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists, unless removal is required under WAC 388-111-0090(3).

NEW SECTION

WAC 388-111-0120 Resident and client protection program—Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

(4) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

NEW SECTION

WAC 388-111-0130 Notice—Service complete. Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-111-0140 Notice—Proof of service. The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the facility or to the individual to whom the notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

WSR 11-07-030
PERMANENT RULES
HORSE RACING COMMISSION

[Filed March 10, 2011, 12:23 p.m., effective April 10, 2011]

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

Purpose: Allows the use of oral fluids in prescreen drug and alcohol testing.

Citation of Existing Rules Affected by this Order: Amending chapter 260-34 WAC, Drug and alcohol testing of licensees.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 11-03-062 on January 18, 2011.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 10, 2011.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-03-009, filed 1/8/09, effective 2/8/09)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, will commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

The alcohol concentration for persons on horseback may not be 0.02 percent or higher.

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in

injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath, oral fluids, and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath, oral fluids, and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, will be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington will not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

AMENDATORY SECTION (Amending WSR 08-07-039, filed 3/13/08, effective 4/13/08)

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the executive secretary, may require any licensee or applicant to provide breath, blood, oral fluids, and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution for that violation. The term "correctional institution" shall include any prison, jail or similar institution in this state or elsewhere.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(d) When any person is riding a horse on the grounds of a licensed racing association.

(2) For licensees or applicants who are subject to a field screening urine, or oral fluid test under the provisions in this chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission.

(3) The result of a test conducted with a preliminary breath test (PBT) instrument (~~(approved by the state toxicologist in chapter 448-15 WAC or other breath test equipment approved under chapter 448-16 WAC)~~), or oral swab, shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the

level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.

WSR 11-07-039

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed March 14, 2011, 2:54 p.m., effective see below]

Effective Date of Rule: This WAC rule takes effect upon the date specified in the certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational as described in the note following RCW 47.56.795. The notice of certification and effective date will be filed with the code reviser for publication in the State Register.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The precondition for the effectiveness of this rule is the certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational.

Purpose: To repeal WAC 468-300-801 through 468-300-890 and replace it with chapter 468-305 WAC which contains the rules governing toll collections and enforcement including the statewide customer service center operations, photo tolling, toll exemptions, issuance of notice of civil penalties and adjudication processes.

Citation of Existing Rules Affected by this Order: Repealing WAC 468-300-801, 468-300-805, 468-300-808, 468-300-810, 468-300-820, 468-300-822, 468-300-824, 468-300-826, 468-300-828, 468-300-830, 468-300-832, 468-300-834, 468-300-840, 468-300-850, 468-300-852, 468-300-853, 468-300-854, 468-300-860, 468-300-862, and 468-300-890.

Statutory Authority for Adoption: RCW 46.63.160, 47.46.105, 47.56.010, 47.56.030(1), 47.56.070, 47.56.403, 47.56.785, 47.56.795.

Adopted under notice filed as WSR 11-03-092 on January 19, 2011.

Changes Other than Editing from Proposed to Adopted Version: 1. **WAC 468-305-110 Why should I use a Good To Go!™ Pass?**, the last sentence of this section was deleted because it is outside the scope of this agency's rule-making authority as it is the transportation commission's sole authority to set and adjust toll rates and fees.

2. **WAC 468-305-122 What is a Pay By Plate?**, the last sentence of this section was deleted because it is outside the scope of this agency's rule-making authority as it is the transportation commission's sole authority to set and adjust toll rates and fees.

3. **WAC 468-305-124 What is a Customer-Initiated Payment?**, the last sentence of this section was deleted because it is outside the scope of this agency's rule-making authority as it is the transportation commission's sole authority to set and adjust toll rates and fees.

4. **WAC 468-305-130 What is a Pay By Mail Toll Bill?**, the last sentence of this section was deleted because it is outside the scope of this agency's rule-making authority as

it is the transportation commission's sole authority to set and adjust toll rates and fees.

5. **WAC 468-305-530 How do I request an in-person administrative hearing?**, subsection (3), the time and method required to reschedule a hearing was changed from "in writing at least twenty-four hours" to require rescheduling in writing or by phone at least one business day prior to the hearing date. A business day is Monday through Friday and excludes weekends and holidays.

6. **WAC 468-305-550 What is the burden of proof at the hearing or for the written dispute and waiver of hearing?**, the conjunctive phrase "together with" was added to combine two sentences to clarify the three elements needed to constitute prima facie evidence of a toll violation: (1) Legible photographic evidence that the vehicle listed in the notice of civil penalty used the toll facility at the respective time, date and location, and (2) was assessed a photo toll together with (3) evidence that the person named in the notice of civil penalty is the registered owner of the vehicle.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 47, Amended 0, Repealed 20.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 47, Amended 0, Repealed 20.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 47, Amended 0, Repealed 20.

Number of Sections Adopted Using Negotiated Rule Making: New 47, Amended 0, Repealed 20; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Date Adopted: March 14, 2011.

Stephen T. Reinmuth
Chief of Staff

Chapter 468-305 WAC

GENERAL PROVISIONS

NEW SECTION

WAC 468-305-001 Definitions. The following terms and acronyms shall have the meanings set forth as below.

"Active account" means an open Good To Go!™ toll account to which tolls and fees may be recorded by the customer service center system.

"Administrative fee" means the fee imposed by WSDOT for toll collection processing and other activities as set forth in chapter 468-270 WAC.

"Administrative hearing" means an in-person hearing before an administrative law judge to contest a notice of civil penalty (NOCP).

"Administrative law judge" means a judge provided by the office of administrative hearings authorized to conduct administrative hearings.

"Automatic replenishment" means the addition of money to a toll account using a customer's pre-designated payment method according to the Good To Go!™ terms and conditions.

"Branded debit card" means a debit card that can be used as a credit card.

"Civil penalty" means the penalty assessed for a toll violation.

"Closed account" means a toll account that has been closed.

"Commercial account" means a uniquely identifiable type of account for a toll customer who requests more than six Passes for their account.

"Commission" means the transportation commission appointed by the governor of the state of Washington. The commission is responsible for setting toll rates, fees and schedules.

"Customer-Initiated Payment" means the method used to pay a photo toll when there is no regular toll account and the customer pays the photo toll no later than three days after the toll transaction.

"Customer service center (CSC)" means the place that customers can contact by phone, mail, in person, fax or the internet to open and manage a toll account, and receive services regarding their account and information about state toll facilities.

"Day" means that time period reckoned from midnight to midnight.

"Department" means the Washington state department of transportation (WSDOT).

"Department of licensing (DOL)" means the agency that maintains vehicle registration information.

"Dishonored check" means any check returned to WSDOT by a financial institution for any reason of non-acceptance, nonpayment or stop payment, unless a justifiable stop payment order exists.

"Dishonored credit card transaction" means a credit card transaction that is not approved by the entity that issued the credit card.

"Dynamic toll pricing" means varying the toll rate charged to toll customers to maintain specific performance standards of traffic management.

"Eligible toll facility (toll facility)" means any portion(s) of the state highway system upon which tolling has been specifically identified by the legislature including, but not limited to, transportation corridors; bridges; crossings; interchanges; on-ramps; off-ramps; approaches; bi-state facilities; and interconnections between highways.

"Final order" means the decision provided by the administrative law judge (ALJ) in response to an administrative hearing or written dispute and waiver of hearing to contest an NOCP.

"Good To Go!™" means the name of the department's toll collection system and is a registered trademark.

"Good To Go!™ customer" means a toll customer who participates in the department's Good To Go!™ tolling program.

"Government agency transponder account" means a uniquely identifiable type of account for a public agency.

"High occupancy vehicle (HOV)" means a bus, van-pool or a carpool vehicle with minimum occupancy requirements depending upon the posted roadway HOV signage and as further described in WAC 468-510-010 and RCW 46.74.010.

"High-occupancy toll lanes (HOT lanes)" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the lanes in order to maintain travel speed and reliability. HOT lane supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment as defined in RCW 47.56.401 and 47.56.403.

"Inactive account" means a toll account that has had no toll transaction activity during a predefined period of time as defined by the Good To Go!™ terms and conditions.

"Insufficient funds account" means a toll account with a balance less than the single toll rate or fee at the time the customer's transaction is processed.

"Nonsufficient funds" means a dishonored check presented to WSDOT in payment of any toll transaction.

"Notice of civil penalty (NOCP)" means the notice that is sent to notify the registered vehicle owner of a toll violation for failure to pay a toll by the toll payment due date, and for which a civil penalty is assessed.

"Notice of dishonored credit card transaction" means a transaction authorized by a toll customer that is not honored by the financial institution for any reason except for the existence of a stop payment order.

"Notice of nonsufficient funds (NSF)" means the notice sent to a toll customer who presented a nonsufficient funds check to WSDOT in payment of any toll transaction or fee. This notice will be mailed to the toll customer at the address noted on the check returned from the financial institution.

"Pass (Good To Go!™ Pass)" means the transponder device used on WSDOT toll facilities.

"Pay By Mail" means the method used to pay a photo toll when a toll bill is mailed to the vehicle's registered owner.

"Pay By Plate" means the method used to pay a photo toll by a customer who has a toll account through the use of a photo toll system.

"Payment transaction" means a record of activity created by the customer service center as a result of a customer payment.

"Person" means an individual, firm, partnership, corporation, association, or public agency.

"Photo toll" means a charge associated with a particular vehicle that is identified by its license plate and includes Pay By Mail, Pay By Plate and Customer-Initiated Payment.

"Photo toll system" means a camera-based imaging system that uses digital video or still image formats to record license plate images of vehicles using toll lanes for the purpose of collecting photo tolls.

"RCW" means the Revised Code of Washington.

"Registered toll account" means a toll account that contains customer contact information.

"State" means the state of Washington.

"Statewide tolling program" means the single, integrated tolling operations used by all eligible state toll facilities.

ties and includes both toll collection and toll enforcement processes.

"Tacoma Narrows Bridge" means the toll facility located on SR 16 in Pierce County, Washington.

"Toll" means the charge for the use of a state toll facility that may be paid by Good To Go![™] Pass, Pay By Plate (or a registered license plate account), Customer-Initiated Payment, Pay By Mail, or cash (where available).

"Toll account (Good To Go![™] toll account)" means an account that is linked to a Pass or license plate, or both, in order to pay a toll by automatic debit.

"Toll bill (Pay by Mail Toll Bill)" means a bill that is sent to the registered owner of a vehicle which has incurred a photo toll. A toll bill will state the total amount due including photo tolls at the Pay By Mail rate and all associated administrative fees.

"Toll collection system (TCS)" means any system that creates a toll transaction and includes both electronic and photo toll collection systems, and cash where available.

"Toll customer" means anyone who passes through a toll transportation facility.

"Toll enforcement office" means the division within WSDOT responsible for toll enforcement activities associated with the notices of civil penalty (NOCPs) as well as the written disputes and administrative hearings.

"Toll enforcement officer" means any person authorized by WSDOT to review and certify notices of civil penalty (NOCP).

"Toll facility" means a toll transportation facility.

"Toll payment due date" means the date when a toll bill must be paid to avoid a toll violation and civil penalty. The toll payment due date is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

"Toll transaction" means a record of activity created by the toll collection system as a result of a vehicle traveling through a tolling point.

"Toll violation" means the violation of statutes requiring that a toll be paid by the toll payment due date which is eighty days from the toll transaction date.

"Transponder disabling device (shield)" means an authorized WSDOT device that is used to render inoperative the radio transmission of the vehicle identification code from a transponder to a roadside transponder reader.

"Transponder (Good To Go![™] Pass)" means a device attached to a toll customer's vehicle that automatically identifies the toll customer's vehicle as it passes through the toll facility.

"Transponder toll transaction" means a toll transaction has posted in the customer service center system based on a transponder number.

"Unregistered toll account" means a uniquely identifiable type of account that does not contain customer name, address, or vehicle information and requires the use of a Pass (transponder).

"Variable pricing" means a method of varying a toll rate by time of day.

"Written dispute and waiver of hearing" means a completed form containing a written statement disputing a notice of civil penalty that is reviewed and decided by an

administrative law judge. There is no appeal of a decision in response to a written dispute.

"WSDOT" means Washington state department of transportation, any division, section, office, unit or other entity within Washington state department of transportation, and any of the officers or other officials lawfully representing Washington state department of transportation.

NEW SECTION

WAC 468-305-002 What is the purpose of these rules? The purpose of these rules is to explain how the Washington state department of transportation (WSDOT) will operate its tolling programs and specifically to:

- (1) Establish a uniform toll collection and enforcement system for transportation facilities across Washington state;
- (2) Establish efficient processes for both photo and electronic toll collection including an effective toll bill system; and
- (3) Ensure fair and efficient toll enforcement and adjudication processes including the accurate issuance of notices of civil penalty (NOCP) and the opportunity for an impartial resolution of NOCP disputes.

NEW SECTION

WAC 468-305-010 Who collects the toll charges on WSDOT toll roads and bridges? (1) To ensure that tolls at all WSDOT toll facilities are collected in a timely, effective and efficient manner, WSDOT may contract with one or more independent toll collection companies to manage the day-to-day toll collection and customer service activities for its various toll facilities.

(2) All toll related revenues collected by any independent toll collection company through WSDOT are payable to the state of Washington.

(3) Although WSDOT may contract with independent toll collection companies to manage the day-to-day toll collection activities of its toll facilities, WSDOT retains ultimate oversight authority for all toll collection operations at those facilities.

NEW SECTION

WAC 468-305-015 What is "dynamic toll pricing"? Dynamic toll pricing is a toll pricing method that changes based upon live traffic conditions to maximize the performance of the toll facility. For example, in a HOT lane, the toll rate charged to enter the lane will be lower when more lane space is available, and higher when less lane space is available.

NEW SECTION

WAC 468-305-020 What is "variable toll pricing"? The variable toll pricing method changes based on time of day rather than live traffic conditions, but like dynamic toll pricing, is also intended to maximize the performance of the highway facility being tolled.

NEW SECTION

WAC 468-305-030 What is the State Route 167 high-occupancy toll (HOT) lanes pilot project? (1) The SR 167 HOT lanes are high occupancy vehicle (HOV) lanes which also serve as toll lanes for single occupancy vehicles. Single occupancy vehicles that choose to use the HOT lanes must pay a toll using an interior mounted Good To Go!™ Pass.

(2) The purpose of the project is to help determine if HOT lanes can more efficiently move people and vehicles within the SR 167 corridor by allowing drivers of single occupant vehicles, who pay a toll, to use SR 167 HOV lanes when excess capacity exists.

(3) Photo tolling is not available on the SR 167 HOT lanes. Customers must have an interior mounted Good To Go!™ Pass to use the toll facility. A violation of the high-occupancy toll lane restrictions may result in a traffic infraction issued by a law enforcement officer.

TOLL COLLECTIONNEW SECTION

WAC 468-305-100 What toll payment methods are available on WSDOT toll facilities? The following toll payment methods are available on WSDOT toll facilities:

(1) **Payment by Pass:** This toll payment option uses a Good To Go!™ Pass (transponder device) to debit funds from an associated valid toll account.

Note: This is the ONLY payment method available on the SR 167 HOT lanes pilot project. Single occupancy vehicles must pay by an interior Good To Go!™ Pass and may receive a traffic infraction for failure to pay using the Pass.

(2) **Photo toll payments:** This payment method uses a photograph of a license plate to assess the toll. The photo toll may be paid by toll account; a Customer-Initiated Payment; by individual payment on-line, mail, fax, over the phone or in person at a customer service center; or in response to a Pay By Mail toll bill.

(3) **Manual payment:** This payment method is available only on the Tacoma Narrows Bridge. It requires payment at a tollbooth using cash, a credit card or branded debit card. This option also requires you to stop your vehicle at the tollbooth facility to pay.

NEW SECTION

WAC 468-305-110 Why should I use a Good To Go!™ Pass? Paying your toll by Good To Go!™ Pass is quick and simple, and offers you the lowest toll rate. This method reads a Good To Go!™ Pass (transponder device) installed in your vehicle as you drive through the toll facility and automatically debits your toll from your toll account.

NEW SECTION

WAC 468-305-120 What is a photo toll? When a vehicle crosses a toll facility and does not pay electronically using a Good To Go!™ Pass (transponder) or with cash where accepted, an image of the vehicle's license plate will be cap-

ured and the toll will be charged. This is called a "photo toll." The photo toll may be paid:

- (1) Automatically if you have a valid toll account linked to your license plate;
- (2) By Customer-Initiated Payment; or
- (3) In response to a Pay By Mail toll bill.

NEW SECTION

WAC 468-305-122 What is a Pay By Plate? A customer may pay the photo toll by establishing a Good To Go!™ toll account and registering the vehicle license plate(s). Each time an image of the license plate is captured it will be linked to your account and the photo toll will be debited from your account. This is called "Pay By Plate."

NEW SECTION

WAC 468-305-124 What is a Customer-Initiated Payment? When a vehicle is detected through the photo toll system, the customer may initiate payment prior to the issuance of a toll bill. The Customer-Initiated Payment may be made ten days in advance or up to three days after the photo toll is incurred. The customer must provide the vehicle license plate information in order to process the payment.

NEW SECTION

WAC 468-305-130 What is a Pay By Mail toll bill? If the photo toll is unpaid after three days, a toll bill may be sent to the registered owner of the vehicle. The toll bill may contain one or more photo toll transactions.

NEW SECTION

WAC 468-305-132 What information will be included in a Pay By Mail toll bill? Pay By Mail toll bills will include the following information:

- (1) Registered owner's name and current known address;
- (2) Details of the toll charges and fees assessed; and payments, if any;
- (3) A request for payment within fifteen days of the toll bill invoice date;
- (4) A warning of the potential consequences for not paying the toll bill and tolls;
- (5) Information on how to dispute the toll bill;
- (6) Contact information for the CSC, including the web site address; and
- (7) Information about establishing a toll account.

NEW SECTION

WAC 468-305-135 What happens if I don't pay my Pay By Mail toll bill? If you do not pay the toll bill by the payment request date, you will be sent a subsequent toll bill that will include a reprocessing fee and may include any additional photo toll transactions which may have occurred since the issuance of the previous toll bill.

If you fail to pay any toll listed on the toll bill within eighty days from the date of the toll transaction, you have

committed a toll violation for which a notice of civil penalty may be issued.

NEW SECTION

WAC 468-305-140 How do I dispute a toll charge? A customer may dispute the toll charges to a toll account or in a toll bill by completing a Toll Dispute Form which is available on-line or at the customer service center. A toll may be dismissed or adjusted if the customer provides documentation that the vehicle was stolen or sold at the time of the transaction or that the toll bill contained an error in the vehicle identification, or vehicle registration information as to the proper registered owner of the vehicle.

A Good To Go!™ customer with an account in good standing at the time of the transaction but who failed to update their vehicle information may be entitled to an adjustment.

NEW SECTION

WAC 468-305-200 Are any vehicles exempt from paying a toll? Only those vehicles authorized by the commission are exempt from paying tolls. The list of qualified vehicles and qualified uses may vary depending on the toll facility.

NEW SECTION

WAC 468-305-210 What is required for a qualified vehicle to claim an exemption? (1) In order to establish a vehicle's exemption approved by the commission, you may be required to meet the following procedures:

(a) Establish that the vehicle(s) is eligible for exemption by submitting a certification of exemption eligibility; and review and monitor toll usage as requested by WSDOT;

(b) Establish and maintain a Good To Go!™ toll account in good standing and equip the qualified vehicle with a Pass; and

(c) Equip the vehicle with identification signage.

(2) To claim exemptions for specific toll transactions debited from a toll account, the registered owner or its authorized representative must submit a written request which:

(a) Includes the toll account number;

(b) Identifies the date and time of the transaction(s) for which a credit is being sought;

(c) Includes a statement that the qualified vehicle's use of the road met the exemption requirements; and

(d) Submit the written request within eighty days of the toll transaction date. The department may then issue a credit to the toll account.

(3) To claim exemption from specific toll transactions where the registered owner receives a Pay By Mail toll bill, the registered owner or its authorized representative must submit a written request which:

(a) Includes the toll bill number;

(b) Identifies the date and time of the toll transaction(s) for which a credit or waiver is being sought;

(c) Includes a statement that the qualified vehicle's use of the road met the exemption requirements; and

(d) Submit the written request within eighty days of the toll transaction date. The department may then waive the toll.

(4) Failure to submit a certification of vehicle(s) exemption eligibility or timely submit a written request for toll transaction credit will result in a waiver of the ability to claim a toll exemption.

NEW SECTION

WAC 468-305-220 How are rental car transactions processed? When a vehicle registered to a rental agency uses a toll facility without making the proper payment, the rental agency will receive notification of the toll charge, time, date, location and amount due. The rental agency may elect to pay WSDOT directly for the toll and seek reimbursement from the renter or they may provide WSDOT with the information regarding the rentee and rental vehicle as required under RCW 46.63.160(10) within thirty days of the notice mailing. WSDOT may then issue a toll bill to the rentee. If the rental agency fails to timely provide the requested information it may be held liable for the toll charges. To facilitate toll operations and collections, the department may use and allow various processes for toll transactions associated with rental agency vehicles.

TOLL ACCOUNTS

NEW SECTION

WAC 468-305-300 How can I open a Good To Go!™ toll account? (1) To open a toll account, you must complete the account application including the optional electronic check authorization if chosen.

(2) Prepay at least the minimum fund balance into the account. If you have any amounts due to the toll division they must be resolved prior to opening an account;

(3) Purchase and install a Good To Go!™ Pass (transponder device) for Pass transactions; and

(4) Register your vehicle license plate(s) for Pay By Plate transactions.

A toll account may be set up to include Pass transactions and Pay By Plate transactions.

Note: The "Good To Go!™" customer contract contains a full explanation of the Good To Go!™ terms and conditions associated with the WSDOT "Good To Go!™" toll collection program.

NEW SECTION

WAC 468-305-302 Do I need to establish a separate Good To Go!™ account for each Good To Go!™ toll road or bridge that I use? No. If you open a Good To Go!™ account, you may use any Good To Go!™ toll facility without establishing a separate toll account.

NEW SECTION

WAC 468-305-310 What are the different types of Good To Go!™ toll accounts available and what information is required for each? The department offers four different toll accounts to meet the needs of its customer.

(1) **Registered toll account.** This account contains customer contact information and will allow for Pass and Pay By Plate transactions. For Pass transactions, the vehicle or vehicles must be equipped with a transponder. For Pay By Plate transactions, the customer must provide the license plate numbers of the vehicles that will be authorized to use the account.

(2) **Unregistered toll account.** This account does not require or contain the customer's contact or identifying information. All vehicles that the customer intends to use the account must be equipped with a Pass. Automatic replenishment and account refunds are not available for this account type.

(3) **Commercial account.** This is a registered account that has more than six Good to Go!™ Passes registered to it and may have a higher account establishment level.

(4) **Government agency transponder account.** This account is a uniquely identifiable toll account for government agencies. The agency must provide customer contact information.

NEW SECTION

WAC 468-305-315 How do I replenish my account?

You may replenish your account either manually or have it replenished automatically.

(1) **Automatic account replenishment.** A customer who has a registered toll account may choose to have that account replenished automatically by using an electronic check (ACH) from your bank account, credit card, or branded debit card and according to the following requirements:

(a) **Electronic check (ACH).** You must designate a bank account (electronic check) to be used for replenishment as well as the replenishment range to be used. The replenishment amount will remain within your authorized range, but will never go below the WSDOT established minimum replenishment amount. You must also complete the electronic check – ACH Authorization Form.

(b) **Credit card or branded debit card.** You must designate a credit card or branded debit card to be used for replenishment, and designate the payment amount to be used.

The automatic replenishment amount can be raised by the customer but cannot be lowered on-line. The customer can call a customer service representative to lower the replenishment amount but it cannot be lowered below the WSDOT established minimum replenishment amount. The automatic replenishment is not available on unregistered accounts.

(2) **Manual account replenishment.** If you choose to manually replenish your account, you are responsible for monitoring your account balance and making deposits as needed to maintain a positive balance sufficient to cover toll charges.

NEW SECTION

WAC 468-305-316 What happens if my payment does not go through when opening or replenishing an account?

(1) **Opening an account.** If your payment cannot be processed (if the initial payment failed during account establishment), the account will not be opened unless another form of payment is tendered and cleared. If the payment was

not submitted in person (the ACH or bank card payments received by mail or fax), the CSC will attempt to notify the customer within three days to provide another form of payment.

(2) **Replenishing an account.** If your payment cannot be processed to automatically replenish your account, the CSC shall attempt to resubmit the payment request a second time. If your payment does not go through and your account goes negative, you may receive a toll bill(s) for any toll transactions that occur while your account was negative.

NEW SECTION

WAC 468-305-320 What are the various statuses that my account could be in? (1) A toll account may be designated with one of the following statuses:

(a) **Proposed.** An account is in this status prior to becoming active.

(b) **Active.** An account is considered active if it is funded and eligible to receive toll transactions.

(c) **Closed.** An account may be closed upon a customer's written request to close it; or closed by the CSC after twenty-four months of inactivity or if the account has a zero or negative balance.

(d) **Suspended.** An account may be suspended for up to twenty-four months at the request of the customer. Transactions and payments cannot post to a suspended toll account.

(2) The CSC will not allow a customer to close an account with a negative balance and reopen a new account. The CSC will notify the customer of the amount due, in writing, when an attempt is made to close an account with a negative balance. Unpaid balances on a toll account may be forwarded to a collections agency.

(3) If an account is suspended, closed or has insufficient funds to cover a toll transaction, the customer will receive a Pay By Mail toll bill for any transactions that do not post to the account.

(4) If funds are available on the account at the time of closure, the customer will be refunded the balance, minus any outstanding tolls and fees.

NEW SECTION

WAC 468-305-330 How can I get a refund if I close my Good To Go!™ account?

When you close your toll account, you may request a refund by mail or in person if you have a registered toll account. Account closure forms may be obtained on-line, in person or by calling the customer service center. Any outstanding fees or tolls will be deducted from the account balance prior to issuing an account refund. Refunds shall be issued within fifteen days from receipt of the completed account closure form. Refunds shall be made in the form of the original payment, when possible. For example, if deposit was made by credit card, the refund would be credited to the same credit card.

For accounts that cannot be refunded electronically, the customer will be issued a check by WSDOT to the account's last recorded mailing address. Refunds will not be issued to unregistered transponder accounts.

NEW SECTION

WAC 468-305-340 In what order will my payment be applied to what I owe in toll charges? The CSC will apply each customer payment including Customer-Initiated Payments in the following order:

(1) Payment shall be applied to the oldest outstanding unpaid toll transaction based on transaction posting date and time, unless otherwise directed by customer.

(2) For each toll transaction, payment will be applied first to the administrative fees then to the toll transaction amount.

NEW SECTION

WAC 468-305-350 What happens if my check does not clear my bank? The process for handling dishonored checks described in WAC 468-20-900, Dishonored checks.

NEW SECTION

WAC 468-305-400 What forms of payment will be accepted by the customer service center? (1) Credit card. The CSC will accept and process the following types of credit cards as a customer's method of payment:

- (a) MasterCard;
- (b) VISA;
- (c) American Express;
- (d) Discover;
- (e) Branded debit cards.

(2) Debit card. The CSC will accept and process debit cards. Debit cards that require a pin for processing will be accepted only for in-person transactions.

(3) Check. The CSC will accept the following forms of checks as a customer's method of payment:

- (a) Personal check;
- (b) Business check;
- (c) Electronic check (automatic clearing house - ACH);
- (d) Money order;
- (e) Cashier's check;
- (f) Traveler's check;
- (g) Bank or teller's check;
- (h) Government check (warrant);
- (i) Voucher or similar draft guaranteed by a U.S. bank.

(4) Cash. The CSC will accept cash in the form of U.S. coin or currency.

(5) Electronic benefits transfer. The CSC will accept and process electronic benefits transfer (EBT) at walk-in CSC locations.

(6) Inter agency payment. The CSC will accept and process inter/intra agency payment (IAP) for accounts flagged as a state agency.

(7) Electronic check (ACH).

(a) The CSC will accept direct payment from your bank account via electronic check (also known as automatic clearing house - ACH) at the walk-in centers, mobile units, online, via phone, mail and fax. Foreign banks will not be accepted.

(b) ACH payments will require either a signed authorization or electronic signature authorization from the customer. The authorization can also be verbal for payments by phone.

NEW SECTION

WAC 468-305-410 What toll payment methods are accepted at the TNB toll booths? The following forms of payments may be used to pay at the Tacoma Narrows Bridge tollbooths and the conditions under which payments will be accepted:

- (1) U.S. coin and currency;
- (2) Credit cards (MasterCard, VISA, Discover, or American Express);
- (3) Branded debit cards (no pin); and
- (4) Other noncash instruments authorized by the department.

NEW SECTION

WAC 468-305-420 What administrative services are provided to WSDOT toll customers without charge? The WSDOT provides the following administrative services to WSDOT toll customers without charge:

(1) Electronic statements are free and are available to Good To Go!™ customers at wsdot.gov/goodtogo;

(2) The interactive voice response (IVR) phone system provides previous day account balance information and information regarding the last ten account transactions and the last five payments to call-in customers without charge; and

(3) Customer service representatives will provide account balance information to call-in customers without charge and answer any concerns regarding your account.

TOLL VIOLATIONS AND PENALTIESNEW SECTION

WAC 468-305-500 What is a toll violation? If a customer does not pay a photo toll by the toll payment due date, it becomes a toll violation. The toll payment due date is eighty days from the toll transaction date.

NEW SECTION

WAC 468-305-502 What is a civil penalty? When a customer commits a toll violation a civil penalty may be assessed. The civil penalty is forty dollars, plus the toll transaction amount and associated administrative fee. The registered owner of the vehicle incurring the toll is liable for the civil penalty.

NEW SECTION

WAC 468-305-505 What is a notice of civil penalty (NOCP)? A notice of civil penalty (NOCP) is sent by WSDOT to notify the registered vehicle owner of a toll violation for which a civil penalty has been assessed. The NOCP will be served by U.S. first class mail to the registered owner of the vehicle at the address of record. The notice of civil penalty shall include:

(1) A certification of the toll by an authorized WSDOT toll enforcement officer;

(2) The amount of the penalty plus the toll including any administrative fees; and

- (3) Instructions for payment or dispute of the NOCP.

NEW SECTION

WAC 468-305-510 How do I pay a NOCP? (1) If the registered owner does not contest the NOCP, the owner must pay the appropriate penalty amount within fifteen days of the date on the NOCP to the WSDOT toll enforcement office. Payment may be made in cash, check, certified check, credit or debit card, or by money order.

(2) Payment of the penalty or failure to contest within fifteen days shall constitute a waiver of the right to contest the civil penalty.

(3) Failure to either pay the fine or timely contest the civil penalty shall automatically result in liability for the civil penalty.

(4) If the notice of civil penalty is unpaid after fifteen days, a hold will be placed on the vehicle registration renewal and the penalty may be transferred to a collections agency.

NEW SECTION

WAC 468-305-515 How can I contest or dispute a notice of civil penalty? If the registered owner chooses to contest the notice of civil penalty, the owner may submit a Written Dispute and Waiver of Hearing Form, or request an in-person administrative hearing as follows:

(1) Administrative hearing. The registered owner may request an in-person administrative hearing before an administrative law judge in order to contest one or more NOCP(s) within fifteen days of the date of the NOCP. The hearing will be consistent with the Administrative Procedure Act brief adjudicative proceedings described in RCW 34.05.482 through 34.05.494.

(2) Written dispute and waiver of hearing. The registered owner may contest an NOCP by completing and submitting a Written Dispute and Waiver of Hearing Form to the toll enforcement office within fifteen days of the date of the NOCP. However, where a registered owner chooses to dispute in writing, he or she waives the right to an in-person hearing, and the right to appeal the final order issued in response to the written dispute and waiver.

NEW SECTION

WAC 468-305-520 How do I submit a written dispute and waiver of hearing? You must complete the Written Dispute and Waiver of Hearing Form which is available on-line or in person at the WSDOT toll enforcement office or any of the Good To Go!TM customer service centers. The Written Dispute and Waiver of Hearing Form must be completed, signed and submitted according to the instructions on the form within fifteen days of the date of the NOCP.

The Written Dispute and Waiver of Hearing Form shall include a full written statement explaining the reasons for disputing the NOCP. You may also submit documentary evidence that is relevant to your dispute. The information included with the Written Dispute and Waiver of Hearing Form will be considered a final submittal and be the only information reviewed in your defense.

NEW SECTION

WAC 468-305-525 Who reviews the Written Dispute and Waiver of Hearing Form? (1) An administrative law judge will review the Written Dispute and Waiver of Hearing Form together with the evidence provided by WSDOT and make a written determination (final order on dispute and waiver) within thirty days of receiving the completed form.

(2) If the dispute is denied, the final order will include a brief statement of the reasons for the decision. Any fine owed shall be paid within ten days after issuance of the final order.

(3) The order on the written dispute and waiver is final. There is no right to appeal the final order to WSDOT or superior court.

NEW SECTION

WAC 468-305-530 How do I request an in-person administrative hearing? (1) You can request an administrative hearing by checking the appropriate box on the NOCP and returning it to the address provided on the NOCP, or by contacting the WSDOT toll enforcement office in person or by phone.

(2) Once you request a hearing, you will receive a notice of hearing which will contain:

(a) The date and time of your hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to the statutes and rules involved;

(d) A short plain statement of the matters asserted by WSDOT in the NOCP; and

(e) A statement that a party who fails to attend or participate in a hearing may be held in default.

(3) If you cannot appear on the date scheduled, you may reschedule your hearing date one time only. To reschedule your hearing you must contact the WSDOT toll enforcement office and reschedule your hearing date at least one business day prior to the hearing date. A business day is Monday through Friday and excludes weekends and holidays. You may contact WSDOT in writing or by phone to reschedule your hearing date. Written requests for rescheduling must be received no later than one business day prior to the hearing. If your hearing date is not rescheduled, and you do not appear at your scheduled hearing time, you will be in default and a final order of liability will be issued against you.

NEW SECTION

WAC 468-305-540 What information about my toll charges is available prior to the administrative hearing or submission of a written dispute? The registered owner may request a copy of the evidence package which will include the NOCPs, toll bills and other customer information at issue in the administrative hearing or written dispute. Discovery, as described in superior court civil rules 26 through 36, is not available.

NEW SECTION

WAC 468-305-542 What evidence will be before the administrative law judge at the hearing or when reviewing the written dispute and waiver of hearing? (1) WSDOT evidence. The department will provide for consideration by the administrative law judge the following:

(a) The vehicle license plate images associated with the NOCP(s);

(b) The vehicle registration information from department of licensing;

(c) The Pay By Mail toll bill(s); and

(d) Any other documentary or oral evidence pertaining to the toll violation.

(2) Other evidence.

(a) The registered owner will be afforded the opportunity to respond to the evidence with an oral statement and to present evidence that is reasonably related to the toll violation.

(b) All testimony of parties will be made under oath or affirmation.

(c) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(d) The administrative law judge may exclude evidence that is irrelevant, immaterial or repetitious.

NEW SECTION

WAC 468-305-550 What is the burden of proof at the hearing or for the written dispute and waiver of hearing? The burden of proof is upon WSDOT to establish the toll violation occurred. Legible photographic evidence that the vehicle listed in the notice of civil penalty used the toll facility at the respective time, date and location, and was assessed a photo toll together with evidence that the person named in the notice of civil penalty is the registered owner of the vehicle constitutes prima facie evidence of the toll violation. It is not a defense to a toll violation and notice of civil penalty:

(1) That a person other than the registered owner was driving the vehicle when using the toll facility; or

(2) That the person did not know to pay a toll.

NEW SECTION

WAC 468-305-560 What is the final order? The decision provided by the administrative law judge (ALJ) in response to an administrative hearing or written dispute and waiver of hearing to contest an NOCP is a final order.

After consideration of the evidence and argument as presented in either the Written Dispute and Waiver of Hearing Form, or at the administrative hearing, the administrative law judge will determine whether the toll violation was committed. When the evidence does not support the toll violation, a final order will dismiss the notice of civil penalty. When it has been established that the violation was committed, a final order affirming the toll violation and civil penalty will be issued.

NEW SECTION

WAC 468-305-562 Can I appeal a final order? (1) Administrative hearing. The final order from an in-person administrative hearing may be appealed to the superior court.

(2) Written Dispute and Waiver of Hearing Form. No appeal is available from the final order issued in response to a Written Dispute and Waiver of Hearing Form.

NEW SECTION

WAC 468-305-570 When is payment due if I am found to have committed the toll violation? If you have been issued a final order finding the toll violation was committed your payment of the NOCP is due within ten days of issuance. If you do not pay the violation a hold will be placed on your vehicle registration and the unpaid penalty will be transferred to a collections agency to collect payment.

NEW SECTION

WAC 468-305-572 Will interest be charged if an NOCP is not paid? Simple interest will begin accruing after the NOCP due date. Interest is calculated at one percent simple interest per month thereafter.

NEW SECTION

WAC 468-305-580 How do I find out if I have a lien on my vehicle registration and how can I get it released? You can check with the department of licensing to find out if there is a hold on your vehicle registration renewal. To release the hold, you must pay your civil penalty to either WSDOT toll enforcement office or the collection agency as appropriate.

NEW SECTION

WAC 468-305-582 How do I pay amounts forwarded to a collection agency? Once an unpaid civil penalty has been forwarded to a collection agency, you must contact the collection agency and pay them directly the civil penalty and fees owed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-300-801	What is the purpose of these rules?
WAC 468-300-805	What definitions are important to understanding these rules?
WAC 468-300-808	What toll paying methods are available on WSDOT toll facilities?
WAC 468-300-810	Who collects the tolls charged on WSDOT toll roads and bridges?

- WAC 468-300-820 What is a "Good To Go!™" toll collection system?
- WAC 468-300-822 Is the WSDOT electronic toll collection (ETC) system compatible with electronic payment methods used by other transportation systems?
- WAC 468-300-824 Will commercial vehicles using the CVISN program need a special transponder to use WSDOT toll facilities?
- WAC 468-300-826 What is "dynamic toll pricing"?
- WAC 468-300-828 What is the purpose of the department's State Route 167 high-occupancy toll (HOT) lanes pilot project?
- WAC 468-300-830 How can I open a "Good To Go!™" customer account and use the electronic toll collection lanes?
- WAC 468-300-832 What types of "Good To Go!™" customer accounts are available?
- WAC 468-300-834 Do I need to establish a separate "Good To Go!™" account for each "Good To Go!™" toll road or bridge that I use?
- WAC 468-300-840 What is a customer service center (CSC)?
- WAC 468-300-850 What toll payment methods are available to "Good To Go!™" customers?
- WAC 468-300-852 How can my customer account be closed?
- WAC 468-300-853 If my registered account is closed, am I entitled to a refund?
- WAC 468-300-854 What toll payment methods are available to manual toll customers?
- WAC 468-300-860 What administrative fees may apply to WSDOT toll customers?
- WAC 468-300-862 What administrative services are provided to WSDOT toll customers without charge?
- WAC 468-300-890 How does WSDOT process dishonored checks and dishonored credit card transactions?

WSR 11-07-052**PERMANENT RULES****DEPARTMENT OF HEALTH**

(Dental Quality Assurance Commission)

[Filed March 17, 2011, 10:14 a.m., effective April 17, 2011]

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

Purpose: WAC 246-817-220 Inactive license, the adopted rule creates an inactive dentist license status. The rule defines how to obtain an inactive dentist license and establishes renewal and return to active status requirements.

Statutory Authority for Adoption: RCW 18.32.185.

Other Authority: RCW 18.32.0365.

Adopted under notice filed as WSR 10-23-082 on November 15, 2010.

A final cost-benefit analysis is available by contacting Jennifer Santiago, 310 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: February 4, 2011.

Andrew A. Vorono
Chair

NEW SECTION

WAC 246-817-220 Inactive license. (1) A dentist may obtain an inactive license by meeting the requirements of WAC 246-12-090 and RCW 18.32.185.

(2) An inactive license must be renewed every year on or before the practitioner's birthday according to WAC 246-12-100 and 246-817-990.

(3) If a license is inactive for three years or less, to return to active status a dentist must meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(4) If a license is inactive for more than three years, and the dentist has been actively practicing in another United States jurisdiction, to return to active status the dentist must:

(a) Provide certification of an active dentist license, submitted directly from another licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(b) Provide verification of active practice in another United States jurisdiction within the last three years; and

(c) Meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(5) If a license is inactive for more than three years, and the dentist has not been actively practicing in another United States jurisdiction, to return to active status the dentist must provide:

- (a) A written request to change licensure status;
- (b) The applicable fees according to WAC 246-817-990;
- (c) Proof of successful completion of an approved:
 - (i) Practical/practice examination according to WAC 246-817-120; or
 - (ii) A qualifying postgraduate residency program, approved by or administered under the direction of the DQAC;
- (d) Written certification of all dental or health care licenses held, submitted directly from the licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;
- (e) Written declaration that continuing education and competency requirements for the two most recent years have been met according to WAC 246-817-440;
- (f) Proof of successful completion of an approved written jurisprudence examination within the past year;
- (g) Proof of malpractice insurance if available, including dates of coverage and any claims history; and
- (h) Proof of AIDS education according to WAC 246-817-110, if not previously provided.

WSR 11-07-065

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-38—Filed March 21, 2011, 12:09 p.m., effective April 21, 2011]

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

Purpose: The current rule does not make it illegal to buy and sell unlawfully taken wildlife. The proposed rule will prohibit the sale, purchase, and trade of fish, shellfish, and wildlife taken in violation of any law or regulation. The rule also adds velvet antlers of moose to the list of nonedible wildlife parts that cannot be sold, purchased, or traded without a permit from the director; and it more clearly details the conditions required for selling, purchasing, or trading game-farm raised deer and elk. Lastly, it provides information so that a person whose permit was denied to sell, purchase, or trade nonedible wildlife parts can request a hearing to contest the denial.

Reasons Supporting Proposal: The changes will reduce poaching by prohibiting the sale, purchase, and trade of unlawfully taken wildlife. The changes also will provide clearer guidance to people who want to buy, sell, or trade game-farm raised deer and elk, or who want to contest a denial of a permit to sell, purchase, or trade nonedible parts of wild animals, game birds, or game fish.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-071.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Adopted under notice filed as WSR 10-21-119 on October 20, 2010, and WSR 11-01-135 on December 21, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: March 18, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-209, filed 8/16/06, effective 9/16/06)

WAC 232-12-071 Buying or selling game unlawful—Game-farmed meat exception. (1) ~~((Unless prohibited by federal regulations,))~~ It is unlawful to offer for sale, sell, purchase, or barter edible parts of wild animals or game birds. It is unlawful to offer for sale, sell, purchase, or barter edible parts of game fish, except pursuant to RCW 77.65.480.

(2) It is unlawful to offer for sale, sell, purchase, or barter the nonedible parts of wild animals, game birds, or game fish ((lawfully taken may be offered for sale, sold, purchased or traded, except it is unlawful to offer for sale, sell, purchase or trade the following unless authorized by a written permit issued by the director)) if:

(a) The possession, sale, selling, purchase, or barter is prohibited by federal regulations;

(b) The wild animals, game birds, or game fish were taken in violation of any law or regulation in any jurisdiction, and the seller, purchaser, or person bartering knew the animal, bird, or fish was illegally taken; or

(c) The nonedible parts are of bighorn sheep or mountain goat((-

~~(b))~~; bear gall bladders; claws or teeth of bear that are not permanently attached to a full bear skin or mounted bear; or velvet antlers of deer ((~~or~~)), elk((-

~~(e))~~; Gall bladder, claws, or teeth of bear, except those claws or teeth permanently attached to a full bear skin or mounted bear.

(2) It is unlawful to knowingly buy, sell, or otherwise exchange, or offer to buy, sell, or otherwise exchange the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not pursuant to permit.

(3)), or moose; and a permit has not been granted by the department allowing for the sale, purchase, or barter of any of the animal parts listed in this subsection (2)(c).

(3) For purposes of subsection (2)(c) of this section, all of those parts are considered "nonedible" even if they are used for human consumption.

(4) Under RCW 77.15.194, it is unlawful to knowingly buy, sell, or otherwise exchange, or to offer to buy, sell, or otherwise exchange, the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not the animal is trapped pursuant to a permit.

(5) It is ~~(lawful)~~ unlawful to offer for sale, sell, purchase ~~((and sell the meat of))~~, or barter game-farm raised deer and elk, ~~((provided))~~ unless the following conditions have been met:

(a) Proof of the source of the game-farmed meat is maintained with the meat until the meat is consumed or exported. Qualifying proof includes sales or purchase invoices or receipts containing the following information in the English language:

(i) Name of seller or importer;

(ii) Name of the company selling the meat;

(iii) The date of sale;

(iv) The quantity of meat sold; and

(v) The species of the meat sold.

(b) The meat is imported from a U.S. licensed game farm, or a game farm in another ~~((state or))~~ country~~((s)).~~

(c) The meat is boned, and only the meat is imported ~~((for sale, and)).~~

(d) The meat is packaged for retail sale prior to ~~((import))~~ importation into this state. ~~((It is unlawful to fail to maintain proof of the source of the game-farmed meat together with the meat until the meat is consumed or exported.))~~

(6) A violation of subsection (4) of this section is punishable under RCW 77.15.194. The remaining subsections in this section are punishable under RCW 77.15.260.

(7) If you request a written permit to offer for sale, sell, purchase, or barter the nonedible parts of wild animals listed in subsection (2)(c) of this section, and your request is denied, you have a right to a hearing under the provisions of chapter 34.05 RCW. In order to obtain a hearing, you must notify the department, in writing, within forty-five days of the date of the letter denying your permit. The address to send hearing requests to is:

The Washington Department of Fish and Wildlife

Legal Affairs - Office of the Director

Post Office Box 43137

Olympia, Washington 98504-3137

If you do not request a hearing to contest denial of the permit, the permit denial will become effective forty-five days following the denial.

Purpose: This rule amends the lead-based paint abatement activities rule, which provides the department of commerce, Washington Administrative Code regulations (chapter 365-230 WAC) to seek federal authorization from the United States Environmental Protection Agency to administer and enforce the lead-based paint renovation activities rule along with the lead-based paint abatement activities rule in Washington state. This provides for accreditation of training firms, certification of individuals, certification of firms, information distribution requirements, and enforcement of renovation and lead-based paint activities in Washington state.

Citation of Existing Rules Affected by this Order: Amending chapter 365-230 WAC.

Statutory Authority for Adoption: RCW 70.103.10 [70.103.010], 70.103.20 [70.103.020], 70.103.30 [70.103.-030], 70.103.40 [70.103.040], 70.103.50 [70.103.050], 70.1080 [70.103.080], and 70.103.90 [70.103.090].

Adopted under notice filed as WSR 10-21-085 on October 19, 2010.

Changes Other than Editing from Proposed to Adopted Version: (Response to public hearings), WAC 365-230-040, changes written for the requirement of renovation principal instructors to have eight minimum hours of lead course training per 40 C.F.R. Part 745.225. WAC 365-230-160 changes written to provide recertification for lead-based paint disciplines only. WAC 365-230-360 removes requirement for certified renovation firms to provide surety bonds and insurance in its application to the department. WAC 365-230-380 provides recertification period to five years for renovators.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: March 21, 2011.

Rogers Weed
Director

WSR 11-07-067

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed March 21, 2011, 2:32 p.m., effective April 21, 2011]

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

Chapter 365-230 WAC

ACCREDITATION OF LEAD-BASED PAINT TRAINING PROGRAMS AND THE CERTIFICATION OF

FIRMS AND INDIVIDUALS CONDUCTING LEAD-BASED PAINT ACTIVITIES AND RENOVATION

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-010 Authority, purpose and scope. (1) The authority for these regulations is chapter 70.103 RCW.

(2) Purpose.

(a) These regulations address Washington's need for a qualified and properly trained work force to perform ~~((inspection, risk assessment and abatement of hazards associated with lead-based paint,))~~ lead-based paint activities, and lead-based paint renovation work, as defined in these rules, to safeguard the environment and protect human health, especially for children under six years of age and other high-risk groups from lead-based paint hazards.

(b) These regulations prescribe the accreditation requirements for training providers offering lead-based paint activities and lead-based paint renovation training courses to qualify individuals for lead-based paint certification and will require that all lead-based paint training courses be offered or provided only by accredited training providers.

(c) These regulations prescribe the certification requirements of individuals and firms engaged in lead-based paint activities and renovation in target housing and child occupied facilities.

(d) These regulations establish work practice standards for the performance of lead-based paint abatement, inspection, risk assessment, ~~((and abatement activities for))~~ renovation, dust sampling by individuals and firms, and will require that only certified individuals and the certified firms employing such individuals perform these lead-based paint activities and lead-based paint renovations.

(3) Scope.

(a) These rules apply to all individuals and firms that are engaged in lead-based paint activities and lead-based paint renovation as defined in these regulations, (WAC 365-230-200 and 365-230-330) except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities and renovation be performed only by certified individuals and the certified firms employing such individuals.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of lead-based paint inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker, and of legally registered firms employing such individuals.

(d) These rules prescribe work practice standards for ~~((the))~~ lead-based paint abatement and renovation, and for the performance of lead-based paint ~~((hazards and for the performance of lead-based paint))~~ inspection ~~((and))~~, risk assessment, renovation, dust sampling, and those actions or circum-

stances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke, or modify certification.

(e) These rules establish application fees for certification and accreditation.

(f) These rules establish a procedure by which training providers may apply for and obtain accreditation to offer initial and refresher lead-based paint ~~((activity))~~ courses in any of the following disciplines: Inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker.

(g) These rules prescribe the requirements for training programs to provide, offer, or claim to provide accredited lead-based paint activities and renovation courses.

(h) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke or modify accreditation.

(i) These rules describe the actions or failures to act that constitute violations of these rules and for which the department may issue fines.

(j) These rules establish a schedule of penalties for failure to comply with these rules.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-016 Contact information for accreditation and certification matters. Application materials and information concerning lead-based paint accreditation and certification as described in these rules can be obtained from the lead-based paint program via the following contact information:

(1) Mailing address: Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

(2) Telephone number: 360-586-LEAD (5323)

(3) ~~((Fax number: 360-586-5880~~

~~((4)))~~ Web site: ~~((www.cted.wa.gov/lead))~~ www.commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-020 Definitions. As used in these rules unless otherwise required by context:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or the encapsulation of lead-based paint with an EPA-approved encapsulant, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will

be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in (a) and (b) of this subsection.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under (c) of this subsection.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through ~~((the))~~ their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under (c) of this subsection.

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accreditation" means the process whereby the department has reviewed and approved a training provider's written application with associated materials for accreditation, and has conducted an on-site audit finding the training program is in compliance as specified in these rules.

(3) "Accredited training program" means a training program accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, to provide training for individuals engaged in lead-based paint activities, renovation, or dust sampling.

(4) "Accredited training course" means either an initial or a refresher training course accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, that provides training for individuals engaged in lead-based paint activities and renovation.

(5) "Accredited training provider" means an individual, corporation, partnership or other unincorporated association or public entity to which the department has approved accreditation to offer one or more lead-based paint courses.

(6) "Approved" means approved in writing by the department.

(7) "Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(8) "Business day" means Monday through Friday with the exception of legal Washington state holidays.

(9) "Certified" means issued a certificate by the department based on meeting requirements for the appropriate discipline. Those requirements include, but are not limited to, the following:

(a) Successful completion of a training program accredited by the department; and

(b) Receiving a passing score on a certification examination administered by the department, or by the training firm in the certification of lead-based paint workers, renovators, and dust sampling technicians; and

(c) Satisfaction of any other requirements for the appropriate discipline; and

(d) Submittal and approval of the appropriate application by the department for inspection, risk assessment or abatement activities in target housing and child-occupied facilities; and

(e) Submittal and approval of the appropriate renovator or dust sampling technician application by the department.

Note: Guidance policy is written to grandfather in all Washington state residents previously certified by EPA as renovators, dust sampling technicians, or Washington renovation firms into the department. Out-of-state residents are required to submit appropriate renovator, dust sampling technician, or renovation firm application and fee to the department.

(10) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a certificate under these rules.

(11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under the age of six, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(12) "Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(13) "Clearance examination standards" means a maximum of 40 micrograms of lead in dust per square foot on floors, 250 micrograms of lead in dust per square foot on interior window sills, and 400 micrograms of lead in dust on window troughs.

(14) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(15) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

(16) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(17) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(18) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement or renovation.

(19) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

(20) "Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(21) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.

(22) "Course completion certificate" means documentation issued by an accredited training provider to an individual as proof of successful completion of a department-approved lead-based paint course or initial training course. All course completion certificates are valid for six months from the course completion date.

(23) "Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

(24) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during an initial or refresher training course.

(25) "Department" means the ((Washington)) department of ((community, trade, and economic development)) commerce.

(26) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or

exterior surface or fixture that is otherwise damaged or separated from the substrate.

(27) "Director" means the director of the ((Washington)) department of ((community, trade, and economic development)) commerce.

(28) "Discipline" means one of the specific types or categories of lead-based paint activities or renovation identified in these rules for which individuals may receive training from accredited programs and become certified by the department. For example, "abatement worker" is a discipline.

(29) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(30) "Documented methodologies" are the methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(31) "Dripline" means the area within three feet surrounding the perimeter of a building.

(32) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft² on floors or 250 µg/ft² on interior window sills based on wipe samples.

(33) "Elevated blood lead level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

(34) "Encapsulant" means ((a)) an EPA-approved substance that forms a barrier between lead-based paint and the environment using a liquid applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

(35) "Encapsulation" means the application of an encapsulant.

(36) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(37) "EPA" means the Environmental Protection Agency.

(38) "Firm" means a sole proprietorship, corporation, association, firm, partnership, or joint stock company legally registered with the Washington department of licensing to conduct business in the state of Washington.

(39) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(40) "Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(41) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(42) "Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in WAC 365-230-

200 or 365-230-330 as well as any other skill taught in a training course.

(43) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(44) "Initial training course" means a full, accredited lead-based paint training course required for certification. It is different than a refresher course.

(45) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(46) "Inspector" means an individual who is certified by the department to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with WAC 365-230-200. An inspector may also collect dust and soil samples ~~(and)~~ to perform clearance testing. An inspector may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

(47) "Interim controls" mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(48) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(49) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter, 5000 parts per million, or 0.5 percent by weight.

(50) "Lead-based paint activities" mean, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in these rules.

(51) "Lead-based paint activities courses" mean training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training providers.

(52) "Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

(53) "Lead-hazard screen" is a limited risk assessment activity that involves limited paint and dust sampling as described in WAC 365-230-200.

(54) "Licensed" means a person who has been certified by the department in one or more disciplines.

(55) "Living area" means any area of a residential dwelling used by one or more children under the age of six, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

(56) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

(57) "Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which

is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(58) "Multifamily housing" means a housing property consisting of more than four dwelling units.

(59) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(60) "Permanent" means having an expected design life of twenty years.

(61) "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian tribe, state, or political subdepartment thereof; any interstate body; and any department, agency, or instrumentality of the federal government.

(62) "Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, such factors including the following: The presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

(63) "Preliminary clearance" means clearance of interior living areas according to which an inspector or risk assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance levels.

(64) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

(65) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a manual disability is an example of a proficiency test.

(66) "Project designer" means an individual who is certified by the department to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for large lead abatement projects in target housing and child-occupied facilities, including occupant notification and protection, cleanup and clearance, and abatement reports.

(67) "Refresher training course" means a minimum ~~((seven-hour training course-))~~ of eight training hours, or four training hours for project designer(+), renovator, or dust sampling technician accredited by the department to update an individual's knowledge and skills in the discipline in which training is offered.

(68) "Renovator courses" means certified renovator or certified dust sampling technician courses accredited by the department.

(69) "Residential dwelling" means:

(a) A detached single-family dwelling unit, including attached structures such as porches and stoops; or

(b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

~~((69))~~ (70) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

~~((70))~~ (71) "Risk assessor" means an individual who is certified by the department to conduct in target housing and child-occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with WAC 365-230-200.

~~((71))~~ (72) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or book-cases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room.

~~((72))~~ (73) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

~~((73))~~ (74) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

~~((74))~~ (75) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 250 parts per million (~~((mg/g))~~ or, (mg/kg) based on soil samples.

~~((75))~~ (76) "Soil sample" means a sample collected in a representative location using ASTM E1727, "*Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques*," or equivalent method. ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((76))~~ (77) "Supervisor" means an individual who is certified by the department to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child-occupied

facilities, and to prepare occupant protection plans and abatement reports in accordance with WAC 365-230-200.

~~((77))~~ (78) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

~~((78))~~ (79) "These rules" means Washington Administrative Code (WAC) 365-230-010 through ~~((365-230-270))~~ 365-230-385.

~~((79))~~ (80) "Train-the-trainer course" means a course that includes, but is not limited to, instruction in the planning and teaching of adult education, adult learning principles, designing training objectives, selecting and designing training activities, creating an effective learning environment, facilitating group involvement and discussions, and strategies for dealing with difficult training situations and difficult learners.

~~((80))~~ (81) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

~~((81))~~ (82) "Training hour" means at least fifty minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

~~((82))~~ (83) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

~~((83))~~ (84) "Training provider" means any business entity accredited under WAC 365-230-035 and 365-230-040 that offers lead-based paint activities and renovation courses.

~~((84))~~ (85) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing 60 µg/ft², a composite sample (three subsamples) containing 100 µg/ft², and a composite sample (four subsamples) containing 110 mg/ft² is 100 µg/ft². This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

~~((85))~~ (86) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool), and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

~~((86))~~ (87) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined

by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

((87)) (88) "Worker" means an individual who is certified by the department and licensed by the construction contractors' board to conduct lead-based paint abatement activities in target housing and child-occupied facilities in accordance with WAC 365-230-200.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-030 Accreditation required. (1) No firm, individual or other entity shall provide, offer, or claim to provide a department-accredited lead-based paint training course without applying for and receiving accreditation from the department as required by these rules.

(2) A training provider may be accredited for the initial inspector, risk assessor, renovator, dust sampling technician, abatement worker, supervisor, and project designer training courses or for refresher training courses within the same disciplines.

(3) Only accredited training providers are eligible to offer initial and refresher lead-based paint training courses.

(4) To qualify for and maintain accreditation, a training provider shall:

(a) Propose and offer at least one accredited lead-based paint training course.

(b) Conform to personnel, operational and curriculum requirements.

(c) Comply with accreditation application and procedural requirements.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-035 Application process. The following are procedures a training program must follow to receive accreditation by the department to offer lead-based paint activities training courses, or renovation and dust sampling technician courses:

(1) A training program seeking accreditation shall submit a complete written application to the department. To be considered complete, the application must be on the appropriate departmental form and include all required documentation and attachments.

(2) Information that must be provided with the application is as follows:

(a) Name, address, and phone number of training provider and training program manager.

(b) A list of course(s) for which accreditation is being applied. For the purposes of this section, courses taught in

different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(c) The name and documentation of the qualifications of the training manager.

(d) The name(s) and documentation of qualifications of any principal instructor(s).

(e) A statement signed by the training program manager certifying that the training program meets the requirements under WAC 365-230-040.

((8)) (f) If a training program uses EPA-recommended model training materials, or training materials approved by an EPA-authorized state or Indian tribe, the training manager shall include a statement certifying that. If the training program makes any changes or additions to the model curriculum, the training manager shall submit a statement indicating the changes or additions and shall submit a copy of the new or changed curriculum. It is not necessary to submit unchanged model training curriculum materials.

((9)) (g) If a training program does not use model training materials as described in ((8)) (f) of this subsection, the training manager shall include: A copy of the entire course instruction curriculum, including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, and any other materials to be used for the course.

((10)) (h) All applications for accreditation shall include:

(i) A copy of the course test blueprint describing the portion of test questions devoted to each major course topic.

(ii) A description of the facilities and equipment to be used for lecture and hands-on training, respectively.

(iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(iv) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

(A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.

(B) Procedures for the training manager's annual review of principal instructor competency.

(v) Documentation of accreditation by other state or federal agencies, if applicable.

(vi) A check or money order made out to the department of ~~((community, trade, and economic development))~~ commerce in the amount as described in WAC 365-230-120.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-040 Requirements for the accreditation of training programs. For a training program to obtain accreditation from the department to offer lead-based paint activities courses, lead-based paint renovation courses or dust sampling technician courses, the program shall meet the following requirements:

(1) The training program shall employ a training manager who has:

(a) At least two years of experience, education, or training in teaching workers or adults; or

(b) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(c) Two years of experience in managing a training program specializing in environmental hazards; and

(d) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(a) Demonstrated experience, education, or training in teaching workers or adults; and

(b) Successfully completed at least sixteen hours of any department-accredited, EPA-accredited or tribal-accredited lead-specific training for instructors of lead-based paint activities courses; or at least eight hours of any department-accredited, EPA-accredited or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) The following documents shall be recognized by the department as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in subsections (1), (2), and (3) of this section. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by WAC 365-230-090. Those documents include the following:

(a) Official academic transcripts or diploma as evidence of meeting education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(c) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(a) The inspector course shall last a minimum of twenty-four training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in WAC 365-230-050.

(b) The risk assessor course shall last a minimum of sixteen training hours, with a minimum of four hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in WAC 365-230-050.

(c) The supervisor course shall last a minimum of thirty-two training hours, with a minimum of eight hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in WAC 365-230-050.

(d) The project designer course shall last a minimum of eight training hours. The minimum curriculum requirements for the project designer course are contained in WAC 365-230-050.

(e) The abatement worker course shall last a minimum of sixteen training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in WAC 365-230-050.

(f) The renovator course must last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in WAC 365-230-050(6).

(g) The dust sampling technician course must last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in WAC 365-230-050(7).

(7) For each course offered, the training program shall conduct ~~((either))~~ a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(a) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in WAC 365-230-050.

(b) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(c) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(a) The name, a unique identification number, and address of the individual.

(b) The name of the particular course that the individual completed.

(c) Dates of course completion/test passage.

(d) The name, address, and telephone number of the training program.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of principal instructor competency.

(10) The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in WAC 365-230-200(2); and shall offer the renovator or dust sampling technician courses that teach the applicable work practice standards contained in WAC 365-230-200 and 365-233-330, as well as other standards developed by EPA pursuant to Title IV of TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities and renovation or dust sampling they are responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) A course audit shall include, but not be limited to, a review of: Instructional curriculum; examination design, administration and security procedures, and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; coverage; and teaching facilities.

(13) An accredited training provider may not implement changes in method or content that affects one half-hour or more of contact instruction without ten business days advance notice of the changes to department.

(14) The training provider is responsible for ensuring that the training manager and principal instructor comply with the requirements of this rule.

(15) Whenever there is a change in either the training manager or principal instructor for an accredited training course, the training provider shall notify the department of this change within thirty days, along with documentation demonstrating the appropriate qualifications as described in this section.

(16) The training provider shall use a system for verifying the positive identification of all trainees. Trainees without proper identification may not take the course exam.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-050 Minimum training curriculum requirements. To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that

require hands-on activities as an integral component of the course.

(1) Inspector.

(a) Role and responsibilities of an inspector.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(d) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.*

(e) Paint, dust, and soil sampling methodologies.*

(f) Clearance standards and testing, including random sampling.*

(g) Preparation of the final inspection report.*

(h) Recordkeeping.

(2) Risk assessor.

(a) Role and responsibilities of a risk assessor.

(b) Collection of background information to perform a risk assessment.

(c) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(d) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*

(e) Lead hazard screen protocol.

(f) Sampling for other sources of lead exposure.*

(g) Interpretation of lead-based paint and other lead sampling results, including all applicable state or federal guidance or regulations pertaining to lead-based paint hazards.*

(h) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(i) Preparation of a final risk assessment report.

(3) Supervisor.

(a) Role and responsibilities of a supervisor.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(d) Liability and insurance issues relating to lead-based paint abatement.

(e) Risk assessment and inspection report interpretation.*

(f) Development and implementation of an occupant protection plan and abatement report.

(g) Lead-based paint hazard recognition and control.*

(h) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(i) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*

(j) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*

(k) Clearance standards and testing.

(l) Cleanup and waste disposal.

(m) Recordkeeping.

(4) Project designer.

(a) Role and responsibilities of a project designer.

(b) Development and implementation of an occupant protection plan for large scale abatement projects.

(c) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(d) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(e) Clearance standards and testing for large scale abatement projects.

(f) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) Abatement worker.

(a) Role and responsibilities of an abatement worker.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state and local regulations and guidance that pertain to lead-based paint abatement.

(d) Lead-based paint hazard recognition and control.*

(e) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(f) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*

(g) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*

(6) Renovator.

(a) Role and responsibilities of a renovator.

(b) Background information on lead and its adverse health effects.

(c) Background information on EPA, HUD, OSHA, and other local regulations and guidance that pertains to lead-based paint and renovation activities.

(d) Procedures for using acceptable test kits to determine whether paint is lead-based paint.*

(e) Renovation methods to minimize the creation of dust and lead-based paint hazards.*

(f) Interior and exterior containment and clean-up methods.*

(g) Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.*

(h) Waste handling and disposal.

(i) Providing on-the-job training to other workers.

(j) Record preparation.

(7) Dust sampling technician.

(a) Role and responsibilities of a dust sampling technician.

(b) Background information on lead and its adverse health effects.

(c) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(d) Dust sampling methodologies.*

(e) Clearance standards and testing.

(f) Report preparation.*

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-060 Requirements for the accreditation of refresher training courses. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, ~~((and))~~ abatement worker, renovator, and dust sampling technician. A training program may apply for accreditation of a refresher training course concurrently with its application for accreditation of an initial training course. All applications for accreditation of a refresher training course must follow the application process as described in WAC 365-230-035. To obtain department accreditation to offer refresher training, a training program must meet the requirements for accreditation of a training program as described in WAC 365-230-040, except for the minimum training-hour requirements in WAC 365-230-040 (6)(a) through ~~((e))~~ (g). In addition, applicants for accreditation of a refresher training course must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed in WAC 365-230-050, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(a) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(b) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(c) Current technologies relating to lead-based paint ~~((activities))~~ in general, as well as specific information pertaining to the appropriate discipline.

(2) Each refresher course, except for the project designer, renovator, and dust sampling technician course, shall last a minimum of eight training hours. ~~((The))~~ Project designer, renovator, and dust sampling technician refresher courses shall last a minimum of four training hours.

(3) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-100 Notification of lead-based paint training activity. (1) The training manager shall provide notification of lead-based paint activities courses or renovator and dust sampling technician courses offered.

(a) ~~((The training manager shall provide the department with notice of all lead-based paint activities courses offered.))~~ The original notice must be received by the department at least ~~((ten))~~ seven business days prior to offering any lead-based paint activities or renovator and dust sampling technician courses.

(b) The training manager shall provide the department updated notice when lead-based paint activities or renovator and dust sampling technician courses will begin on a date

other than the one specified in the original notification, as follows:

(i) For lead-based paint activities or renovator and dust sampling technician courses beginning prior to the original start date an updated notice must be received by the department at least ~~((ten))~~ seven business days before the revised start date.

(ii) For lead-based paint activities or renovator and dust sampling technician courses beginning after the original start date an updated notice must be received by the department at least two business days before the original start date.

(c) The training manager shall update the department of any change in location of lead-based paint activities or renovator and dust sampling technician courses at least ~~((ten))~~ seven business days prior to the scheduled course start date.

(d) The training manager shall also update the department regarding any course cancellations, or any other change to the original notice. Updated notices must be received by the department at least two business days prior to the scheduled course start date.

(e) Each notice, including updates, shall include the following:

(i) Notification type (original, update, cancellation).

(ii) Training program name, department accreditation number, address, and phone number.

(iii) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(iv) Date(s) and time(s) of training.

(v) Training location(s) phone number, and street address.

(vi) Principal instructor's name.

(vii) Training manager's name and signature.

(f) Notification shall be accomplished using ~~((any))~~ one of the following methods: Written ~~((notice, or by e-mail))~~ or electronic. ~~((All notices submitted by e-mail must be followed with written notice within twenty-four hours of submission. Written))~~ Notification of lead-based paint activities, renovator, or dust sampling technician course schedules can be accomplished by using either the sample form titled "~~((Lead-Based Paint Activities Training Course Follow-up))~~ Pre-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department at 360-586-5323, or on the internet at ~~((http://www.cted.wa.gov/lead))~~ http://www.commerce.wa.gov/lead.

(g) Lead-based paint activities or renovator and dust sampling technician courses shall not begin on a date, or at a location other than that specified in the original notice unless an updated notice identifying a new date or location is submitted, in which case the course must begin on the date and location specified in the updated notice.

(h) No training program shall provide lead-based paint activities or renovator and dust sampling technician courses without first notifying the agency of such activities in accordance

with the requirements of this ~~((paragraph))~~ subsection (1)(h).

(2) The training manager shall provide notification following completion of lead-based paint activities or renovator and dust sampling technician courses.

(a) The training manager shall provide the department with notice after the completion of any lead-based paint activities or renovator and dust sampling technician course that shall be received by the department no later than ~~((twenty))~~ ten business days following course completion.

(b) The notice shall include the following:

(i) Training program name, department accreditation number, address, and phone number.

(ii) Course discipline and type (initial/refresher).

(iii) Date(s) of training.

(iv) The following information for each student who took the course:

(A) Name.

(B) Address.

(C) Course completion certificate number.

(D) Student test score.

(v) Training manager's name and signature.

(c) Notification shall be accomplished using ~~((any))~~ one of the following methods: Written ~~((notice, or by e-mail))~~ or electronic. ~~((All notices submitted by e-mail must be followed with written notice within twenty-four hours of submission. Written))~~ Notification following lead-based paint activities ~~((training))~~, renovator, or dust sampling technician courses can be accomplished by using either the sample form titled "~~((Lead-Based Paint Activities Training Course Follow-up))~~ Post-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from department at 360-586-5323, or on the internet at ~~((http://www.cted.gov/lead))~~ http://www.commerce.gov/lead.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-120 Accreditation fees. The following fees are established for accreditation:

(1) A nonrefundable application fee of two hundred dollars for accreditation of an initial or refresher lead-based paint training course.

(2) A nonrefundable application fee of two hundred dollars for reaccreditation of an initial or a refresher lead-based paint training course.

(3) If an initial or refresher course provides instruction for more than one discipline, a separate application fee of two hundred dollars for each discipline is required.

(4) All fees shall be in the form of a check or money order made out to the department of ~~((community, trade, and economic development))~~ commerce.

**CERTIFICATION OF INDIVIDUALS AND FIRMS
ENGAGED IN LEAD-BASED PAINT ACTIVITIES:
TARGET HOUSING AND CHILD-OCCUPIED FACIL-
ITIES**

Note: Renovation firms, renovator, and dust sampling technician certification requirements are found under WAC 365-230-360 and 365-230-380.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-130 Certification of individuals. (1)

No individual shall perform any lead-based paint activity as described in WAC 365-230-200 without first becoming certified by the department. Certified individuals may perform only specific lead-based paint activities for which they are certified. Individuals seeking certification by the department to engage in lead-based paint activities must:

~~((a))~~ Submit a complete application as described in WAC ~~((365-230-170))~~ 365-230-150 and must provide documentation that the applicant has either:

~~((i))~~ (a) Met the certification requirements as described in WAC 365-230-132 for the inspector, risk assessor, or supervisor disciplines; or WAC 365-230-134 for the project designer or worker disciplines; or

~~((ii))~~ (b) Holds a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 CFR 745.324.

~~((A))~~ (i) Applicants for certification based on certification from another state or tribal program must document to the department that they have read and understand the certification and work practice standards as described in these rules.

~~((B))~~ (ii) Certification based on a valid lead-based paint certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(2) Individuals may first apply to the department for certification to engage in lead-based paint activities pursuant to this section on or after the effective date of these rules.

(3) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving the department certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in the Work practice standards section (WAC 365-230-200).

(5) It shall be a violation of these rules for an individual to conduct any of the lead-based paint activities described in the Work practice standards section (WAC 365-230-200) that has not been certified by the department.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-132 Inspector, risk assessor, or supervisor. (1) To become certified by the department as an inspector, risk assessor, supervisor, pursuant to WAC 365-230-130, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Pass the certification exam in the appropriate discipline offered by the department; and

(c) Meet or exceed the following experience and/or education requirements:

(i) Inspectors. No additional experience and/or education requirements.

(ii) Risk assessors.

(A) Successful completion of an accredited training course for inspectors; and

(B) Bachelor's degree and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an associates degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(C) Certification as an industrial hygienist, an engineer, a registered architect, certified safety professional, registered sanitarian, or registered environmental specialist; or

(D) A high school diploma (or equivalent), and at least three years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(ii) Supervisor:

(A) One year of experience as a certified lead-based paint abatement worker; or

(B) At least two years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(2) In order to be eligible to take the certification examination for a particular discipline, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Meet or exceed the education and experience requirements described in this section.

(c) Submit a completed application as described in WAC 365-230-150.

(3) An individual may take the certification exam no more than three times within six months of receiving a course completion certificate.

(4) If an individual does not pass the certification exam and receive a certificate within six months of receiving his/her course completion certificate, the individual must successfully complete the appropriate lead-based paint course from an accredited training program before reapplying for certification from the department.

(5) A passing score on third-party, qualifying examination administered by the department is seventy or above.

(6) After successfully completing the appropriate training and application requirements as described in these rules, an individual shall be certified by the department.

(7) To maintain certification, an individual must be recertified as described in WAC (~~(365-230-170)~~) 365-230-160.

(8) Certification shall be nontransferable.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-150 Application requirements for an individual. (1) Applications for an individual shall be submitted on forms prescribed by the department and shall be accompanied, as appropriate, by either:

(a) Documentation that the applicant has met the required training, experience, and education requirements as described in WAC 365-230-132 (~~(\emptyset)~~), 365-230-134, and 365-230-380. Acceptable documentation includes the following:

(i) As proof of meeting the training requirements, a valid lead-based paint training course completion certificate issued by a department-accredited training provider.

(ii) As proof of meeting the work experience requirements, documentation must include name and address of employer, name and telephone number of supervisor; employment dates, description of specific duties performed. The supervisor or employer must sign the documentation verifying that the information is true and correct. A self-employed individual must provide the name, address and Uniform Business Identifier of business, dates of self-employment, and a description of specific duties. Documentation of work experience must be provided on the appropriate departmental form.

(iii) As proof of meeting the educational requirements, documentation such as an official transcript or diploma; or

(b) Documentation that the applicant holds a valid certification in the appropriate discipline issued by EPA or by an EPA-authorized state or tribe.

(i) Applicants seeking certification based on an EPA or EPA-authorized state or tribal certification must document to the department that they have read and will comply with the certification and work practice standards of these rules.

(ii) Certification based on an EPA or EPA-authorized state or tribal certification shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(2) All applications for certification shall be accompanied by:

(a) Two current passport-size photos.

(b) Applicant's name, signature and date.

(c) A check or money order made out to the department of (~~(community, trade, and economic development)~~) commerce in the amount as described in the certification fees section of these rules.

(3) Application materials can be obtained by mail from Department of (~~(Community, Trade, and Economic Development)~~) Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at (~~(http://www.eted.wa.gov/lead)~~) http://commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-160 Recertification. (1) To maintain certification in a (~~(particular)~~) Lead-Based Paint Activities discipline, a certified individual shall apply to and be recertified by the department in that discipline either:

(a) Every three years after the original date of issue if the individual completed a training course with a course test and hands-on assessment; or

(b) Every five years if the individual completed a training course with a proficiency test.

(2) An individual shall be recertified if the individual:

(a) Successfully completes the appropriate accredited refresher training course; and

(b) Submits a valid copy of the appropriate refresher course completion certificate; and

(c) Complies with the following application requirements established by the department:

(i) Submit a complete and signed application; and

(ii) Submit two recent passport-size photographs; and

(iii) Submit a check or money order made out to the department of community, trade, and economic development in the amount as described in WAC 365-230-260.

(3) Application materials can be obtained by mail from Department of (~~(Community, Trade, and Economic Development)~~) Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at (~~(http://www.eted.wa.gov/lead)~~) http://commerce.wa.gov/lead.

(4) An individual whose certification expires may obtain certification by completing the requirements described in WAC 365-230-150 and 365-230-130.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-180 Application requirements for a firm. (1) Applications for a firm shall be submitted on forms prescribed by the department and shall be accompanied, by the following:

A letter of compliance, signed by an officer of the firm, or an individual authorized to sign on the firm's behalf, certifying the following:

(a) The firm will employ only certified employees of the appropriate discipline to conduct lead-based paint activities as prescribed in these rules.

(b) The firm will follow the standards for conducting lead-based paint activities as prescribed in these rules.

(c) The firm shall maintain all records pursuant to these rules.

(2) A check or money order made out to the department of (~~(community, trade, and economic development)~~) commerce in the amount as described in WAC 365-230-260.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-200 Work practice standards. (1) Only certified individuals and the certified firms employing

such individuals shall perform or offer to perform lead-based paint activities.

(2) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Revised, October, 1997); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by this department; any other equivalent methods and guidelines.

(3) Clearance levels appropriate for the purposes of this section may be found in subsection (8)(~~(e)~~)(g)(i) and (v) of this section or other equivalent guidelines.

(4) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations described in this section, and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart R.

(a) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(i) Two square feet of deteriorated lead-based paint per room or equivalent;

(ii) Twenty square feet of deteriorated paint on the exterior building; or

(iii) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) When performing any lead-based paint activity described as a lead-based paint inspection, lead hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with these rules, documented methodologies, work practice requirements, and the work practice standards described in this section.

(5) Inspection. Only a person certified by the department as an inspector or risk assessor may conduct an inspection.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead-based paint as follows:

(i) In target housing and child-occupied facilities, each interior and exterior component with a distinct painting history shall be tested for lead-based paint, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint; and

(ii) In a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

(i) Inspection date;

(ii) Building address;

(iii) Date of construction;

(iv) Apartment identification (numbers, letters, names if applicable);

(v) Name, address and telephone number of owner or owners of each unit;

(vi) Name, signature, and certification number of each inspector or risk assessor conducting testing;

(vii) Name, address and telephone number of the certified firm employing each inspector or risk assessor;

(viii) Each testing method and device or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and

(ix) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(6) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined using documented methodologies, and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multifamily dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified for conducting lead hazard screens in residential dwellings in the Work Practice Standard section of these rules. In addition, composite dust samples shall be collected in common areas where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(i) Information in a risk assessment report as specified in subsection (7) including (i)(i) through (xiv) and excluding (i)(xv) through (xviii). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(ii) Any recommendations for follow-up risk assessment and other further actions.

(7) Risk assessment. Only an individual certified by the department as a risk assessor may conduct a risk assessment of target housing or child-occupied facility. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint.

(ii) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) For multifamily dwellings and child-occupied facilities, the samples required in "residential dwellings" as described in (b) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to sampled target house or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., nonplay areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include as a minimum the following information:

(i) Assessment date.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment identification (numbers, letters, names if applicable).

(v) Name, address and telephone number of each owner of each building.

(vi) Name, signature, and certification number of each risk assessor conducting the assessment.

(vii) Name, address and telephone number of the certified firm employing each risk assessor.

(viii) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure employed for paint analysis.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to subsection background information portion of the risk assessment work practice standard of this section.

(xvi) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(8) Abatement. An abatement project shall be conducted only by certified individuals and the certified firms employing such individuals. Abatement shall be conducted as follows:

(a) A certified supervisor or project designer is required for each abatement project and shall be on-site during all worksite preparation and during postabatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be on-site or available by telephone, pager, or answering service, and be able to be present at the worksite in no more than two hours.

(b) The certified supervisor or project designer, as well as the certified firm employing that individual shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) A certified project designer may replace and assume the responsibilities of a certified supervisor required for an abatement project. If a certified project designer provides supervision on an abatement project, the project designer shall be responsible for preparing the occupant protection plan and the abatement report.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abate-

ment to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(e) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(f) These work practices shall be restricted during abatement and paint removal:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(iii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with high efficiency particulate air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iv) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than twenty square feet on exterior surfaces; and

(v) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100°F.

(g) When soil abatement is conducted, if the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but (~~no greater~~) less than 250 parts per million (<250 ppm).

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(iii) If the soil is not removed, the soil shall be permanently covered so as to be separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement, asphalt or concrete.

(h) Soil interim controls:

(i) Grass, mulch, shrubbery and other landscaping materials are not considered permanent covering, but may be used as interim controls that eliminate contact with bare soils.

(ii) Interim control measures are acceptable in areas where bare soils contain less than the current HUD abatement standard for lead in soils, except in:

(A) A child's play area, or any bare soil area where a child under six years of age regularly plays. Interim control measures are not acceptable in these areas where soil lead levels exceed 250 ppm.

(B) A garden area, or any other area where bare soils produce edibles intended for human consumption. Interim controls are not acceptable in these areas where soil lead levels exceed 250 ppm.

(iii) On-going monitoring and evaluation of interim soil control measures must follow HUD Guidelines - Table 6.1, Standard Reevaluation Schedule Number 6, under the column header entitled, "Visual Survey," as a requirement for interim soils control. This requirement must be included in a written report provided to the owner and occupants of the property.

~~((H))~~ (i) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(i) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor or designer may apply in writing to the department for authorization of a preliminary clearance. The application must include the following:

(A) The project address.

(B) The name and certification number of the abatement project supervisor or project designer.

(C) A description of the conditions that justify issuance of a waiver.

(D) A description of the abatement work that remains to be done on the project.

(E) A schedule for completion of the abatement work that remains to be done.

(F) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(G) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor or designer shall present the department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(ii) Following the visual inspection and any postabatement cleanup required in subsection (8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iv) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(v) Postabatement clearance activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

~~((H))~~ (i) After conducting an abatement with containment between containment and noncontainment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(i) After conducting ~~((H))~~ abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor

of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(ii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(iii) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(iv) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination refresher or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination refresher divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested until clearance examination standards are met.

(v) The clearance levels for lead in dust are less than 40 µg/ft² for floors, less than 250 µg/ft² for interior window sills, and less than 400 µg/ft² for window troughs.

~~((f))~~ (k) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (8)(i) of this section.

(iii) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five percent level of confidence that no more than five percent or fifty of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

~~((h))~~ (l) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(i) Start and completion dates of abatement.

(ii) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor or project designer assigned to the abatement project.

(iii) The occupant protection plan.

(iv) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(v) The results of clearance sampling and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(vi) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

~~((g))~~ (m) A clearance report shall be prepared by a certified inspector or risk assessor. The clearance report shall include the following information:

(i) The property address where the clearance sampling occurred.

(ii) The abatement clean-up completion date and time.

(iii) The date and time of clearance sampling.

(iv) Name and certification number of each inspector or risk assessor conducting the clearance.

(v) The signature of the inspector or risk assessor conducting the clearance.

(vi) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor.

(vii) Results of the visual inspection.

(viii) Identification of containment or noncontainment applications.

(ix) Identification of location(s) where clearance samples were collected.

(x) Name, address, and telephone number of the laboratory analyzing the collected samples.

(xi) All results of laboratory analysis on collected samples, including quality control results.

(xii) Documented methodology used for sampling.

(9) Sampling. Any paint chip, dust, or soil samples collected pursuant to this section shall be collected by a certified inspector or risk assessor. Such sampling shall incorporate sample quality control procedures and the samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(10) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or postabatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(11) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months.

(a) The following reports must be submitted to the department as specified in WAC 365-230-100 and 365-230-220:

(i) Notification of lead-based paint activities course to take place.

(ii) Notification of lead-based paint activities course that has taken place.

(iii) Notice of abatement.

(b) All reports required by these rules may be submitted on forms available from the department. The exhibit referred to in this rule is not printed in this WAC. Copies are available as follows from department of ~~((community, trade, and economic development))~~ **commerce**:

Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

Telephone number: ~~((360-586-5373))~~ 360-586-5323

~~((Fax number: 360-586-5880))~~

Web site: ~~((www.cted.wa.gov/lead))~~ www.commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-210 Determinations of lead-based paint and lead-based paint hazards. (1) Lead-based paint is present:

(a) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter, equal to or in excess of 5,000 parts per million, or equal to or in excess of 0.5 percent by weight; and

(b) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(2) A paint-lead hazard is present:

(a) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the "clearance examination standards" definition of these rules;

(b) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(c) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against a door frame); and

(d) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(a) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills is equal to or greater than 40 µg/ft² for floors and 250 µg/ft² for interior window sills, respectively;

(b) On floors or interior window sills in an unsampled residential dwelling in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(c) On floors or interior window sills in an unsampled common area in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present in a residential dwelling or child-occupied facility when the soil-lead concentration from a composite sample of bare soil is equal to or greater than 250 ppm.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-220 Notice of abatement. A certified firm shall notify the department of lead-based paint abatement activities as follows:

(1) Except as provided in subsection (2) of this section, the department must be notified prior to conducting lead-based paint abatement activities. The original notice must be received by the department at least five business days before lead-based paint abatement activities begin.

(2) Notice for abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order must be received by the department as early as possible before, but not later than the day lead-based paint abatement activities begin. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the notification to take advantage of this abbreviated notification period.

(3) Updated notice of a new start date must be provided to the department for lead-based paint abatement activities that will begin on a date other than the date specified in the original notification notice, as follows:

(a) For lead-based paint abatement activities beginning prior to the original start date, an updated notice must be received by the department at least five business days before the revised start date.

(b) For lead-based paint abatement activities beginning after the original start date, an updated notice must be received by the department on or before the original start date.

(4) The certified firm shall update the department of any change in location of lead-based paint abatement activities at least five business days prior to the project start date.

(5) The certified firm shall also update the department regarding the cancellation of any lead-based paint abatement activities, or other significant changes including, but not limited to, when the square footage or acreage to be abated changes by at least twenty percent. This updated notice must be received by the department on or before the start date provided to the department, or if work has already begun, within twenty-four hours of the change.

(6) The following shall be included in each notice:

(a) Notification type (original, updated, cancellation).

(b) Date when lead-based paint abatement activities will commence.

(c) Date when lead-based paint abatement activities will end (approximation using best professional judgment).

(d) Firm's name, the department certification number, address, phone number.

(e) Type of building (e.g., single-family dwelling, multifamily dwelling, child-occupied facilities) on/in which abatement work will be performed.

(f) Property name (if applicable).

(g) Property address including apartment or unit number (if applicable) for abatement work.

(h) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if applicable.

(i) Name and department certification number of the certified supervisor or project designer.

(j) Approximate square footage/acreage to be abated.

(k) Brief description of abatement activities to be performed.

(l) Name, title, and signature of the representative of the certified firm who prepared the notification.

(7) Notification shall be accomplished using ~~((any))~~ one of the following methods: Written ~~((notice, or by e-mail))~~ or electronic. ~~((All notices submitted by e-mail must be followed by written notice within twenty-four hours of submission. Written))~~ Notification can be accomplished using either the sample form titled "Notice of Abatement" or similar form. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow sufficient time for delivery to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department via phone 360-586-5323 ~~((or fax 360-588-5880))~~, or on the internet at ~~((http://www.eced.gov/lead))~~ http://www.commerce.gov/lead.

(8) In the event of changes to the information provided in the original notification, lead-based paint abatement activities shall not begin on a date, or at a location, other than that specified in either an original or updated notice.

(9) No firm or individual shall engage in lead-based paint abatement activities, as defined in WAC 365-230-200 prior to notifying the department of such activities according to requirements of this section. No lead-based paint abatement activities described in the notice of abatement may begin until the notice has been approved by the department.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-240 Suspension, revocation and modification of accredited training course or lead-based paint certification. (1) The department may suspend, revoke or modify accreditation of a training course, or the lead-based paint certification of an individual or firm, and may assess a civil penalty, if the individual, entity, or responsible party under these rules has:

(a) Failed to comply with a requirement of chapter 70.103 RCW or the rules adopted thereunder; or

(b) Obtained or retained accreditation or certification by error, misrepresentation, or fraud.

(2) The department may assess a civil penalty against any person who engages in lead-based paint ~~((activity))~~ activities or renovation without certification from the department or who offers to provide or provides lead-based paint training courses without accreditation from the department.

(3) Prior to denying, suspending, revoking, or modifying an accreditation or certification, or imposing a civil penalty, the department in writing shall notify the affected entity of:

(a) The factual and legal basis for the alleged violation;

(b) The penalty assessed for the alleged violation;

(c) The date on which the penalties take effect; and

(d) The opportunity to contest the action by requesting an adjudicative proceeding within twenty days of notice of the action.

(4) Whenever an affected entity does not timely request an adjudication proceeding to contest the department's action, the action becomes final and binding on the day specified in the notification of action. Except as provided in subsection (3) of this section, the filing of a timely request for an adjudicative proceeding stays any action against the affected entity until completion of the adjudicative proceeding.

(5) Whenever the department determines that the public health, safety, or welfare warrants immediate action, the department may summarily suspend accreditation or certification prior to the opportunity for an adjudicative proceeding, as provided in RCW 34.05.479.

(6) Any request for adjudicative proceeding shall be conducted by the department under chapters 34.05 RCW and 10-08 WAC.

(7) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(8) Department shall maintain a list, available to the public, of entities whose accreditation has been suspended, revoked, or modified.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-250 Schedule of penalties. (1) The standard penalty for each violation shall be a maximum:

First violation of any section, five hundred dollars and/or ten days suspension.

Second violation of any section, one thousand dollars and/or twenty days suspension.

Third violation of any section, one thousand five hundred dollars and/or thirty days suspension.

Fourth violation of any section, two thousand dollars and/or one year suspension or revocation.

Fifth violation of any section, five thousand dollars and/or one year suspension (or more) or revocation.

(2) The department may aggravate the maximum standard penalty in an amount not to exceed ~~((five))~~ ten thousand dollars per violation and/or revocation, based on the following factors:

(a) The violation caused or had the potential to cause injury to humans or significant property damage;

(b) The violation involved fraud or intentional misrepresentation;

(c) The violation was similar to a previous violation; or

(d) The violator obstructed or failed to cooperate with the department's investigation of the violation.

(3) The department may mitigate the maximum standard penalty if the violator has cooperated with the department's investigation and has voluntarily undertaken steps to prevent reoccurrence of the same violation.

(4) Any person or entity whose accreditation or certification has been revoked shall not be eligible to reapply for one year from the effective date of the final order of revocation.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-260 Certification fees. The following fees are established for certification:

(1) Firms, inspectors, risk assessors, renovators, dust wipe sampling technicians, supervisors, project designers and workers shall pay a nonrefundable certification or recertification fee of twenty-five dollars.

(2) All fees shall be in the form of a check or money order made out to the department of ~~((community, trade, and economic development))~~ commerce.

LEAD-BASED PAINT RENOVATION

Renovation Definitions, Work Practices, Renovator and Dust Wipe Sampling Technician Certification, Renovation Firm Certification, Information Distribution Requirements, etc.

Residential property renovation rules.

This part contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) cite RCW statutory authority here and applies to all renovations performed for compensation in target housing and child-occupied facilities.

NEW SECTION

WAC 365-230-280 Purpose. (1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with WAC 365-230-300 are properly trained; renovators and firms performing these renovations are certified; and the work practices in WAC 365-230-330 are followed during these renovations.

NEW SECTION

WAC 365-230-290 Effective dates. (1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements, and work practice standards in this section are applicable in Washington state. The training, certification and accreditation requirements, and work practice standards in this section will become effective as follows:

(a) Training programs. Effective May 15, 2011, no training program may provide, offer, or claim to provide training or refresher training for department certification as a renovator or a dust sampling technician without accreditation from the department under WAC 365-230-030. Training programs may apply for accreditation under WAC 365-230-030 beginning March 15, 2011.

(b) Firms.

(i) Firms may apply for certification under WAC 365-230-360 beginning March 15, 2011.

(ii) On or after the implementation date, no firm may perform, offer, or claim to perform renovations for compensation without certification from the department under WAC 365-230-360 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in WAC 365-230-300(1).

(c) Individuals. On or after the implementation date, all renovations must be directed by renovators certified in accordance with WAC 365-230-380(1) and performed by certified renovators or individuals trained in accordance with WAC 365-230-340 (2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in WAC 365-230-300(1).

(d) Work practices. On or after the implementation date, all renovations must be performed in accordance with the work practice standards in WAC 365-230-330 and the recordkeeping requirements in WAC 365-230-340 (2)(a) and (f) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in WAC 365-230-300(1).

(e) Suspension and revocation provisions in WAC 365-230-390 are effective upon implementation of these rules.

(2) Renovation-specific pamphlet. Renovators or firms performing renovations in Washington state must provide owners and occupants with "*The Lead-Safe Certified Guide To Renovate Right*."

(3) Prerenovation education rule. With the exception of the requirement to use the pamphlet entitled "*The Lead-Safe Certified Guide To Renovate Right*" the provisions of the prerenovation education rule have been in effect since June 1999, Toxic Substance Control Act (TSCA 406b).

NEW SECTION

WAC 365-230-300 Applicability. This section applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to WAC 365-230-130) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter (mg/cm²) or 0.5 percent by weight, where the firm performing the renovation has obtained a copy of the determination.

(2)(a) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in WAC 365-230-350 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5 percent by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in WAC 365-230-320 do not apply to emergency renovations, which are renovation activities that were not planned but result from

a sudden, unexpected event (such as nonroutine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood-lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in WAC 365-230-330, 365-230-360, and 365-230-380 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of WAC 365-230-330 (1)(e), which must be performed by certified renovators or individuals trained in accordance with WAC 365-230-385 (1)(b), the cleaning verification requirements of WAC 365-230-330(2), which must be performed by certified renovators, and the recordkeeping requirements of WAC 365-230-340 (2)(f).

NEW SECTION

WAC 365-230-310 Definitions. For purposes of this chapter, the definitions in WAC 365-230-020 and the following definitions apply:

"Cleaning verification card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether postrenovation cleaning has been properly completed.

"Department" means the Washington department of commerce lead-based paint program.

"Dry disposable cleaning cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

"Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization.

"HEPA vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

"Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or twenty square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by WAC 365-230-330 (1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same thirty days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Pamphlet" means the EPA pamphlet titled "*The Lead-Safe Certified Guide to Renovate Right*" developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet.

"Recognized test kit" means a commercially available kit recognized by EPA under §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligram per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined under WAC 365-230-200. The term renovation includes, but is not limited to: The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weatherstripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this section. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized state or tribal program.

"Wet disposable cleaning cloth" means a commercially available, premoistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet mopping system" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Work area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

NEW SECTION

WAC 365-230-320 Information distribution requirements. (1) Renovations in dwelling units. No more than sixty days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) In addition to the requirements in subsection (1)(a) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

(ii) Obtain a certificate of mailing at least seven days prior to the renovation.

(2) Renovations in common areas. No more than sixty days before beginning renovation activities in common areas of multiunit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required under WAC 365-230-340 at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can receive a copy of the records required by WAC 365-230-340 (3) and (4) or obtain a copy from the renovation firm at no cost to the occupants.

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the

initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than sixty days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required under WAC 365-230-340 (3) and (4) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required under WAC

365-230-340 (3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by subsection (1)(a)(i) and (b)(i) of this section, subsection (2)(a)(i) of this section, subsection (3)(a)(i)(A) and (a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(b) Be either a separate sheet or part of any written contractor service agreement for the renovation.

(c) Be written in the same language as the text of the contractor agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

NEW SECTION

WAC 365-230-330 Work practice standards. (1) Standards for renovation activities. Renovations must be performed by certified firms using certified renovators as directed under WAC 365-230-370. The responsibilities of certified firms are set forth under WAC 365-230-360 and the responsibilities of certified renovators are set forth under WAC 365-230-380.

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the postrenovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345 (b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within twenty feet of the renovation. On multistory buildings, close all doors and windows within twenty feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering.

(D) In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(c) Prohibited and restricted practices. The work practices listed below shall be prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited.

(ii) The use of machines designed to remove paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with a HEPA exhaust control.

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100°F.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from noncontaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within two feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

(2) Standards for postrenovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by recleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure:

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, reclean the windowsill as directed in this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than

the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for postrenovation cleaning verification. If the surface within the work area is greater than forty square feet, the surface within the work area must be divided into roughly equal sections that are each less than forty square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, reclean that section of the surface as directed in this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been recleaned, wait for one hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved postrenovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(ii) When the work area passes the postrenovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal or local law requires dust wipe sampling.

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this section.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to reclean the work area until the dust clearance sample results are below the

clearance standards in WAC 365-230-020 or any applicable local standard.

(4) Activities conducted after postrenovation cleaning verification. Activities that do not disturb paint such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after postrenovation cleaning verification has been performed.

NEW SECTION

WAC 365-230-340 Recordkeeping and reporting requirements. (1) Firms performing renovations must retain and, if requested, make available to the department all records necessary to demonstrate compliance with this section for a period of three years following completion of the renovation. This three-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable state or tribal laws or regulations.

(2) Records that must be retained pursuant to subsection (a) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described under WAC 365-230-300. These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to this chapter).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(b) Signed and dated acknowledgments of receipt as described under WAC 365-230-320 (1)(a)(i) and (b)(i), (2)(a)(i), (3)(a)(i)(A) and (a)(ii)(A).

(c) Certifications of attempted delivery as described under WAC 365-230-320 (1)(a)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described under WAC 365-230-320 (1)(a)(ii) and (b)(ii), (2)(a)(ii), (3)(a)(i)(B) and (a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described under WAC 365-230-320 (2)(c) and (d), and renovations in child-occupied facilities, as described under WAC 365-230-320 (3)(b).

(f) Documentation of compliance with the requirements under WAC 365-230-330, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described under WAC 365-230-330(1), and that the certified renovator performed the postrenovation cleaning verification described under WAC 365-230-330(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined under WAC 365-230-330, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within twenty feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within twenty feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(v) Waste was contained on-site and while being transported off-site.

(vi) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(vii) The certified renovator performed the postrenovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within thirty days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this section to the following persons.

(i) The owner of the building; and, if different;

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multiunit target housing, renovation firms must post the information required by this section or instructions on how

interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by this subsection may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required under subsection (2)(a)(ii) of this section and the training and work practice compliance information required under subsection (2)(f) of this section.

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted under WAC 365-230-330(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within thirty days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different;

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility;

(c) When performing renovations in common areas of multiunit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all the affected units.

NEW SECTION

WAC 365-230-350 Recognized test kits. (1) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in subsection (3)(a) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in subsection (3) of this section.

(2) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA-approved testing program.

(a) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following web site for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

(b) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(c) Before September 1, 2010, test kits must meet only the negative response criteria in subsection (3)(a) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meet both of the criteria in subsection (3) of this section.

(d) After September 1, 2010, test kits must meet both of the criteria in subsection (3) of this section.

(e) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's web site.

(f) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(3) Response criteria.

(a) Negative response criteria. For paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5 percent by weight, a demonstrated probability (with 95 percent confidence) of a negative response less than or equal to 5 percent of the time.

(b) Positive response criteria. For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5 percent by weight, a demonstrated probability (with 95 percent confidence) of a positive response less than or equal to 10 percent of the time.

NEW SECTION

WAC 365-230-360 Certification of renovation firms.

(1) No firm shall offer to perform for compensation any of the lead-based paint renovation activities described in WAC 365-230-330 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint renovation activities. The firm is responsible for ensuring that its employees follow the work practice requirements for renovation as described in WAC 365-230-330.

(2) A firm seeking certification shall submit to the department a completed application as described in this section.

(3) The firm shall maintain all records pursuant to WAC 365-230-340.

(4) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within thirty days of the change of ownership, and of any changes to information submitted on the original application.

(5) The certification period for renovation firms is five years from the date certification is issued. To maintain its renovation firm certification, a firm must be recertified by the department every five years.

(6) To retain certification, a firm shall submit to the department an application as described above prior to the expiration date listed on the firm's certification.

NEW SECTION

WAC 365-230-370 Application requirements for renovation firms. (1) Applications for a firm shall be submitted on forms prescribed by the department and shall be accompanied by the following:

A letter of compliance, signed by an officer of the firm, or an individual authorized to sign on the firm's behalf, certifying the following:

(a) The firm will employ only certified renovators, or other workers trained by certified renovators to conduct lead-based paint renovation activities as prescribed in these rules.

(b) The firm will follow the standards for conducting lead-based paint renovation activities as prescribed in these rules.

(c) The firm shall maintain all records pursuant to these rules.

(2) A check or money order made out to the department of commerce in the amount as described under WAC 365-230-260.

NEW SECTION

WAC 365-230-375 Approval or disapproval of renovation firm certification. (1) The department may disapprove an application for certification for the following reasons including, but not limited to:

(a) Failure to complete application in accordance with these rules, or department policy or instructions;

(b) Failure to satisfy eligibility requirements for certification;

(c) Failure to provide required documentation or information requested by the department;

(d) History of citations or violations of existing regulations or these rules, regulations including execution of a consent agreement in settlement of an enforcement action;

(e) History of revocation of a certificate;

(f) Making false or misleading statements in the application;

(g) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under the department.

(2) In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for certification. The department may also request additional materials under the recordkeeping requirements of WAC 365-230-340. If a firm's application for certification has been disapproved, the program may reapply for certification at any time.

NEW SECTION

WAC 365-230-380 Renovator and dust sampling technician certification and recertification. (1) No individual shall perform lead-based paint renovation or dust sampling technician activities as described in this section unless they are certified by the department. Individuals seeking initial certification by the department to engage in lead-based paint renovation activities must successfully complete a dust sampling technician or renovator course accredited by the department. The course completion certificate serves as proof of training. Certified individuals may perform only lead-based paint renovation activities for which they are certified. To become certified as a renovator or dust sampling technician, an individual must:

(a) Submit a completed application to the department as described under WAC 365-230-150 and must provide documentation that the applicant has either:

(i) Met the certification requirements as described in this subsection for renovator or dust sampling technician.

(ii) Hold a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 CFR 745.324.

(A) Applicants for certification based on certification from another state or tribal program must document to the department that they have read and understand the certification and work practice standards as described in these rules.

(B) Certification based on a valid lead-based paint renovator or renovation dust sampling technician certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(b) Submit two passport-size photos.

(c) A signed and dated renovator or dust sampling technician application.

(d) A check or money order made out to the department in the amount as described in the certification fees section of these rules.

(e) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by telephone, 360-586-5323, electronically at <http://www.commerce.wa.gov/lead>.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/ HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust wipe sampling technician course in lieu of the initial training to become a certified dust sampling technician.

(4) Individuals may first apply to the department for certification to engage in lead-based paint renovation or dust sampling pursuant to this section on or after the effective date of these rules.

(5) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as renovator, or dust sampling technician.

(6) Upon receiving the department certification, individuals conducting lead-based paint renovator or dust sampling technician activities shall comply with the work practice standards for performing the appropriate lead-based paint renovation activities as established in the work practice standards, WAC 365-230-330.

(7) It shall be a violation of these rules for an individual to conduct any of the lead-based paint renovator or dust sampling technician activities described in the work practice standards under WAC 365-230-330 who has not been certified by the department.

(8) To maintain renovator certification or dust sampling technician, an individual must complete a renovator refresher course or a dust sampling refresher course accredited by the department within five years of the date the individual completed the initial course as described in subsection (1) of this section, or within five years of the date of his/her last

refresher course for the discipline. If the individual does not complete a refresher course within this time, the individual must retake the initial course to become certified again.

NEW SECTION

WAC 365-230-385 Renovator and dust sampling technician responsibilities. (1) Renovator responsibilities. Certified renovators are responsible for ensuring compliance under WAC 365-230-330 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described under 365-230-330(2) and must either perform or direct workers who perform all of the tasks described under WAC 365-230-330(1).

(b) Must provide training to uncertified workers on the work practices that they will be using in performing their assigned tasks.

(c) Must be physically present at the worksite when signs required by WAC 365-230-330 (1)(a) are posted, while the work area containment required by WAC 365-230-330 (1)(b) is being established, and while the work area cleaning required by WAC 365-230-330 (1)(e) is performed.

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by WAC 365-230-330(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(g) Must have with them at the worksite copies of their initial course completion certificate and their most recent refresher course completion certificate.

(h) Must prepare the records required by WAC 365-230-340(2).

(2) Dust sampling technician responsibilities. When performing optional dust clearance sampling under WAC 365-230-330, a certified dust sampling technician:

(a) Must collect dust samples in accordance with WAC 365-230-200 (8)(f)(i) through (iv), must send the collected samples to a laboratory recognized under TSCA section 405(b) (National Lead Laboratory Accreditation Program (NLLAP)) as found under WAC 365-230-200 (7)(h), and must compare the results to the clearance levels in dust less than 40 µg/ft² on floors, less than 250 µg/ft² on windowsills, and less than 400 µg/ft² on troughs.

(b) Must have with them at the worksite copies of their initial course completion certificate and their most recent refresher course completion certificate.

WSR 11-07-070
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed March 22, 2011, 9:57 a.m., effective April 22, 2011]

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

Purpose: 1. To amend six rules containing a reference to chapter 4-25 WAC that was decodified and recodified as chapter 4-30 WAC. The board changed the references to the accurate reference, Title 4 WAC.

2. The board amended WAC 4-30-048 to refer to the complete listing of seventeen standards.

Additionally, the goal with all of its rule proposals is to:

- Promote clarity.
- Ensure effective communication.
- Ensure fairness in interpretation and application of the rules.
- Promote efficiencies through minimizing gray areas.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-020, 4-30-048, 4-30-090, 4-30-110, 4-30-112, 4-30-134, and 4-30-142.

Statutory Authority for Adoption: For WAC 4-30-020 is RCW 18.04.055; for WAC 4-30-048 is RCW 18.04.055(2); for WAC 4-30-090 is RCW 18.04.350 (2), (3), (4), (5); for WAC 4-30-110 is RCW 18.04.055(8), 18.04.195, 18.04.205; for WAC 4-30-112 is RCW 18.04.055(8), 18.04.195; for WAC 4-30-134 is RCW 18.04.055(7), 18.04.215(5); and for WAC 4-30-142 is RCW 18.04.055(16), 18.04.195 (11)(d), 18.04.295, 18.04.305, 18.04.350(2).

Adopted under notice filed as WSR 11-03-091 on January 19, 2011.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: March 22, 2011.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-020 What ((is)) are the authority for and the purpose of the board's rules? The Public Accountancy Act (act), chapter 18.04 RCW, establishes the board as the licensing and disciplinary agency for certified public accountants (CPA), CPA-Inactive certificate holders, CPA firms,

and owners of CPA firms. The act authorizes the board to promulgate rules to carry out the purpose of the act, which include:

- Protecting the public interest;
- Enhancing the reliability of information used for guidance in financial transactions or for accounting for or assessing financial status or performance;
- Establishing one set of qualifications to be a licensee of this state;
- Assuring that CPAs practicing in Washington have substantially equivalent qualifications to those practicing in other states;
- Regulating ownership of CPA firms;
- Publishing consumer alerts and public protection information regarding persons and firms who violate the act or board rules; and
- Providing general consumer protection information to the public.

The board's rules, contained in (~~chapter 4-25 [4-30]~~) Title 4 WAC, encompass these subjects:

- Definitions;
- Administration of the board;
- Ethics and prohibited practices;
- Entry and renewal requirements;
- Continuing competency; and
- Regulation and enforcement.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-048 Compliance is required with which rules, regulations and professional standards? Licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(b), CPA-Inactive certificate holders, CPA firms, nonlicensee firm owners, and employees of such persons must comply with rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken. However, if the requirements found in the professional standards listed in this section differ from the requirements found in specific board rules, board rules prevail.

Authoritative bodies include, but are not limited to, the Securities and Exchange Commission (SEC); the Public Company Accounting Oversight Board (PCAOB); the Financial Accounting Standards Board (FASB); the Governmental Accounting Standards Board (GASB); the Cost Accounting Standards Board (CASB); the Federal Accounting Standards Advisory Board (FASAB); the U.S. Governmental Accountability Office (GAO); the Federal Office of Management and Budget (OMB); the Internal Revenue Service (IRS); the American Institute of Certified Public Accountants (AICPA), and federal, state, and local audit, regulatory and tax agencies.

Such standards include:

- (1) Statements on Auditing Standards and related Auditing Interpretations issued by the AICPA;

- (2) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA;

- (3) Statements on Governmental Accounting and Financial Reporting Standards issued by GASB;

- (4) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by AICPA;

- (5) Statements of Financial Accounting Standards and Interpretations, and Staff Positions issued by FASB, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB;

- (6) Statement on Standards for Consulting Services issued by the AICPA;

- (7) Statements on Quality Control Standards issued by the AICPA;

- (8) Statements on Standards for Tax Services and Interpretation of Statements on Standards for Tax Services issued by the AICPA;

- (9) Statements on Responsibilities in Personal Financial Planning Practice issued by the AICPA;

- (10) Statements on Standards for Litigation Services issued by the AICPA;

- (11) Professional Code of Conduct issued by the AICPA including interpretations and ethics rulings;

- (12) Governmental Auditing Standards issued by the U.S. Governmental Accountability Office;

- (13) AICPA Industry Audit and Accounting Guides;

- (14) SEC Rules, Concept Releases, Interpretative Releases, and Policy Statements;

- (15) Standards issued by the PCAOB; and

- (16) IRS Circular 230;

- (17) Any additional national or international standards recognized by the AICPA, PCAOB, SEC and/or GAO.

If the professional services are governed by standards not included in subsections (1) through (~~(16)~~) (17) of this section, individuals and firms including persons exercising practice privileges under RCW 18.04.350(2) who offer or render professional services in this state or for clients located in this state and the firms rendering professional services in this state or for clients located in this state through such qualifying individuals must:

- (a) Maintain documentation of the justification for the departure from the standards listed in subsections (1) through (~~(16)~~) (17) of this section;

- (b) Determine and document what standards are applicable; and

- (c) Demonstrate compliance with the applicable standards.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-090 Must an out-of-state individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? No. Out-of-state individuals holding valid licenses to practice public accounting issued by a substantially equivalent state, may hold out and practice within

Washington state and/or provide public accounting services in person, by mail, telephone, or electronic means to clients residing in Washington state without notice or payment of a fee.

As a condition of this privilege, the out-of-state individual is deemed to have consented to:

(1) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(2) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules (~~chapter 4-25 [4-30]~~) contained in Title 4 WAC;

(3) The appointment of the state board which issued the certificate or license as their agent upon whom process may be served in any action or proceeding by this state's board against the certificate holder or licensee;

(4) Render the following services for a client with a home office in this state only through a firm that has obtained a license from this state (RCW 18.04.195, 18.04.205 and WAC 4-30-110):

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and

(c) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(5) Not render any professional services in this state unless the out-of-state individual is licensed to render such services in the state of licensure upon which the privilege is contingent;

(6) Cease offering or performing professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is no longer valid; and

(7) Cease offering or performing specific professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is restricted from offering or performing such specific professional services.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-110 What are the allowable legal forms of organization and ownership requirements for a CPA firm? (1) Permitted forms of organization. A CPA firm may be organized as:

(a) A proprietorship;

(b) A partnership;

(c) A professional corporation (PC) or professional service corporation (PS);

(d) A limited liability company (LLC);

(e) A limited liability partnership (LLP); or

(f) Any other form of legal entity authorized by Washington state statute for use by a CPA firm.

(2) What happens when a CPA firm alters its legal form? A mere change in the legal form of an existing firm constitutes a new firm for licensing purposes. Accordingly, the new entity must first obtain a CPA firm license from the

board and then dissolve the former firm unless the owners desire to maintain more than one licensed firm. Affiliated entities using a restricted title or offering or performing restricted services are subject to board rules.

(3) What are the ownership requirements for a CPA firm?

(a) All owners of a licensed CPA firm are required to:

(i) Fully comply with the provisions of chapter 18.04 RCW; and

(ii) Be subject to discipline by the board for violations of chapter 18.04 RCW (~~or 4-25 [4-30]~~) and this board's rules contained in Title 4 WAC;

(b) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all partners, owners, or shareholders must be:

(i) Licensees in this state or holders of a valid license to practice public accountancy issued by another state;

(ii) Entitled to practice public accounting in Washington state; and

(iii) Principally employed by the firm or actively engaged in its business.

(c) At least one general partner of a partnership, one shareholder of a corporation, and one member of a limited liability company must be a licensee.

(d) Each CPA proprietor, partner, shareholder or member who is either a resident or is entering the state and practicing public accountancy in this state must hold a valid Washington state license or practice privileges.

(e) A principal owner and any individual having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accounting in this state.

(f) A nonresident CPA owner must be licensed to practice public accountancy in at least one state.

(g) A nonlicensee owner must:

(i) Be an individual;

(ii) Meet the good character requirements of RCW 18.04.105 (1)(a);

(iii) Comply with the act and board rules; and

(iv) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC 4-30-010; and

(h) A resident nonlicensee firm owner must meet the requirements of WAC 4-30-116 and register with the board concurrent with submission of the firm license application, or submission of an amendment to the firm license status, to the board.

(4) What are the requirements for the firm's main office and a branch office? A firm's main office located in this state must be under the direct supervision of a resident licensee.

A branch office is an office of a licensed CPA firm which is physically separated from the main office. A branch office operates under the license of the main office.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-112 Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? (1) A firm license must be obtained from the board if any of the following criteria apply:

(a) The firm has an office in this state and performs attest or compilation services for clients in this state;

(b) The firm has an office in this state and, by any means, represents the firm to the public that the firm is a firm of certified public accountants; or

(c) The firm is licensed in another state and performs the following services for clients with a home office in this state:

(i) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(ii) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and

(iii) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(2) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(2) and WAC 4-30-090 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

(3) As a condition of this privilege, the nonresident firm is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules(~~chapter 4-25 [4-30]~~) contained in Title 4 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render those services described in subsection (1)(c) of this section for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through out-of-state individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-134 What are the CPE requirements for individuals? (1) The following CPE is required for individuals during the three calendar year period prior to renewal:

(a) An individual licensed to practice in this state must complete a total of 120 CPE hours, including 4 CPE credit hours in an approved Washington ethics and regulations course meeting the requirements of subsection (3) of this section. The total 120 CPE hours requirement is limited to no more than 24 CPE credit hours in nontechnical subject areas. All qualifying CPE hours must be taken after the date your initial CPA license was issued;

(b) A CPA-Inactive certificate holder or a resident nonlicensee firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section; and

(c) Individuals holding practice privileges are exempt from the CPE requirements of this section.

(2) **CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:** When you convert your status from a CPA-Inactive certificate holder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:

(a) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(b) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(c) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(3) **Ethics and regulations applicable to practice in Washington state:** During each CPE reporting period all individuals licensed in this state, individual CPA-Inactive certificate holders in this state, and resident nonlicensee firm owners are required to complete 4 CPE credit hours in approved ethics and regulations with specific application to the practice of public accounting in Washington state. In order to be approved by the board, the CPE sponsor or instructor must submit documentation associated with the ethics and regulations CPE to the board for approval and the sponsor or instructor must obtain written approval from the board. The ethics and regulations CPE must cover all of the

following topics, and the ethics and regulations CPE must substantially address these topics:

(a) Chapter 18.04 RCW and ~~((chapter 4-25 [4-30]))~~ Title 4 WAC. The CPE must include general level information on the Public Accountancy Act, the board's rules, policies, and the rule-making process.

(b) WAC 4-30-026 How can I contact the board?

(c) WAC 4-30-032 Do I need to notify the board if I change my address?

(d) WAC 4-30-034 Must I respond to inquiries from the board?

(e) WAC 4-30-040 through 4-30-048 Ethics and prohibited practices. The CPE must include detailed information on each rule and all related board policies.

(f) WAC 4-30-103 Series—Continuing competency. The CPE must include detailed information on each rule and all related board policies.

(g) WAC 4-30-142 What are the bases for the board to impose discipline?

(h) AICPA Code of Conduct: The CPE must include general level information on the AICPA Code of Conduct.

(i) Variances or key differences between Washington state law (chapter 18.04 RCW ~~((and chapter 4-25 [4-30]))~~), this board's rules (Title 4 WAC) and the AICPA Code of Conduct.

(j) Other topics or information as defined by board policy.

(4) CPE requirements to renew a license or CPA-Inactive certificate out of retirement:

(a) In order to renew a license out of retirement, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the renewal application is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application is submitted to the board.

(b) In order to renew a CPA-Inactive certificate out of retirement, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application is submitted to the board.

(5) CPE requirements for a CPA-Inactive certificate holder to either qualify to apply for a license or return to their previously held status as a licensee: If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is ~~((is))~~ submitted to the board.

(6) Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the application for reinstatement is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this

section must be completed within the six-month period immediately preceding the date your application for reinstatement is submitted to the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement is submitted to the board.

(7) Reciprocity: If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section, after you were licensed as a CPA and within the thirty-six month period immediately preceding the date your application is submitted to the board. For purposes of initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

(8) CPE extension request: In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must complete the required CPE by the end of the CPE reporting period preceding your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause. The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing by the end of the CPE reporting period. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

A form useful for this purpose is available from the board's web site or will be provided to you upon request.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-142 What are the bases for the board to impose discipline? RCW 18.04.055, 18.04.295, 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license, CPA-Inactive certificate, the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed thirty thousand dollars; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295, 18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license, CPA-Inactive certificate, registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license, certificate, or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee, CPA-Inactive certificate holder, or a resident nonlicensee firm owner including but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required by RCW 18.04.215 or 18.04.195;

(b) Offering or rendering public accounting services in this state by an out-of-state individual or firm not qualified for practice privileges under RCW 18.04.195 or 18.04.350 (2);

(c) Making misleading, deceptive, or untrue representations;

(d) Engaging in acts of fiscal dishonesty;

(e) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(f) Unlawfully selling unregistered securities;

(g) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(h) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties; or

(i) Withdrawing or liquidating, as fees earned, funds received by a licensee, CPA-Inactive certificate holder, or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in

WAC 4-30-010, a CPA-Inactive certificate holder, or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee, certificate holder, or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in ~~((chapter 4-25 [4-30]))~~ Title 4 WAC, by a licensee, defined in WAC 4-30-010, CPA-Inactive certificate holder, or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state and required to obtain a license under RCW 18.04.195 (1)(a)(iii) by an out-of-state individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place

of business has been restricted from performing those specific services;

(e) Failure of a firm not licensed in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a licensed firm to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in (~~chapter 4-25 [4-30]~~) Title 4 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC 4-30-010, CPA-Inactive certificate holder, or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC 4-30-010, CPA-Inactive certificate holder, nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner.

WSR 11-07-078
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed March 22, 2011, 10:28 a.m., effective May 15, 2011]

Effective Date of Rule: May 15, 2011.

Purpose: Chapter 246-976 WAC, the rules revise and update EMS and trauma system (EMSTS) prehospital rules and standards. These rules and standards relate to EMS services and certification requirements of individual EMS professionals. The rules are necessary in order to be current and in alignment with national industry standards, guidelines, and best practice.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-976-021, 246-976-151 and 246-976-950; and amending WAC 246-976-001 through 246-976-400, 246-976-890, and 246-976-920.

Statutory Authority for Adoption: Chapters 18.71, 18.73, and 70.168 RCW.

Adopted under notice filed as WSR 10-21-070 on October 18, 2010.

Changes Other than Editing from Proposed to Adopted Version: Substantive provisions of law identified in defined terms in the definition section were moved into the specific rule language; defined terms that are no longer needed were removed. All rule language regarding denial, suspension, discipline, etc. were revised to cite the correct statute or rule governing the process that will be used by the department, and the individual or agency's rights.

A final cost-benefit analysis is available by contacting Michael Lopez, P.O. Box 47853, Olympia, WA 98504-7853, phone (360) 236-2841, fax (360) 236-2830, e-mail michael.lopez@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 7, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 11, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 20, Repealed 3.

Date Adopted: March 22, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-001 Purpose. The purpose of these rules is to implement RCW 18.71.200 through 18.71.215, and chapters 18.73 and 70.168 RCW; and those sections of chapter 70.24 RCW relating to EMS(~~(T€)~~) personnel and services.

(1) This chapter establishes criteria for:

(a) Training and certification of ~~((basic, intermediate and advanced life support technicians))~~ EMS providers;

(b) Licensure and inspection of ambulance services and aid services;

(c) Verification of prehospital trauma services;

(d) Development and operation of a statewide trauma registry;

(e) The designation process and operating requirements for designated trauma care services;

(f) A statewide emergency medical communication system;

(g) Administration of the statewide EMS/TC system.

~~((3))~~ (2) This chapter does not contain detailed procedures to implement the state EMS/TC system. Requests for procedures, guidelines, or any publications referred to in this chapter must be obtained from the Office of ~~((Emergency Medical and Trauma Prevention))~~ Community Health Systems, Department of Health, Olympia, WA 98504-7853 or on the internet at www.doh.wa.gov.

AMENDATORY SECTION (Amending WSR 05-01-221, filed 12/22/04, effective 1/22/05)

WAC 246-976-010 Definitions. Definitions in RCW 18.71.200, 18.71.205, 18.73.030, and 70.168.015 and the definitions in this section apply ~~((to))~~ throughout this chapter unless the context clearly requires otherwise. ~~((In addition, unless the context plainly requires a different meaning, the following words and phrases used in this chapter mean:~~

"ACLS" means advanced cardiac life support, a course developed by the American Heart Association.)

(1) "Activation of the trauma system" means mobilizing resources to care for a trauma patient in accordance with regional patient care procedures. ((When the prehospital provider identifies a major trauma patient, using approved pre-hospital trauma triage procedures, he or she notifies both dispatch and medical control from the field.))

(2) "Adolescence" means the period of physical and psychological development from the onset of puberty to maturity, approximately twelve to eighteen years of age.

(3) "Advanced cardiac life support (ACLS)" means a course that includes the education and clinical interventions used to treat cardiac arrest and other acute cardiac related problems.

(4) "Advanced emergency medical technician (AEMT)" means a person who has been examined and certified by the secretary as an intermediate life support technician as defined in RCW 18.71.200 and 18.71.205.

(5) "Advanced first aid((:))" ((for the purposes of RCW 18.73.120, 18.73.150, and 18.73.170;)) means ((a course of at least twenty-four hours of instruction, which includes at least:

•CPR;

•Airway management;

•Trauma/wound care;

•Immobilization)) an advanced first-aid course prescribed by the American Red Cross or its equivalent.

(6) "Advanced life support (ALS)" means invasive emergency medical services requiring the advanced medical treatment skills of a paramedic.

(7) "Agency" means an aid or ambulance service licensed by the secretary to provide prehospital care or inter-facility ambulance transport.

(8) "Agency response time" means the interval from ((agency notification)) dispatch to arrival on the scene. ((It is the combination of activation and en-route times defined under system response times in this section.))

(9) "Aid service" means an agency licensed by the ((department)) secretary to operate one or more aid vehicles, consistent with regional and state plans.

~~(("Airway technician" means a person who:~~

~~•Has been trained in an approved program to perform endotracheal airway management and other authorized aids to ventilation under written or oral authorization of an MPD or approved physician delegate; and~~

~~•Has been examined and certified as an airway technician by the department or by the University of Washington's school of medicine.~~

~~("ALS" means advanced life support.)~~

(10) "Ambulance service" means an agency licensed by the ((department)) secretary to operate one or more ground or air ambulances. ((Ground ambulance service operation must be consistent with regional and state plans. Air ambulance service operation must be consistent with the state plan.))

(11) "Approved" means approved by the department of health.

(12) "ATLS" means advanced trauma life support, a course developed by the American College of Surgeons.

(13) "Attending surgeon" means a physician who is board-certified or board-qualified in general surgery, and who has surgical privileges delineated by the facility's medical staff. The attending surgeon is responsible for care of the trauma patient, participates in all major therapeutic decisions, and is present during operative procedures.

(14) "Available" for designated trauma services described in WAC 246-976-485 through 246-976-890 means physically present in the facility and able to deliver care to the patient within the time specified. If no time is specified, the equipment or personnel must be available as reasonable and appropriate for the needs of the patient.

~~(("BLS" means basic life support.))~~

(15) "Basic life support (BLS)" means emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

(16) "Board certified" or "board-certified" means that a physician has been certified by the appropriate specialty board recognized by the American Board of Medical Specialties. For the purposes of this chapter, references to "board certified" include physicians who are board-qualified.

(17) "Board-qualified" means physicians who have graduated less than five years previously from a residency program accredited for the appropriate specialty by the accreditation council for graduate medical education.

(18) "BP" means blood pressure.

(19) "Certification" means the ((department)) secretary recognizes that an individual has ((met)) proof of meeting predetermined qualifications, and authorizes the individual to perform certain procedures.

(20) "Consumer" means an individual who is not associated with the EMS/TC system, either for pay or as a volun-

teer, except for service on the steering committee, (~~(licensing and certification committee,))~~ or regional or local EMS/TC councils.

(21) "Continuing medical education (~~((CME)))~~ method" (~~((or "continuing medical education method" or "CME"))~~) or (~~((("CME method" ("is the completion of)))~~) means prehospital EMS recertification education (~~((requirements))~~) required after initial (~~((prehospital))~~) EMS certification to maintain and enhance skill and knowledge. The CME method requires the successful completion of ((a written) department-approved knowledge and practical skill(s) certification examinations to recertify.

(22) "County operating procedures" or "COPS" means the written operational procedures adopted by the county MPD and the local EMS council specific to county needs.

(23) "CPR" means cardiopulmonary resuscitation.

(24) "Critical care transport" means the interfacility transport of a patient whose condition requires care by a physician, RN or a paramedic who has received special training and approval by the MPD.

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

(26) "Dispatch" means to identify and direct an emergency response unit to an incident location.

(27) "Diversion" (~~((for trauma care))~~) means the EMS transport of a (~~((trauma))~~) patient past the usual receiving (~~((trauma service))~~) facility to another (~~((trauma service))~~) facility due to temporary unavailability of (~~((trauma))~~) care resources at the usual receiving (~~((trauma service))~~) facility.

(28) "E-code" means external cause code, an etiology included in the International Classification of Diseases (ICD).

(29) "ED" means emergency department.

(30) "Emergency medical procedures" means the skills that are performed within the scope of practice of EMS personnel certified by the secretary under chapters 18.71 and 18.73 RCW.

(31) "Emergency medical services and trauma care (EMS/TC) system" means an organized approach to providing personnel, facilities, and equipment for effective and coordinated medical treatment of patients with a medical emergency or injury requiring immediate medical or surgical intervention to prevent death or disability. The emergency medical services and trauma care system includes prevention activities, prehospital care, hospital care, and rehabilitation.

(32) "Emergency medical responder (EMR)" means a person who has been examined and certified by the secretary as a first responder to render prehospital EMS care as defined in RCW 18.73.081.

(33) "Emergency medical technician (EMT)" means a person who has been examined and certified by the secretary as an EMT to render prehospital EMS care as defined in RCW 18.73.081.

(34) "EMS" means emergency medical services.

(35) "EMS provider" means an individual certified by the secretary or the University of Washington School of Medicine under chapters 18.71 and 18.73 RCW to provide prehospital emergency response, patient care, and transport.

(36) "EMS/TC" means emergency medical services and trauma care.

~~((("EMT" means emergency medical technician.))~~

(37) "General surgeon" means a licensed physician who has completed a residency program in surgery and who has surgical privileges delineated by the facility.

(38) "ICD" means the international classification of diseases, a coding system developed by the World Health Organization.

~~((("ILS" means intermediate life support.))~~

(39) "Injury prevention" means any combination of educational, legislative, enforcement, engineering and emergency response initiatives used to reduce the number and severity of injuries.

(40) "Interfacility transport" means medical transport of a patient between recognized medical treatment facilities requested by a licensed health care provider.

(41) "Intermediate life support (ILS)" means invasive emergency medical services requiring the advanced medical treatment skills of an advanced EMT (AEMT).

~~((("Intermediate life support (ILS) technician" means a person who:~~

- ~~• Has been trained in an approved program to perform specific phases of advanced cardiac and trauma life support as specified in this chapter, under written or oral direction of an MPD or approved physician delegate; and~~

- ~~• Has been examined and certified as an ILS technician by the department or by the University of Washington's school of medicine.~~

~~"Intravenous therapy technician" means a person who:~~

- ~~• Has been trained in an approved program to initiate IV access and administer intravenous solutions under written or oral authorization of an MPD or approved physician delegate; and~~

- ~~• Has been examined and certified as an intravenous therapy technician by the department or by the University of Washington's school of medicine.)~~

(42) "IV" means ~~((intravenous:~~

~~"Licensing and certification committee (L&C committee)" means the emergency medical services licensing and certification advisory committee created by RCW 18.73-040) a fluid or medication administered directly into the venous system.~~

(43) "Local council" means a local EMS/TC council authorized by RCW 70.168.120(1).

~~((("Local medical community" means the organized local medical society existing in a county or counties; or in the absence of an organized medical society, majority physician consensus in the county or counties.))~~

(44) "Medical control" means ~~((MPD authority to direct the))~~ oral or written direction of medical care ~~((provided by))~~ that certified prehospital EMS personnel ~~((in the prehospital EMS system))~~ provide to patients of all age groups. The oral or written direction is provided by the MPD or MPD delegate.

(45) "Medical control agreement" means a written agreement between two or more MPDs, using similar protocols that are consistent with regional plans, to assure continuity of patient care between counties, and to facilitate assistance.

(46) "Medical program director (MPD)" means ~~((medical program director.~~

"Must" means shall) a person who meets the requirements of chapters 18.71 and 18.73 RCW and is certified by the secretary. The MPD is responsible for both the supervision of training and medical control of EMS providers.

(47) "MPD delegate" means a physician appointed by the MPD and recognized and approved by the department. An MPD delegate may be:

(a) A prehospital training physician who supervises specified aspects of training EMS personnel; or

(b) A prehospital supervising physician who provides on-line medical control of EMS personnel.

(48) "Ongoing training and evaluation program (OTEP)" ((or "ongoing training and evaluation program (OTEP)" or "OTEP" or "OTEP program" or "OTEP method" is)) means a continuous program of prehospital EMS education for EMS personnel ((that)) after completion of initial training. An OTEP is approved by the MPD and the department ((to)). An OTEP must meet the EMS education requirements and core topic content required for recertification. The OTEP method includes ((cognitive, affective and psychomotor)) evaluations of the knowledge and skills covered in the topic content following ((completion of)) each topic presentation ((to determine student competence of topic content)).

(49) "PALS" means a pediatric advanced life support((; a)) course ((developed by the American Heart Association)).

(50) "Paramedic" or "physician's trained emergency medical service paramedic" means a person who((;

• Has been trained in an approved program to perform all phases of prehospital emergency medical care, including advanced life support, under written or oral authorization of an MPD or approved physician delegate; and

• Has been examined and certified as a paramedic by the department or by the University of Washington's school of medicine.) has been trained in an approved program to perform all phases of prehospital emergency medical care, including advanced life support, under written or oral authorization of an MPD or approved physician delegate, examined and certified by the secretary under chapter 18.71 RCW.

(51) "Pediatric education requirement (PER)" ((or "PER")) means the pediatric education and training standards required for certain specialty physicians and nurses who care for pediatric patients in designated trauma services as identified in WAC 246-976-886 and 246-976-887.

(52) "PEPP" means pediatric education for prehospital professionals.

(53) "PHTLS" means a prehospital trauma life support course.

(54) "Physician" means an individual licensed under the provisions of chapters 18.71 or 18.57 RCW.

(55) "Physician with specific delineation of surgical privileges" means a physician with surgical privileges delineated for emergency/life-saving surgical intervention and stabilization of a trauma patient prior to transfer to a higher level of care. Surgery privileges are awarded by the facility's credentialing process.

(56) "Postgraduate year" means the classification system for residents who are undergoing postgraduate training. The number indicates the year the resident is in during his/her postmedical school residency program.

(57) "Practical skills examination" means a test conducted in an initial course, or a test ((or series of evaluations)) conducted during a recertification period, to determine competence in each of the practical skills or group of skills specified by the department.

((("Prehospital agencies" means providers of prehospital care or interfacility ambulance transport.))

(58) "Prehospital index (PHI)" means a scoring system used to ((activate)) trigger activation of a hospital trauma resuscitation team.

(59) "Prehospital patient care protocols" means the department-approved, written ((procedures)) orders adopted by the MPD under RCW 18.73.030((13)) (15) and 70.168.-015((26)) (27) which direct the out-of-hospital ((emergency)) care of ((the emergency)) patients ((which includes the trauma care patient)). These protocols are related only to delivery and documentation of direct patient treatment. The protocols meet or exceed statewide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

(60) "Prehospital provider" means EMS provider.

(61) "Prehospital trauma care service((s))" means ((agencies)) an agency that ((are)) is verified by the secretary to provide prehospital trauma care.

(62) "Prehospital trauma triage procedure((s))" means the method used by prehospital providers to evaluate injured patients and determine whether to activate the trauma system from the field. It is described in WAC 246-976-930(2).

(63) "Public education" means education of the population at large, targeted groups, or individuals, in preventive measures and efforts to alter specific ((injury-related)) injury, trauma, and medical-related behaviors.

(64) "Quality improvement (QI)" or ((("QI" or)) "quality assurance (QA)" means a process/program to monitor and evaluate care provided in ((trauma services and)) the EMS/TC system((s)).

(65) "Regional council" means the regional EMS/TC council established by RCW 70.168.100.

(66) "Regional patient care procedures ((("RPCP")))" means ((procedures adopted by a regional council under RCW 18.73.030(14) and 70.168.015(23)), and approved by the department. Regional patient care procedures do not relate to direct patient care.) department-approved written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with statewide minimum standards. The patient care procedures identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients are consistent with the transfer procedures in chapter 70.170 RCW. Patient care procedures do not relate to direct patient care.

(67) "Regional plan" means the plan defined in WAC 246-976-960 (1)(b) that has been approved by the department.

(68) "Registered nurse" means an individual licensed under the provisions of chapter 18.79 RCW.

~~("Response area" means a service coverage zone identified in an approved regional plan.)~~

(69) "Rural" means an unincorporated or incorporated area(s) with a total population(s) of less than ten thousand people, or with a population density of less than one thousand people per square mile.

(70) "Secretary" means the secretary of the department of health.

(71) "Senior EMS instructor (SEI)" means an individual approved by the department to be responsible for the administration, quality of instruction and the conduct of ((basic life support)) initial emergency medical responder (EMR) and emergency medical technician (EMT) training courses.

(72) "Special competence" means that an individual has been deemed competent and committed to a medical specialty area with documented training, board certification and/or experience, which has been reviewed and accepted as evidence of a practitioner's expertise:

(*) (a) For physicians, by the facility's medical staff;

(*) (b) For registered nurses, by the facility's department of nursing;

(*) (c) For physician assistants and advanced registered nurse practitioners, as defined in the facility's bylaws.

~~("Specialized training" means approved training of certified EMS personnel to use a skill, technique, or equipment that is not included in the standard course curriculum.)~~

(73) "State plan" means the emergency medical services and trauma care system plan described in RCW 70.168.015 (7), adopted by the department under RCW 70.168.060(10).

(74) "Steering committee" means the EMS/TC steering committee created by RCW 70.168.020.

(75) "Suburban" means an incorporated or unincorporated area with a population of ten thousand to twenty-nine thousand nine hundred ninety-nine or any area with a population density of between one thousand ((tø)) and two thousand people per square mile.

(76) "System response time" for trauma means the interval from discovery of an injury until the patient arrives at a designated trauma facility. ~~((It includes:~~

~~"Discovery time": The interval from injury to discovery of the injury;~~

~~"System access time": The interval from discovery to call received;~~

~~"911 time": The interval from call received to dispatch notified, including the time it takes the call answerer to:~~

~~• Process the call, including citizen interview; and~~

~~• Give the information to the dispatcher;~~

~~"Dispatch time": The interval from call received by the dispatcher to agency notification;~~

~~• "Activation time": The interval from agency notification to start of response;~~

~~• "En route time": The interval from the end of activation time to the beginning of on-scene time;~~

~~• "Patient access time": The interval from the end of en route time to the beginning of patient care;~~

~~• "On scene time": The interval from arrival at the scene to departure from the scene. This includes extrication, resuscitation, treatment, and loading;~~

~~• "Transport time": The interval from leaving the scene to arrival at a health care facility;))~~

(77) "Training ((agency)) program" means an organization ((or individual)) that is approved by the department to be responsible for specified aspects of training ((of)) EMS personnel.

~~("Training physician" means a physician delegated by the MPD and approved by the department to be responsible for specified aspects of training of EMS personnel.)~~

(78) "Trauma rehabilitation coordinator" means a person designated to facilitate early rehabilitation interventions and the trauma patient's access to a designated rehabilitation center.

(79) "Trauma response area" means a service coverage zone identified in an approved regional plan.

(80) "Trauma service" means the clinical service within a hospital or clinic that is designated by the department to provide care to trauma patients.

(81) "Urban" means:

(*) (a) An incorporated area over thirty thousand; or

(*) (b) An incorporated or unincorporated area of at least ten thousand people and a population density over two thousand people per square mile.

(82) "Verification" means a prehospital agency is capable of providing verified trauma care services and is credentialed under chapters 18.73 and 70.168 RCW.

(83) "Wilderness" means any rural area not readily accessible by public or private maintained road.

NEW SECTION

WAC 246-976-022 EMS training program requirements, approval, reapproval, discipline. (1) To apply for initial department approval as an EMS training program, applicants shall meet the requirements in Table A of this section.

**Table A
EMS Training Program Requirements For Approval**

REQUIREMENTS	
Organization type	Must be one of the following: <ul style="list-style-type: none"> • A local EMS and trauma care council or a county office responsible for EMS training for the county. This includes county agencies established by ordinance and approved by the MPD to coordinate and conduct EMS programs; • A regional EMS and trauma care council providing EMS training throughout the region; • An accredited institution of higher education; or

REQUIREMENTS	
	<ul style="list-style-type: none"> • A private educational business, licensed as a private vocational school.
Optional organization	<ul style="list-style-type: none"> • If the organizations listed above do not exist or are unable to provide an EMS training program, the local EMS and trauma care council may recommend to the department another entity that is able to provide training. • In the absence of a local EMS council, the regional EMS and trauma care council may provide such recommendation. • Initial training courses conducted for licensed EMS agencies under the oversight of a department-approved EMS training program.
Need for new training program	Applicant must demonstrate need for new or additional EMS training programs.
Training program application	Complete a DOH EMS training program application on forms provided by the department indicating the levels of EMS training the program wants to conduct.
Class room and laboratory	Provide a description of classroom and laboratory facilities.
Training equipment and supplies	Provide a list of equipment and supplies on hand (or accessible) for use in the training program.
Course enrollment	For each level of EMS training applying for, provide a description of: <ul style="list-style-type: none"> • Course entry prerequisites; • Selection criteria; and • The process used to screen applicants.
Student handbook	Provide a student handbook for each level of EMS training applied for that provides: <ul style="list-style-type: none"> • Training program policies, including minimum standards to enter training consistent with this chapter; • Course requirements and minimum standards required for successful completion of examinations, clinical/field internship rotations, and the EMS course; • Initial certification requirements the student must meet to become certified as identified in WAC 246-976-141; and

REQUIREMENTS	
	<ul style="list-style-type: none"> • A listing of clinical and field internship sites available.

(2) Approved training programs shall meet the requirements in Table B of this section.

Table B
EMS Training Program Requirements

REQUIREMENTS	
General	An approved training program must: <ul style="list-style-type: none"> • Conduct courses following department requirements; • If conducting paramedic training courses, be accredited by a national accrediting organization approved by the department; • In conjunction with the course instructor, ensure course applicants meet the course application requirements in WAC 246-976-041; • Maintain clinical and field internship sites to meet course requirements, including the requirement that internship rotations on EMS vehicles must be performed as a third person, not replacing required staff on the vehicle; • For the purposes of program and course evaluation, provide to the department, county MPD, or MPD delegate access to all course related materials; • Conduct examinations over course lessons and other Washington state required topics; and • Participate in EMS and trauma care council educational planning.
Certification examination	Coordinate activities with the department-approved certification examination provider, including: <ul style="list-style-type: none"> • Registering the training program; • Assisting students in registering with the examination provider; • Providing verification of cognitive knowledge and psychomotor skills for students successfully completing the EMS course; and • Assisting students in scheduling the examination.
Student records	Maintain student records for a minimum of four years.

REQUIREMENTS	
Evaluation	Monitor and evaluate the quality of instruction for the purposes of quality improvement, including course examination scores for each level taught.
Reporting	Submit an annual report to the department which includes: <ul style="list-style-type: none"> • Annual, overall certification examination results; • A summary of complaints against the training program and what was done to resolve the issues; • Quality improvement activities including a summary of issues and actions to improve training results.

(3) To apply for reapproval, an EMS training program must meet the requirements in Table C of this section.

**Table C
EMS Training Program Reapproval**

REAPPROVAL	
Requirements	An EMS training program must be in good standing with the department and: <ul style="list-style-type: none"> • Have no violations of the statute and rules; • Have no pending disciplinary actions; • Maintain an overall pass rate of seventy-five percent on department-approved state certification examinations; • If conducting paramedic training courses, be accredited by a national accrediting organization approved by the department.
Reapplication	Complete:

REAPPROVAL	
	<ul style="list-style-type: none"> • The requirements in Tables A and B of this section; and • Submit an updated EMS training program application to the department at least six months prior to the program expiration date.

(4) Training program approval is effective on the date the department issues the certificate. Approval must be renewed every five years. The expiration date is indicated on the approval letter.

(5) Discipline of EMS training programs.

(a) The secretary may deny, suspend, modify, or revoke the approval of a training program when it finds:

(i) Violations of chapter 246-976 WAC;

(ii) Pending disciplinary actions;

(iii) Falsification of EMS course documents; or

(iv) Failure to update training program information with the department as changes occur.

(b) The training program may request a hearing to contest the secretary's decisions in regard to denial, suspension, modification, or revocation of training program approval in accordance with the Administrative Procedure Act (APA) (chapter 34.05 RCW) and chapter 246-10 WAC.

NEW SECTION

WAC 246-976-023 Initial EMS training course requirements and course approval. To be approved to conduct each initial EMS training course, an EMS training program must:

(1) Meet the requirements identified in Table A of this section;

(2) Submit a completed EMS course training application on forms provided by the department, postmarked or received by the department at least three weeks prior to the course start date identified on the application;

(3) Have the approval of the training program's medical director and the recommendation for approval from the county medical program director; and

(4) Have written course approval from the department.

**Table A
Initial EMS Training Course Requirements**

REQUIREMENTS
<p>The EMS training program must:</p> <ul style="list-style-type: none"> • If conducting paramedic training courses, be accredited by a national accrediting organization approved by the department; • With the course SEI or lead instructor, ensure course applicants meet the course application requirements in WAC 246-976-041; • Supply each student with a student handbook as specified in WAC 246-976-022; • Provide each student, prior to beginning their field internship rotations, current, county specific, county medical program director field protocols and any specific information they will need while completing the internship; and • Use field internship preceptors who monitor and evaluate students in a standard and consistent manner.

REQUIREMENTS
<p>EMS course SEI or lead instructor:</p> <p>The EMS course instructors identified in this section, under the general supervision of the county medical program director (MPD) are responsible:</p> <ul style="list-style-type: none"> • For the overall conduct of the course, quality of instruction, and administrative paperwork; • For following the course curricula or instructional guidelines for the level of training conducted; • For evaluating the students' knowledge and practical skills throughout the course; • For providing on-site instruction during each class and to supervise any other course instruction, unless arrangements have been made for another SEI or lead instructor to supervise. When using other instructors, the SEI or lead need not be physically present but must be immediately available for consultation.
<p>Emergency medical responder (EMR) and EMT courses:</p> <p>The course instructor must be a department-approved SEI. An SEI candidate may instruct under the supervision of the SEI for the purpose of demonstrating instructional proficiency to the SEI.</p>
<p>AEMT courses:</p> <p>The course instructor for advanced EMT courses must be:</p> <ul style="list-style-type: none"> • An AEMT that is recognized by the department as an SEI; or • A paramedic; or • Program instructional staff when training is provided by an accredited paramedic training program; and • Approved by the county medical program director.
<p>Paramedic/EMT-paramedic courses:</p> <ul style="list-style-type: none"> • The lead instructor for paramedic courses must have proof of clinical experience at the paramedic level or above; and • Must have the approval of the training program's medical director and the county medical program director.
<p>EMS Evaluators:</p> <ul style="list-style-type: none"> • Evaluators must be MPD and department-approved EMS evaluators; • EMS evaluators for EMR and EMT courses must be certified at the EMT level or higher; • EMS evaluators for advanced EMT courses must be certified at the AEMT or paramedic level.
<p>Other instructors that may instruct individual course lessons when knowledgeable and skilled in the topic, approved by the MPD and under supervision of the SEI or lead instructor:</p> <ul style="list-style-type: none"> • Guest instructors; • Department-approved EMS evaluators, to assist the SEI or lead instructor in the instruction of the course, who must be certified at or above the level of education provided; and • The MPD, MPD delegate or other physicians approved by the MPD.
<p>Course curriculum or instructor guidelines:</p> <p><i>The National Emergency Medical Services Training Standards - Instructor Guidelines</i> published January 2009 for the level of instruction; and</p> <ul style="list-style-type: none"> • Instruction in multicultural health appropriate to the level of training; and • A department-approved, four hour infectious disease training program that meets the requirements of chapter 70.24 RCW; and • Other training consistent with MPD protocols.
<p>EMS course practical skill evaluations:</p> <p>SEIs or department-approved EMS evaluators conduct psychomotor evaluations during the course and provide corrective instruction for students. For EMR and EMT courses, evaluators must be certified as an EMT or higher level.</p>
<p>End of course practical skill examinations:</p> <p>Department-approved SEIs or department-approved EMS evaluators must conduct practical skill examinations. For EMR and EMT courses, evaluators must be certified at the EMT level or higher.</p>

NEW SECTION

WAC 246-976-024 EMS specialized training. (1) MPDs may submit a proposal to conduct pilot training programs to determine the need for skills, techniques, or equipment that is not included in standard course curricula/instructional guidelines. A pilot program allows the MPD to conduct field research to determine:

- (a) The effectiveness of the training;
- (b) EMS provider knowledge and skills competency;
- (c) EMS provider ability to provide proper patient care after the training.

(2) To request approval of a pilot training program, the MPD must submit a proposal which includes the following information to the department for review:

(a) A needs statement describing what the proposed pilot will address;

(b) The level of certified EMS provider who will be participating in the pilot training;

(c) The length of the pilot project;

(d) The method by which the pilot project will be evaluated;

(e) Course curriculum/lesson plans;

(f) Type of instructional personnel required to conduct the pilot training;

(g) Course prerequisites;

(h) Criteria for successful course completion, including student evaluations and/or examinations; and

(i) Prehospital patient care protocols for use in the pilot program.

(3) The department will:

(a) Review the request and training plan;

(b) Consult with the prehospital technical advisory committee to determine the need for, and the benefits of the requested training throughout the state.

(c) Based on recommendation of the prehospital TAC, approve or deny the request for the pilot program.

(4) The MPD must report the results of the pilot training to the department and the prehospital TAC.

(5) The department and the prehospital TAC will review the results of the pilot training project to determine whether or not the new training will be implemented statewide.

(6) If the pilot training is approved for statewide use, the department will adopt it as specialized training and notify all county MPDs to advise if the skill is required or not.

AMENDATORY SECTION (Amending WSR 02-14-053, filed 6/27/02, effective 7/28/02)

WAC 246-976-031 Senior EMS instructor (SEI) approval. ~~((1) Responsibilities.~~ The SEI is responsible for the overall instructional quality of initial first responder or EMT-basic courses, under the general supervision of the medical program director (MPD). The SEI must conduct courses following department approved curricula identified in WAC 246-976-021. The SEI candidate shall document the completion of requirements for initial and renewal recognition on forms provided by the department.

(2) **Initial recognition.** The department will publish *Initial Recognition Application Procedures for Senior EMS Instructors* (IRAP), which include the *Initial Senior EMS*

Instructor Application and Agreement, instructor objectives, instructions and forms necessary for initial recognition.

(a) ~~Prerequisites.~~ Candidates for initial recognition must document proof of the following:

(i) ~~Current Washington state certification as an EMT or higher EMS certification;~~

(ii) ~~At least three years prehospital EMS experience as an EMT or higher EMS certification level, with at least one recertification;~~

(iii) ~~Successful completion of an approved ongoing training and evaluation program (OTEP)/basic life support (BLS) evaluator workshop;~~

(iv) ~~Current recognition as a CPR instructor for health care providers by the American Heart Association, the American Red Cross, the National Safety Council, or other nationally recognized organization with substantially equivalent standards approved by the department;~~

(v) ~~Successful completion of an instructor training course by the U.S. Department of Transportation, National Highway Traffic Safety Administration, or an instructor training course from an accredited institution of higher education;~~

(vi) ~~Successful completion of an examination developed and administered by the department on current EMS training and certification statutes, Washington Administrative Code (WAC) and the Uniform Disciplinary Act (UDA).~~

(b) ~~Submission of prerequisites.~~ Candidates must submit proof of successful completion of the prerequisites to the department.

(i) ~~Candidates meeting the prerequisites will be issued the IRAP by the department.~~

(ii) ~~The department will provide instruction to each candidate prior to beginning the initial recognition process.~~

(c) ~~Candidate objectives.~~ Candidates who have been issued the IRAP and received instructions on the recognition process must successfully complete the IRAP, under the supervision of a currently recognized, EMT-basic course lead SEI:

As part of an initial EMT-basic course, the candidate must demonstrate to the course lead SEI, the knowledge and skills necessary to complete the following instructor objectives;

(i) ~~Accurately complete the course application process and meet application timelines;~~

(ii) ~~Notify EMT-basic course students of course entry prerequisites;~~

(iii) ~~Assure students selected for admittance to the course meet DOH training and certification prerequisites and notify training agency selection board of discrepancies;~~

(iv) ~~Maintain course records adequately;~~

(v) ~~Track student attendance, scores, quizzes, and performance, and counsel/remediate students as necessary;~~

(vi) ~~Assist in the coordination and instruction of one entire EMT-basic course under the supervision of the course lead SEI, utilizing the EMT-basic training course curriculum identified in WAC 246-976-021, and be evaluated on the instruction of each of the following lessons:~~

(A) ~~Lesson 1-2 Well Being of the EMT-Basic, including Infectious Disease Prevention for EMS Providers;~~

Revised 10/1997 (available from the department of health, office of emergency medical and trauma prevention);

(B) Lesson 2-1—Airway;

(C) Lesson 3-2—Initial Assessment;

(D) Lesson 3-3—Focused History and Physical Exam: Trauma;

(E) Lesson 3-4—Focused History and Physical Exam: Medical;

(F) Lesson 3-5—Detailed Physical Exam;

(G) Lesson 3-6—Ongoing Assessment;

(H) Lesson 3-9—Practical Lab: Patient Assessment;

(I) Lesson 4-1—General Pharmacology;

(J) Lesson 4-2—Respiratory Emergencies;

(K) Lesson 4-3—Cardiovascular Emergencies;

(L) Lesson 4-9—Obstetrics/Gynecology;

(M) Lesson 5-4—Injuries to the Head and Spine, Chest and Abdomen;

(N) Lesson 5-5—Practical Lab: Trauma;

(O) Lesson 6-1—Infants and Children;

(P) Lesson 7-2—Gaining Access (including patient removal, treatment and transport).

(vii) Coordinate and conduct an EMT-basic final end of course comprehensive practical skills evaluation.

(d) **Candidate evaluation.** Performance evaluations will be conducted by an SEI for each instructor objective performed by the candidate on documents identified in the IRAP. These documents consist of:

(i) An evaluation form, to evaluate lesson instruction objectives performed by the candidate;

(ii) A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate;

(iii) An objective completion record, to document successful completion of each instructor objective performed by the candidate.

(e) **Application and approval.**

(i) Candidates must submit the completed IRAP, including the application/agreement and all documents completed during the initial recognition process, to the county MPD to obtain a recommendation of approval to the department.

(ii) Upon recommendation of approval by the county MPD, the SEI candidate will submit the following documents to the department:

(A) Current proof of completion of prerequisites listed in subsection (2)(a)(i), (iv) and (vi) of this section;

(B) The original initial SEI application/agreement, signed by the candidate and the MPD; and

(C) The original completed IRAP document and all forms used for evaluation, quality improvement purposes, and verification of successful completion as identified in the IRAP.

(3) **Renewal of recognition.** The department will publish *Renewal Application Procedures for Senior EMS Instructors (RAP)*, which include the *Senior EMS Instructor Renewal Application and Agreement*, instructor objectives, instructions and forms necessary for renewal.

(a) The RAP will be provided by the department to individuals upon recognition as a SEI, to be completed during the recognition period.

(b) **Candidate objectives.** Candidates who have been issued the RAP must successfully complete the RAP during each approval period, which includes the following instructor objectives:

(i) Coordinate and perform as the lead SEI for one initial first responder or EMT-basic course including the supervision of all practical skills evaluations;

(ii) Receive performance evaluations from a currently recognized SEI, on two candidate instructed first responder or EMT-basic course lessons;

(iii) Perform two performance evaluations on the instruction of first responder or EMT-basic course lessons for SEI initial or renewal recognition candidates; and

(iv) Attend one DOH approved SEI workshop.

(e) **Candidate evaluation.** Evaluations of the performance of instructor objectives will be conducted by an SEI and completed on documents identified in the RAP. These documents consist of:

(i) An evaluation form, to evaluate lesson instruction objectives performed by the candidate.

(ii) A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate.

(iii) An objective completion record, to document successful completion of each instructor objective performed by the candidate.

(d) **Prerequisites.** Candidates for renewal of recognition must document proof of the following:

(i) Current or previous recognition as a Washington state SEI;

(ii) Current Washington state certification as an EMT or higher EMS certification;

(iii) Current recognition as a CPR instructor for health care providers by the American Heart Association, the American Red Cross, the National Safety Council, or other nationally recognized organization with substantially equivalent standards;

(iv) Successful completion of an examination developed and administered by the department on current EMS training and certification statutes, WAC and the UDA.

(e) **Application and approval.**

(i) Candidates must submit the completed RAP, including the application/agreement and all documents completed during the renewal of recognition process, to the county MPD to obtain a recommendation of approval to the department.

(ii) Upon recommendation of approval by the county MPD, the renewal candidate must submit the following documents to the department:

(A) Current proof of successful completion of the prerequisites listed in subsection (3)(d)(ii), (iii), and (iv) of this section;

(B) The original SEI renewal application/agreement that has been signed by the candidate and the MPD; and

(C) The original completed RAP document and all forms used for evaluation, quality improvement purposes and verification of successful completion as identified in the RAP.

(4) **Length of recognition.** Recognition as a SEI is for three years.

~~(5) Denial, suspension, modification or revocation of SEI recognition:~~

~~(a) The department may deny, suspend, modify or revoke an SEI's recognition when it finds:~~

~~(i) Violations of chapter 18.130 RCW, the Uniform Disciplinary Act;~~

~~(ii) A failure to:~~

~~(A) Maintain EMS certification;~~

~~(B) Update the following personal information with DOH as changes occur:~~

~~(I) Name;~~

~~(H) Address;~~

~~(HH) Home and work phone numbers;~~

~~(C) Maintain knowledge of current EMS training and certification statutes, WAC and the UDA;~~

~~(D) Comply with requirements in WAC 246-976-031(1);~~

~~(E) Participate in the instructor candidate evaluation process in an objective and professional manner without cost to the individual being reviewed or evaluated;~~

~~(F) Adequately complete all forms and adequately maintain records in accordance with this chapter;~~

~~(G) Demonstrate all skills and procedures based on current standards;~~

(H) Follow the requirements of the Americans with Disabilities Act;

(I) Maintain security on all department examination materials;

(b) The candidate or SEI may request a hearing to contest department decisions in regard to denial, suspension, modification or revocation of SEI recognition in accordance with the Administrative Procedure Act (APA) (chapter 34.05 RCW) and associated administrative codes:)) (1) **Responsibilities and requirements.**

(a) The SEI is responsible for the overall instructional quality and the administrative paperwork associated with initial EMR or EMT courses, under the general supervision of the MPD.

(b) The SEI must:

(i) Follow department-approved curricula/instructional guidelines identified in WAC 246-976-023;

(ii) Ensure course applicants meet the course application requirements in WAC 246-976-041; and

(2) To become an approved SEI, an EMS provider must meet the requirements identified in Table A of this section.

Table A
Requirements For Initial Senior EMS Instructor Approval

REQUIREMENTS
<p>Prerequisites:</p> <p>Candidates for initial recognition must submit proof of successful completion of the following prerequisites to the department. Candidates meeting the prerequisites will be issued the <i>Initial Recognition Application Procedures (IRAP) for Senior EMS Instructors</i>, which include the <i>Initial Senior EMS Instructor Application and Agreement</i>, instructor objectives, instructions and forms necessary for initial recognition:</p> <ul style="list-style-type: none"> • <u>Current Washington state certification at the EMT or higher EMS certification level;</u> • <u>At least three years prehospital EMS experience at the EMT or higher EMS certification level, with at least one recertification;</u> • <u>Approval as an EMS evaluator as identified in WAC 246-976-161;</u> • <u>Current recognition as a health care provider level CPR instructor from a nationally recognized training program for CPR, foreign body airway obstruction (FBAO), and defibrillation;</u> • <u>Successful completion of an instructor training course by the U.S. Department of Transportation, National Highway Traffic Safety Administration, an instructor training course from an accredited institution of higher education, or equivalent instructor course approved by the department;</u> • <u>Pass an examination developed and administered by the department on current EMS training and certification statutes, Washington Administrative Code (WAC), the Uniform Disciplinary Act (UDA) and course administration.</u>
<p>Candidate objectives:</p> <p>Candidates must successfully complete the IRAP under the supervision of a currently recognized SEI.</p> <p>As part of an initial EMT course, the candidate must demonstrate to the course lead SEI the knowledge and skills necessary to complete the following instructor objectives:</p> <ul style="list-style-type: none"> • <u>Accurately complete the course application process and meet application timelines;</u> • <u>Notify potential EMT course applicants of course entry prerequisites;</u> • <u>Assure that applicants selected for admittance to the course meet department training and certification prerequisites;</u> • <u>Maintain course records;</u> • <u>Track student attendance, scores, quizzes, and performance, and counsel/remediate students as necessary;</u>

REQUIREMENTS
<ul style="list-style-type: none"> • <u>Assist in the coordination and instruction of one entire EMT course, including practical skills, under the supervision of the course lead SEI using the EMT training course instructor guidelines identified in WAC 246-976-023, and be evaluated on the instruction of each of the following sections/lessons:</u> <ul style="list-style-type: none"> = <u>Preparatory section, including <i>Infectious Disease Prevention for EMS Providers</i>, Revised 01/2009;</u> = <u>Airway section;</u> = <u>Assessment section;</u> = <u>Pharmacology section;</u> = <u>Medical section, Cardiovascular and Respiratory lessons;</u> = <u>Special Patient Populations section, Obstetrics, Neonatal Care, and Pediatrics lessons;</u> = <u>Trauma section, Head, Facial, Neck and Spine Trauma and Chest Trauma lessons;</u> = <u>EMS Operations section, Vehicle Extrication, Incident Management, and Multiple Casualty Incidents lessons; and</u> = <u>Multicultural Awareness component.</u> • <u>Coordinate and conduct an EMT final end of course comprehensive practical skills evaluation.</u>
<p>Candidate evaluation: <u>Performance evaluations must be conducted by an SEI for each instructor objective performed by the candidate on documents identified in the IRAP. These documents consist of:</u></p>
<ul style="list-style-type: none"> • <u>An evaluation form, to evaluate lesson instruction objectives performed by the candidate;</u> • <u>A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate; and</u> • <u>An objective completion record, to document successful completion of each instructor objective performed by the candidate.</u>
<p>Application: <u>Submit the following documents to the county MPD to obtain a recommendation:</u></p> <ul style="list-style-type: none"> • <u>The original initial SEI application/agreement, signed by the candidate ; and</u> • <u>The original completed IRAP, all objective completion records, and evaluation documents.</u> <p><u>The completed application must be submitted to the department including:</u></p> <ul style="list-style-type: none"> • <u>The original application signed by both the candidate and the MPD;</u> • <u>The original completed IRAP, all objective completion records, and evaluation documents.</u>

(3) SEI approval is effective on the date the department issues the certification card. Certifications must be renewed every three years. The expiration date is indicated on the certification card.

NEW SECTION

WAC 246-976-032 Senior EMS instructor (SEI) reapproval of recognition. (1) To become reapproved, an SEI must meet the requirements identified in Table A of this section.

(2) The renewal application procedures (RAP) will be provided by the department to individuals upon recognition as an SEI. The RAP must be completed by the SEI during the recognition period.

**Table A
Requirements For Senior EMS Instructor Reapproval**

REQUIREMENTS
<p>Prerequisites: Document proof of completion of the following prerequisites:</p> <ul style="list-style-type: none"> • Current or previous recognition as a Washington state SEI; • Current Washington state certification at the EMT or higher EMS certification level; • Current recognition as a health care provider level CPR instructor from a nationally recognized training program for CPR, foreign body airway obstruction (FBAO), and defibrillation; • Pass an examination developed and administered by the department on current EMS training and certification statutes, Washington Administrative Code (WAC), the Uniform Disciplinary Act (UDA) and course administration.

REQUIREMENTS

Candidate objectives:

Successfully complete the following objectives for each recognition period:

- Coordinate and perform as the lead SEI for one initial EMR or EMT course including the supervision of all practical skills evaluations;
- Receive performance evaluations from a currently recognized SEI, on two candidate instructed EMR or EMT course lessons;
- Perform two performance evaluations on the instruction of EMR or EMT course lessons for SEI initial or renewal recognition candidates; and
- Attend one department-approved SEI or instructor improvement workshop.

Candidate evaluation:

Evaluations of the performance of instructor objectives will be conducted by an SEI and completed on documents identified in the RAP. These documents consist of;

- An evaluation form, to evaluate lesson instruction objectives performed by the candidate;
- A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate; and
- An objective completion record, to document successful completion of each instructor objective performed by the candidate.

Application:

Submit the documented prerequisites and the completed RAP, including the application/agreement and all documents completed during the renewal of recognition process, to the county MPD to obtain a recommendation.

The completed application must be submitted to the department including:

- Current proof of successful completion of the prerequisites listed in this section;
- The original SEI renewal application/agreement that has been signed by the candidate and the county MPD; and
- The original completed RAP document and all forms used for evaluation, quality improvement purposes and verification of successful completion as identified in the RAP.

(3) An EMS instructor approved in another state, country, or U.S. military branch may obtain reciprocal recognition. To become an SEI, the applicant must:

(a) Meet the initial recognition prerequisites as defined in this section;

(b) Provide proof of at least three years of instructional experience as a state approved EMS instructor. If the applicant cannot provide proof of instructional experience, the initial recognition application process must be completed;

(c) Instruct two initial EMT course topics, be evaluated on the instruction by a current Washington SEI, and receive a positive recommendation for approval by the SEI; and

(d) Complete the renewal application and submit it to the department.

(4) An SEI whose recognition has expired for more than twelve months must complete the initial recognition process.

(5) Approval is effective on the date the department issues the certificate. Certifications must be renewed every three years. The expiration date is indicated on the certification card.

NEW SECTION

WAC 246-976-033 Denial, suspension, modification or revocation of SEI recognition. (1) The secretary may deny, suspend, modify or revoke an SEI's recognition when it finds the SEI has:

(a) Violated chapter 18.130 RCW, the Uniform Disciplinary Act;

(b) Failed to:

(i) Maintain EMS certification;

(ii) Update the following personal information with the department as changes occur:

(A) Name;

(B) Address;

(C) Home and work phone numbers;

(iii) Maintain knowledge of current EMS training and certification statutes, WAC, the UDA, and course administration;

(iv) Comply with requirements in WAC 246-976-031 (1);

(v) Participate in the instructor candidate evaluation process in an objective and professional manner without cost to the individual being reviewed or evaluated;

(vi) Complete all forms and maintain records in accordance with this chapter;

(vii) Demonstrate all skills and procedures based on current standards;

(viii) Follow the requirements of the Americans with Disabilities Act; or

(ix) Maintain security on all department-approved examination materials.

(2) The candidate or SEI may request a hearing to contest the secretary's decisions in regard to denial, suspension, modification or revocation of SEI recognition in accordance with the Administrative Procedure Act (APA) (chapter 34.05 RCW), the Uniform Disciplinary Act (chapter 18.130 RCW), and chapter 246-10 WAC.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-041 To apply for training. (1) ~~((You))~~ An applicant for EMS training must be at least ((eighteen)) seventeen years old at the beginning of the course. Variances will not be allowed for the age requirement.

(2) An applicant for training at the intermediate ((IV; airway and ILS technicians)) AEMT ((and advanced life support (paramedic) levels, you)) level, must ((have completed)) be currently certified as an EMT with at least one year ((as a certified EMT or above)) of experience.

(3) An applicant for training at the advanced life support (paramedic) level, must have at least one year of experience as a certified EMT, or equivalent prehospital experience and meet all entry requirements of the state approved paramedic training program.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-141 ~~((To apply for certification.)) To obtain initial EMS provider certification following the successful completion of Washington state approved EMS course.~~ ((1) Department responsibilities. The department will publish procedures for initial certification which include:

(a) ~~Examinations. An applicant may have up to three attempts within six months after course completion to successfully complete the examinations;~~

(b) ~~The process for administration of examinations; and~~

(c) ~~Administrative requirements and the necessary forms.~~

(2) ~~Applicant responsibilities. To apply for initial certification, submit to the department:~~

(a) ~~An application for certification on forms provided by the department;~~

(b) ~~Proof of identity: An official photo identification (which may be state, federal or military identification, drivers' license, or passport);~~

(c) ~~Proof of age;~~

(d) ~~Proof of completion of an approved course or courses for the level of certification sought;~~

(e) ~~Proof of completion of approved infectious disease training to meet the requirements of chapter 70.24 RCW;~~

(f) ~~Proof of successful completion of an approved examination within eighteen months prior to application;~~

(g) ~~Proof of active membership, paid or volunteer, in one of the following EMS/TC organizations:~~

(i) ~~Licensed provider of aid or ambulance services;~~

(ii) ~~Law enforcement agency; or~~

(iii) ~~Other affiliated EMS/TC service;~~

(h) ~~The MPD's recommendation for certification;~~

(i) ~~For EMTs, proof of high school graduation, GED, or equivalent;~~

(j) ~~Other information required by this chapter.~~

(3) ~~Certification is effective on the date the department issues the certificate, and will be valid for three years except as extended by the department for the efficient processing of license renewals. The expiration date will be indicated on the certification card.~~

(4) ~~Certification of intermediate level technicians and paramedics is valid only:~~

(a) ~~In the county or counties where recommended by the MPD and approved by the department;~~

(b) ~~In other counties where formal EMS/TC medical control agreements are in place; or~~

(c) ~~In other counties when accompanying a patient in transit from a county meeting the criteria in (a) or (b) of this subsection.~~

With approval of the MPD, a certified intermediate level technician or paramedic may function as an EMT in counties other than those described in (a) through (c) of this subsection.)) To apply for initial EMS provider certification following the successful completion of a Washington state approved EMS course, an applicant must submit to the department:

(1) A completed initial certification application on forms provided by the department.

(2) Proof of meeting the requirements identified in Table A of this section.

Table A
Applicants Who Have Completed a Washington State Approved EMS Course

<u>REQUIREMENTS</u>
<p><u>EMS education:</u> Candidate must provide proof of successful EMS course completion from a department-approved EMS training program. For paramedic applicants, this proof must be from a training program accredited by a department-approved national accrediting organization.</p> <p><u>Certification examination:</u> Provide proof of a passing score on the department-approved certification examination for the level of certification. Applicants will have three attempts within twelve months of course completion to pass the examination. After three unsuccessful attempts, the applicant may retake the initial EMS training course, or within twelve months of the third unsuccessful attempt, complete department-approved refresher training covering airway, medical, pediatric, and trauma topics identified below, and pass the department-approved certification examination:</p> <ul style="list-style-type: none"> • <u>EMR Not applicable. Must repeat EMR course.</u> • <u>EMT twenty-four hours.</u> • <u>AEMT thirty-six hours - pharmacology review must be included in the refresher training.</u>

REQUIREMENTS
<ul style="list-style-type: none"> • <u>Paramedic forty-eight hours - pharmacology review must be included in the refresher training.</u>
<p>Certification application: <u>High school diploma or GED: Required for EMT, AEMT and paramedic only.</u> <u>Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport).</u> <u>Provide proof of age - at least eighteen years of age. Variances to this age requirement will not be granted.</u> <u>Provide proof of EMS agency association - active membership, paid or volunteer with:</u></p> <ul style="list-style-type: none"> • <u>Licensed aid or ambulance service;</u> • <u>Law enforcement agency;</u> • <u>Business with organized industrial safety team;</u> • <u>Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</u> <p><u>Recommendation of county medical program director - required. MPD must sign application.</u> <u>Background check - required. May include requirement for fingerprint card and FBI background check.</u></p>

NEW SECTION

WAC 246-976-142 To obtain reciprocal (out-of-state) EMS certification, based on a current out-of-state or national EMS certification approved by the department. To apply for certification, an applicant must submit to the department:

- (1) A completed certification application on forms provided by the department; and
- (2) Proof of meeting the requirements identified in Table A of this section.

**Table A
 Reciprocity—Out-of-State Applicants Seeking EMS Certification**

REQUIREMENTS
<p>EMS educational program: EMS courses conducted according to the U.S. Department of Transportation, national EMS training course standards. After June 30, 1996, paramedic training program must be accredited by a national accrediting organization approved by the department.</p>
<p>Additional education: Provide proof of a department-approved four-hour infectious disease course or a seven-hour HIV/AIDS course as required by chapter 70.24 RCW.</p>
<p>Current credential: Provide proof of valid EMS certification from another state or national certifying agency approved by the department.</p>
<p>Certification examination: Provide proof of a passing score on a department-approved certification examination for the level of certification. The score is valid for twelve months from the date of the examination. After twelve months, a passing score on a department-approved certification examination is required. Applicants will have three attempts within twelve months from the first examination date to pass the examination.</p>
<p>Certification application: High school diploma or GED: Required for EMT, AEMT and paramedic only. Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport). Provide proof of age - at least eighteen years of age. Variances to this age requirement will not be granted. Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> • Licensed aid or ambulance service; • Law enforcement agency; • Business with organized industrial safety team; • Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above. <p>Recommendation of county medical program director - required. MPD must sign application. Background check - required. May include requirement for fingerprint card and FBI background check.</p>

NEW SECTION

WAC 246-976-143 To obtain EMS certification by challenging the educational requirements, based on possession of a current health care providers credential. To apply for certification, an applicant must submit to the department:

- (1) A completed certification application on forms provided by the department; and
- (2) Proof of meeting the requirements identified in Table A of this section.

**Table A
Health Care Providers Seeking to Challenge the Educational Requirements for EMS Certification**

REQUIREMENTS
<p>Education: Course completion documents showing education equivalent to the knowledge and skills at the EMR, EMT or AEMT training level. Applicants seeking paramedic certification - successful completion of a paramedic course through a training program accredited by a department-approved national accrediting organization.</p>
<p>Additional education: Provide proof of a department-approved four-hour infectious disease course or a seven-hour HIV/AIDS course as required by chapter 70.24 RCW.</p>
<p>Current credential: Provide proof of a valid health care provider credential.</p>
<p>Certification examination: A passing score on a department-approved certification examination. Applicants will have three attempts within twelve months from the first examination date to pass the examination. After twelve months, the applicant must complete an approved initial EMS course to reapply for certification.</p>
<p>Certification application: High school diploma or GED: Required for EMT, AEMT and paramedic only. Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport). Provide proof of age - at least eighteen years of age. Variances to this age requirement will not be granted. Provide proof of EMS agency association - active membership, paid or volunteer with: <ul style="list-style-type: none"> • Licensed aid or ambulance service; • Law enforcement agency; • Business with organized industrial safety team. Recommendation of county medical program director - required. MPD must sign application. Background check - required. May include requirement for fingerprint card and FBI background check.</p>

NEW SECTION

WAC 246-976-144 EMS certification. (1) Certification is effective on the date the department issues the certificate. Certifications must be renewed every three years. The expiration date is indicated on the certification card.

(2) The secretary may extend the certification period to accommodate the efficient processing of recertification applications. The expiration date will be indicated on the certification card issued by the department.

(3) Certification of AEMTs and paramedics is valid only:

- (a) In the county or counties where recommended by the MPD and approved by the secretary;
- (b) In other counties where formal EMS medical control agreements are in place; or
- (c) In other counties when accompanying a patient in transit.
- (d) While responding to other counties for mutual aid purposes, mass care, or other incidents. In these situations,

EMS provider will provide patient care following the prehospital patient care protocols of their supervising MPD.

(4) A certified AEMT or paramedic may function at a lower certification level in counties other than those described in subsection (3)(a) through (c) of this section, with approval of that county's MPD.

(5) EMTs who have successfully completed IV therapy or supraglottic airway training may use those skills only when following approved county MPD protocols that permit EMTs with such training to perform those skills.

(6) When EMS personnel change or add membership with an EMS agency, or their contact information changes, they must notify the department within thirty days of the change. Changes submitted must be made on forms provided by the department.

AMENDATORY SECTION (Amending WSR 04-08-103, filed 4/6/04, effective 5/7/04)

WAC 246-976-161 General education requirements for ((certification)) EMS provider recertification. ((+)) Education is required for the recertification of all certified EMS personnel. This education may be obtained by completing the continuing medical education (CME) method, ~~or~~ through the ongoing training and evaluation program (OTEP) method, identified below:

(a) CME topic content:

(i) Must meet annual and certification period educational requirements identified in Table A of this section, utilizing:

(A) Cognitive, affective and psychomotor objectives found in curricula identified in WAC 246-976-021, for the level of certification being taught.

(B) Current national standards published for CPR, foreign body airway obstruction (FBAO), and automatic defibrillation.

(C) County medical program director (MPD) protocols, regional patient care procedures, and county operating procedures.

(D) Training updates in standards as identified by the department.

(ii) Must be approved by the MPD.

(iii) May incorporate nationally recognized training programs as part of CME for content identified in (a)(i)(A) of this subsection.

(b) To complete the CME method you must:

(i) Complete and document the educational requirements, indicated in Table A of this section, appropriate to your level of certification.

(ii) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to your level of certification.

(A) IV starts for IV technicians, combined IV/airway technicians, ILS technicians, combined ILS/airway technicians, or paramedics:

(I) During your first certification period, you must perform a minimum of one hundred eight successful IV starts.

• During the first year, you must perform a minimum of thirty-six successful IV starts.

• During the second and third year, you must perform a minimum of thirty-six successful IV starts per year, which may be averaged over the second and third years of the certification period.

(H) If you have completed a certification period, you must demonstrate proficiency in starting IVs to the satisfaction of the MPD (see later certification periods in Table B of this section).

(B) Endotracheal intubations for airway technicians, combined IV/airway technicians, combined ILS/airway technicians or paramedics:

(I) During your first certification period, you must perform a minimum of thirty-six successful endotracheal intubations:

• During the first year, you must perform a minimum of twelve successful endotracheal intubations of which four of the endotracheal intubations must be performed on humans.

• During the second and third year, you must perform a minimum of twelve endotracheal intubations per year, which

may be averaged over the second and third years of the certification period. Four of these endotracheal intubations per year must be performed on humans.

(H) If you have completed a certification period, you must perform a minimum of four successful human endotracheal intubations per year, which may be averaged over the three-year certification period (see later certification periods in Table B of this section).

(III) Upon approval of the MPD, individuals unable to complete the required endotracheal intubations during the certification period, may meet the endotracheal intubation requirements by completing a MPD and department-approved intensive airway management training program, utilizing cognitive, affective and psychomotor objectives covering all aspects of emergency airway management.

(iii) Successfully complete the Washington state written examination and practical skills examination as identified in WAC 246-976-171.

(e) Any applicant changing from the CME method to the OTEP method must meet all requirements of the OTEP method:

(d) Ongoing training and evaluation programs:

(i) Must meet annual and certification period educational requirements identified in Table A, utilizing:

(A) Cognitive, affective and psychomotor objectives found in curricula identified in WAC 246-976-021, for the level of certification being taught, in the following core content areas:

(I) Airway/ventilation (including intensive airway management training for personnel with advanced airway qualifications to determine competency);

(II) Cardiovascular.

(III) Medical emergencies/behavioral.

(IV) Trauma (including intensive IV therapy training for personnel with qualifications to determine competency);

(V) Obstetrics and pediatrics.

(VI) Operations.

(B) The current national standards published for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification.

(C) County medical program director (MPD) protocols, regional patient care procedures, and county operating procedures.

(D) Training updates in standards as identified by the department.

(ii) Must provide cognitive, affective and psychomotor evaluations following completion of each topic presentation to determine student competence of topic content.

Psychomotor skill evaluations must be recorded on skill evaluation forms from nationally recognized training programs, or on forms provided in approved curricula identified in WAC 246-976-021, for the level of certification being taught. If an evaluation form is not provided, a skill evaluation form must be developed and approved by the MPD to evaluate the skill.

(iii) Must be approved by the MPD; any additions or major changes to an approved OTEP require documented approval from the county MPD and the department.

(iv) Must be presented and evaluated by course personnel meeting the following qualifications:

(A) Evaluators must:

(I) Be a currently certified BLS or ALS provider who has completed at least one certification cycle. Certification must be at or above the level of certification being evaluated.

(II) Complete an MPD approved evaluator's workshop, specific to the level of certification being evaluated, and teach proficiency in utilizing skill evaluation forms identified in (d) (ii) of this subsection;

(III) Complete the evaluator application, DOH Form 530-012;

(IV) Be approved by the county MPD and the department.

(B) Instructors must:

(I) Be a currently certified BLS or ALS provider who has completed at least one certification cycle at or above the level of certification being taught.

(II) Be a currently approved evaluator at the level of certification being taught.

(III) Be approved by the county MPD to instruct and evaluate EMS topics.

(C) Guest lecturers, when utilized, must have specific knowledge and experience in the skills of the prehospital emergency care field for the topic being presented and be approved by the county MPD to instruct EMS topics.

(v) May incorporate nationally recognized training programs within an OTEP for the core content areas identified in (d)(i)(A) of this subsection.

(e) To complete the OTEP method you must:

(i) Complete a department and MPD approved OTEP that includes requirements indicated in Table A of this section, appropriate to your level of certification.

(ii) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to your level of certification.

(A) IV starts for IV technicians, combined IV/airway technicians, ILS technicians, combined ILS/airway technicians, or paramedics:

(I) During your first certification period, you must perform a minimum of thirty-six successful IV starts.

• During the first year, you must perform a minimum of twelve successful IV starts.

• During the second and third year, you must perform a minimum of twelve successful IV starts per year, which may be averaged over the second and third years of the certification period.

(II) If you have completed a certification period, you must demonstrate proficiency in starting IVs to the satisfaction of the MPD (see later certification periods in Table B of this section):

(B) Endotracheal intubations for airway technicians, combined IV/airway technicians, combined ILS/airway technicians or paramedics:

(I) During your first certification period, you must perform a minimum of twelve successful endotracheal intubations:

• During the first year, you must perform a minimum of four successful human endotracheal intubations.

• During the second and third year, you must perform a minimum of four human endotracheal intubations per year, which may be averaged over the second and third years of the certification period.

(II) If you have completed a certification period, you must perform a minimum of two successful human endotracheal intubations per year, which may be averaged over the three year certification period (see later certification periods in Table B of this section):

(C) Skills maintenance requirements may be obtained as part of the OTEP.

(D) Individuals participating in an OTEP meet skill maintenance requirements by demonstrating proficiency in the application of those skills to the county MPD during the OTEP.

(f) Any applicant changing from the OTEP method to the CME method must meet all requirements of the CME method.

(g) Education requirements for recertification – Table A:

TABLE A: EDUCATION REQUIREMENTS FOR RECERTIFICATION	Basic Life Support		Intermediate Life Support (EMT-Intermediate Levels)					Paramedic (ALS)
	FR	EMT	IV	Air	IV/Air	ILS	ILS/Air	Paramedic
Annual Requirements								
CPR & Airway	X	X	X	X	X	X	X	
Spinal Immobilization	X	X	X	X	X	X	X	
Patient Assessment	X	X	X	X	X	X	X	
Certification Period Requirements								
Infectious Disease	X	X	X	X	X	X	X	X
Trauma		X	X	X	X	X	X	X
Pharmacology		X	X	X	X	X	X	
Other Pediatric Topics	X	X	X	X	X	X	X	X
*Additional education course hours totaling:	15 hrs	30 hrs	45 hrs	45 hrs	60 hrs	60 hrs	75 hrs	150 hrs

"X" indicates an individual must demonstrate knowledge and competency in the topic or skill.

*Individuals obtaining education through the CME method must complete the total number of educational course hours indicated above. However, due to the competency-based nature of OTEP, fewer class hours may be needed to complete these requirements than the total course hours indicated above.

(h) Skill maintenance requirements – Table B:

TABLE B: SKILLS MAINTENANCE REQUIREMENTS	Intermediate Life Support (EMT-Intermediate Levels)					Paramedic (ALS)
	IV	Air	IV/Air	HLS	HLS/Air	Paramedic
First Certification Period						
• First Year of Certification						
IV Starts						
Continuing Education Method may not be averaged	36		36	36	36	36
OTEP Method	12		12	12	12	12
Endotracheal intubations (4 must be performed on humans for each method)						
Continuing Education Method may not be averaged		12	12		12	12
OTEP Method		4	4		4	4
Intraosseous infusion placement	X		X	X	X	X
• Second and Third Years of Certification						
• Annual Requirements						
IV Starts*						
Continuing Education Method	36		36	36	36	36
OTEP Method	12		12	12	12	12
Endotracheal intubations* (4 per year must be performed on humans for each method)						
Continuing Education Method		12	12		12	12
OTEP Method		4	4		4	4
Intraosseous infusion placement	X		X	X	X	X
• During the Certification Period						
Pediatric airway management		X	X		X	X
Multi-lumen airway placement				X	X	
Defibrillation				X	X	
Later Certification Periods						
• Annual Requirements						
IV Starts	X		X	X	X	X
Endotracheal intubations (2 per year must be performed on humans for each method)						
Continuing Education Method		4	4		4	4
OTEP Method		2	2		2	2
Intraosseous infusion placement	X		X	X	X	X
• During the Certification Period						
Pediatric airway management		X	X		X	X
Multi-lumen airway placement				X	X	
Defibrillation				X	X	

"X" indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

*The second and third year requirements may be averaged over the two years.

(i) Skill maintenance requirements for individuals requesting reciprocal certification:

(i) Reciprocity candidates credentialed less than three years must meet Washington state's skill maintenance requirements for the initial certification period identified above.

(ii) Reciprocity candidates credentialed three years or more must meet Washington state's skill maintenance requirements for second and subsequent certification periods.

(iii) The county MPD may evaluate an individual's skills to determine if the individual is proficient in the application of those skills prior to recommending certification. The MPD may recommend an individual obtain specific training to become proficient in any skills deemed insufficient by the MPD or delegate.

(j) Description of selected terms used in Tables A and B:

(i) Class hours: Actual hours spent to become knowledgeable in a topic(s) or proficient in a skill(s).

(ii) Course hours: The predetermined time scheduled to conduct a course or topic.

(iii) CPR and airway management includes foreign body obstruction (FBAO) and the use of airway adjuncts appropriate to the level of certification, for adults, children and infants following national standards, assuring the following pediatric objectives are covered:

Pediatric objectives—The EMS provider must be able to:

(A) Identify and demonstrate airway management techniques for infants and children.

(B) Demonstrate infant and child CPR.

(C) Demonstrate FBAO technique for infants and children.

(iv) Endotracheal intubation: Proficiency includes the verification of proper tube placement and continued placement of the endotracheal tube in the trachea through procedures identified in county MPD protocols.

(v) Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.

(vi) Intraosseous infusion: Proficiency in intraosseous line placement in pediatric patients.

(vii) IV starts: Proficiency in intravenous catheterization performed on sick, injured, or preoperative adult and pediatric patients. With written authorization of the MPD, IV starts may be performed on artificial training aids.

(viii) Multi-lumen airway placement: Proficiency includes the verification of tube placement and continued placement of the multi-lumen airway through procedures identified in county MPD protocols.

(ix) Other pediatric topics: This includes anatomy and physiology and medical problems including special needs patients appropriate to the level of certification, assuring the following pediatric objectives are covered:

(A) Anatomy and physiology—The EMS provider must be able to:

(I) Identify the anatomy and physiology and define the differences in children of all ages.

(II) Identify developmental differences between infants, toddlers, preschool, school age and adolescents, including special needs children.

(B) Medical problems including special needs patients—The EMS provider must be able to:

(I) Identify the differentiation between respiratory distress and respiratory failure.

(II) Identify the importance of early recognition and treatment of shock in the infant and child patient.

(III) Identify causes and treatments for seizures.

(IV) Identify life-threatening complications of meningitis and sepsis.

(V) Identify signs and symptoms of dehydration.

(VI) Identify signs and symptoms of hypoglycemia.

(VII) Identify how hypoglycemia may mimic hypoxemia.

(VIII) Identify special needs pediatric patients that are technologically dependant (tracheotomy tube, central line, GI or feeding tubes, ventilators, community specific needs).

(IX) Identify the signs and symptoms of suspected child abuse.

(X) Identify the signs and symptoms of anaphylaxis and treatment priorities.

(XI) Identify the importance of rapid transport of the sick infant and child patient.

(x) Patient assessment: This includes adult, pediatric and geriatric patients appropriate to the level of certification, assuring the following pediatric objectives are covered:

Pediatric objectives—The EMS provider must be able to:

(A) Identify and demonstrate basic assessment skills according to the child's age and development.

(B) Demonstrate the initial assessment skills needed to rapidly differentiate between the critically ill or injured and the stable infant and child patient.

(C) Identify and demonstrate the correct sequence of priorities to be used in managing the infant and child patient with life threatening injury or illness.

(D) Identify that the priorities for a severely injured and critically ill infant and child are:

• Airway management;

• Oxygenation;

• Early recognition and treatment of shock;

• Spinal immobilization;

• Psychological support.

(E) Demonstrate a complete focused assessment of an infant and a child.

(F) Demonstrate ongoing assessment of an infant and a child.

(G) Identify the differences between the injury patterns of an infant and a child compared to that of an adult.

(H) Identify the psychological dynamics between an infant and a child, parent or caregiver and EMS provider.

(xi) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for first responders).

(xii) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.

(xiii) Spinal immobilization and packaging: This includes adult, pediatric and geriatric patients appropriate to the level of certification, assuring the following pediatric objectives are covered.

Pediatric objectives—The EMS provider must be able to:

(A) Demonstrate the correct techniques for immobilizing the infant and child patient.

~~(B) Identify the importance of using the correct size of equipment for the infant and child patient.~~

~~(C) Demonstrate techniques for adapting adult equipment to effectively immobilize the infant and child patient.~~

~~(xiv) Trauma: For adult, pediatric and geriatric patients appropriate to the level of certification, assuring the following pediatric objectives are covered:~~

~~Pediatric objectives—The EMS provider must be able to:~~

~~(A) Identify the importance of early recognition and treatment of shock in the infant and child patient.~~

~~(B) Identify the importance of early recognition and treatment of the multiple trauma infant and child patient.~~

~~(C) Identify the importance of rapid transport of the injured infant and child patient.)) (1) Education is required to recertify as an EMS provider.~~

~~(a) The EMS provider must complete the continuing medical education and examination (CME) method, identified in WAC 246-976-162 or the ongoing training and evaluation program (OTEP) method, identified in WAC 246-976-163 for each certification period.~~

~~(b) The EMS provider shall maintain records of successfully completed educational, practical skill evaluation and skill maintenance requirements.~~

~~(2) Education for recertification must be approved by the MPD. Educational and topic content requirements must include:~~

~~(a) Knowledge and skills found in instructor guidelines identified in WAC 246-976-023, appropriate to the level of certification being taught;~~

~~(b) Nationally recognized training programs for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification.~~

Training must be at the health care provider level and meet Journal of American Medical Association (JAMA) standards; and

(c) Current county medical program director (MPD) protocols, regional patient care procedures, county operating procedures and state triage destination procedures.

(3) Nationally recognized training programs may be incorporated as part of content identified in subsection (2) of this subsection.

(4) Skill maintenance is a required educational component for recertification:

(a) For EMS providers completing the CME method the required skills are defined in WAC 246-976-162.

(b) For EMS providers completing the OTEP method the required skills are defined in WAC 246-976-163. These requirements may be obtained as part of an OTEP.

(5) Upon approval of the MPD, if an EMS provider is unable to complete the required endotracheal intubations as defined in WAC 246-976-162 or 246-976-163 the EMS provider may meet the endotracheal intubation requirements by completing an MPD and department-approved intensive airway management training program, covering all knowledge and skill aspects of emergency airway management.

NEW SECTION

WAC 246-976-162 The CME method of recertification. To complete the CME method of recertification, an EMS provider must:

(1) Complete and document the requirements, indicated in Table A of this section, appropriate to the level of certification for each certification period.

**Table A
Education Requirements for Recertification**

	EMR	EMT	AEMT	Paramedic
Annual Requirements				
Cardiovascular education and training	X	X	X	X
Spinal immobilization	X	X	X	X
Patient assessment	X	X	X	X
Certification Period Requirements				
Infectious disease	X	X	X	X
Trauma	X	X	X	X
Pharmacology		X	X	X
Other pediatric topics	X	X	X	X
Total minimum education hours per certification period:	15 hrs	30 hrs	60 hrs	150 hrs

"X" Indicates an individual must demonstrate knowledge and competency in the topic or skill.

(2) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to the level of certification.

**Table B
Skills Maintenance Requirements for the CME Method**

	EMR	EMT	AEMT	Paramedic
First Certification Period or Three Years				
<input type="checkbox"/> First Year				

	EMR	EMT	AEMT	Paramedic
IV starts		EMT w/IV therapy skill 36	36	36
Endotracheal intubations (4 must be performed on humans)				12
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> Second and Third Years				
IV starts over the two-year period		EMT w/IV therapy skill 72	72	72
Endotracheal intubations over the two-year period (4 per year must be performed on humans)				24
Intraosseous infusion placement		EMT w/IV therapy skill X		
During the Certification Period				
Pediatric airway management				X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X
Later Certification Periods				
<input type="checkbox"/> Annual Requirements				
IV starts		EMT w/IV therapy skill X	X	X
Endotracheal intubations (2 per year must be performed on humans)				4
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> During the Certification Period				
Pediatric airway management				X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X

"X" Indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

(3) An EMS provider must successfully complete department-approved knowledge and practical skill examinations as identified in WAC 246-976-171.

(4) An EMS provider changing from the CME method to the OTEP method must meet all requirements of the OTEP method.

(5) Definitions of selected terms used in Tables A and B of this section:

(a) Cardiovascular education and training for adults, children, and infants includes:

(i) Nationally recognized training programs for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification;

(ii) The use of airway adjuncts appropriate to the level of certification;

(iii) The care of cardiac and stroke patients.

(b) Endotracheal intubation: Proficiency includes the verification of proper tube placement and continued placement of the endotracheal tube in the trachea through procedures identified in county MPD protocols.

(c) Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.

(d) Intraosseous infusion: Proficiency in intraosseous line placement.

(e) IV starts: Proficiency in intravenous catheterization performed on sick, injured, or preoperative adult and pediatric patients. With written authorization of the MPD, IV starts may be performed on artificial training aids.

(f) Supraglottic airway placement: Proficiency includes the verification of tube placement and continued placement of the supraglottic airway, in a skill lab setting, through procedures identified in county MPD protocols.

(g) Other pediatric topics: This includes anatomy and physiology and medical problems including special needs patients appropriate to the level of certification.

(h) Patient assessment: This includes adult, pediatric and geriatric patients appropriate to the level of certification.

(i) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for EMRs).

(j) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.

(k) Spinal immobilization and packaging: This includes adult, pediatric, and geriatric patients appropriate to the level of certification

(l) Trauma: For adult, pediatric, and geriatric patients appropriate to the level of certification.

NEW SECTION

WAC 246-976-163 The OTEP method of recertification. (1) Ongoing training and evaluation programs (OTEP):

(a) Must provide knowledge and skill evaluations following completion of each topic presentation to determine student competence of topic content.

(i) Must record practical skill evaluations on skill evaluation forms from nationally recognized training programs, or on department-approved practical skill evaluation forms, for the level of certification being taught.

(ii) If an evaluation form is not provided, a skill evaluation form must be developed and approved by the MPD and the department to evaluate the skill;

(b) Must be conducted at least on a quarterly basis;

(c) Must be approved by the MPD and the department. Any additions or major changes to an approved OTEP requires documented approval from the county MPD and the department;

(d) Must be presented and evaluated by course personnel meeting the following qualifications:

(i) Evaluators must:

(A) Be a currently certified Washington EMS provider who has completed at least one certification cycle. Certifica-

tion must be at or above the level of certification being evaluated;

(B) Complete an MPD approved evaluator's workshop, specific to the level of certification being evaluated, which teaches participants to properly evaluate practical skills using the skill evaluation forms identified in (a) of this subsection. Participants must demonstrate proficiency to successfully complete the workshop;

(C) Complete the evaluator application, DOH Form 530-012;

(I) Be approved by the county MPD and the department; and

(II) Submit the MPD approved EMS evaluator application to the department.

(D) Meet education and participation requirements as identified by the county medical program director;

(E) Be recommended for reapproval by the county medical program director upon EMS credential recertification.

(ii) Instructors must:

(A) Be a currently approved EMS evaluator at or above the level of certification being taught;

(B) Be approved by the county MPD to instruct and evaluate EMS topics;

(iii) Guest lecturers, when used, must have specific knowledge and experience in the skills of the prehospital emergency care field for the topic being presented and be approved by the county MPD to instruct EMS topics;

(e) May use on-line training to provide all or a portion of an OTEP when:

(i) On-line training provides sufficient topic content to meet all annual and certification period requirements;

(ii) Each didactic training topic requires an on-line cognitive evaluation after the training. Successful completion of the topic evaluation is required to receive credit for the topic;

(iii) Instruction and demonstration of all practical skills are provided in person by an SEI or qualified EMS evaluator approved by the MPD to instruct the practical skills;

(iv) Each practical evaluation is completed and scored in the presence of a state approved EMS evaluator or SEI. Each evaluation must be successfully completed to receive credit for the practical skill.

(2) To complete the OTEP method of recertification, the EMS provider:

(a) Must complete a county MPD and department-approved OTEP that includes requirements indicated in Table A of this section, for the certification period, appropriate to the level of certification;

**Table A
Education Requirements for Recertification**

	EMR	EMT	AEMT	Paramedic
Annual Requirements				
Cardiovascular education and training	X	X	X	X
Spinal immobilization	X	X	X	X
Patient assessment	X	X	X	X
Certification Period Requirements				
Infectious disease	X	X	X	X
Trauma	X	X	X	X
Pharmacology		X	X	X
Other pediatric topics	X	X	X	X
* Total minimum education hours per certification period:	15 hrs	30 hrs	60 hrs	150 hrs

"X" Indicates an individual must demonstrate knowledge and competency in the topic or skill.

* Individuals obtaining education through the CME method must complete the total number of educational course hours indicated above. However, due to the competency-based nature of OTEP, fewer class hours may be needed to complete these requirements than the total course hours indicated above.

(b) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to the level of certification. Skill maintenance requirements may be obtained as part of the OTEP.

**Table B
Skills Maintenance Requirements for the OTEP Method**

	EMR	EMT	AEMT	Paramedic
First Certification Period or Three Years				
<input type="checkbox"/> First Year				
IV starts		EMT w/IV therapy skill 12	12	12
Human endotracheal intubations				4
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> Second and Third Years				
IV starts over the two-year period		EMT w/IV therapy skill 12	24	24
Human endotracheal intubations over the two-year period				8
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
During the Certification Period				
Pediatric airway management		EMR & EMT X	X	X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X

	EMR	EMT	AEMT	Paramedic
Later Certification Periods				
<input type="checkbox"/> Annual Requirements				
IV starts		EMT w/IV therapy skill X	X	X
Human endotracheal intubation				2
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> During the Certification Period				
Pediatric airway management		EMR & EMT X	X	X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X

"X" Indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

(c) EMS providers using the OTEP method meet skill maintenance requirements by demonstrating proficiency in the application of those skills to the county MPD during the OTEP.

(d) Any EMS provider changing from the OTEP method to the CME method must meet all requirements of the CME method.

(3) Skill maintenance requirements for applicants requesting reciprocal certification:

(a) Reciprocity applicants credentialed less than three years must meet Washington state's skill maintenance requirements for the initial certification period identified above.

(b) Reciprocity applicants credentialed three years or more must meet Washington state's skill maintenance requirements for second and subsequent certification periods.

(c) The county MPD may evaluate an EMS provider's skills to determine proficiency in the application of those skills prior to recommending certification. The MPD may recommend that an EMS provider obtain specific training to become proficient in any skills deemed insufficient by the MPD or delegate.

(4) Definitions of selected terms used in Tables A and B of this section:

(a) Cardiovascular education and training for adults, children, and infants includes:

(i) Nationally recognized training programs for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification;

(ii) The use of airway adjuncts appropriate to the level of certification; and

(iii) The care of cardiac and stroke patients.

(b) Endotracheal intubation: Proficiency includes the verification of proper tube placement and continued placement of the endotracheal tube in the trachea through procedures identified in county MPD protocols.

(c) Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.

(d) Intraosseous infusion: Proficiency in intraosseous line placement.

(e) IV starts: Proficiency in intravenous catheterization performed on sick, injured, or preoperative adult and pediatric patients. With written authorization of the MPD, IV starts may be performed on artificial training aids.

(f) Supraglottic airway placement: Proficiency includes the verification of tube placement and continued placement of the supraglottic airway, in a skill lab setting, through procedures identified in county MPD protocols.

(g) Other pediatric topics: This includes anatomy and physiology and medical problems including special needs patients appropriate to the level of certification.

(h) Patient assessment: This includes adult, pediatric, and geriatric patients appropriate to the level of certification.

(i) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for EMRs).

(j) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.

(k) Spinal immobilization and packaging: This includes adult, pediatric, and geriatric patients appropriate to the level of certification.

(l) Trauma: For adult, pediatric, and geriatric patients appropriate to the level of certification.

AMENDATORY SECTION (Amending WSR 04-08-103, filed 4/6/04, effective 5/7/04)

WAC 246-976-171 ((To apply for recertification/renewal.) Recertification, reversion, reissuance, and reinstatement of certification. ((1) To apply for recertification, the applicant must provide information that meets the requirements identified in WAC 246-976-141(2); EXCEPT current Washington state certification is considered proof of

course completion, age, and initial infectious disease training.

(2) Proof of successful completion of education and skills maintenance, required for the level of certification, as defined in this chapter and identified in Tables A and B of WAC 246-976-161.

(3) Demonstrate knowledge and practical skills competency:

(a) For individuals participating in the OTEP method of education at the level of certification, successful completion of the OTEP fulfills the requirement of the DOH written and practical skills examinations.

(b) Individuals completing the CME method of education must provide proof of successful completion of the DOH written examination and practical skills examination for the level of certification.

(i) Basic life support (BLS) and intermediate life support (ILS) personnel must successfully complete the DOH approved practical skills examination for the level of certification.

(ii) Paramedics must successfully complete practical skills evaluations required by the MPD to determine ongoing competence:)) (1) To apply for recertification, an EMS provider must:

(a) Meet the requirements identified in Table A of this section for EMS providers completing the CME method; or

(b) Meet the requirements identified in Table B of this section for EMS providers completing the OTEP method; and

(c) Submit to the department a completed certification application on forms provided by the department.

Table A
EMS Providers Participating in the CME Method of Recertification

REQUIREMENTS
<p>EMS Education Requirements:</p> <p>EMS providers participating in the CME method must provide proof of the following to the MPD or MPD delegate:</p> <ul style="list-style-type: none"> • <u>Successful completion of the educational requirements at the level of certification being sought, as specified in this chapter and identified in WAC 246-976-162, Table A;</u> • <u>Successful completion of skills maintenance required for the level of recertification being sought, as specified in this chapter and identified in WAC 246-976-162, Table B;</u> • <u>Passing department-approved practical skill certification examination for the level of certification being sought, within twelve months before submitting the application.</u>
<p>Recertification Examination:</p> <p>Provide proof of a passing score on the department-approved recertification examination for the level of recertification being sought. The EMS provider will have three attempts within twelve months of course completion to pass the examination. If the EMS provider is unsuccessful after three attempts, prior to subsequent attempts, refresher training must be completed as follows:</p> <ul style="list-style-type: none"> • <u>EMR twelve hours.</u> • <u>EMT twenty-four hours.</u> • <u>AEMT thirty hours - pharmacology review must be included in the refresher training.</u> • <u>Paramedic forty-eight hours - pharmacology review must be included in the refresher training.</u>
<p>Certification application:</p> <p>Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport).</p> <p>Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> • <u>Licensed aid or ambulance service;</u> • <u>Law enforcement agency;</u> • <u>Business with organized industrial safety team;</u> • <u>Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</u> <p>Recommendation of county medical program director.</p> <ul style="list-style-type: none"> • <u>The county MPD may require additional examinations to determine competency on department-approved MPD protocols prior to recommendation of recertification.</u> • <u>Required - MPD must sign application.</u> <p>Background check - may be required.</p>

Table B
EMS Providers Participating in the OTEP Method of Recertification

REQUIREMENTS
<p><u>EMS Education Requirements:</u> EMS providers participating in the CME method must provide proof of the following to the MPD or MPD delegate:</p> <ul style="list-style-type: none"> • <u>Successful completion of the educational requirements at the level of certification being sought, as specified in this chapter and identified in WAC 246-976-163, Table A;</u> • <u>Successful completion of skills maintenance required for the level of certification being sought, as specified in this chapter and identified in WAC 246-976-163, Table B;</u> • <u>Successful completion of the OTEP knowledge and skill evaluations at the level of recertification being sought.</u>
<p><u>Recertification Examination:</u> The evaluations required under this section fulfill the requirement of department-approved knowledge and practical skill recertification examinations.</p>
<p><u>Certification Application:</u> Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport). Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> • <u>Licensed aid or ambulance service;</u> • <u>Law enforcement agency;</u> • <u>Business with organized industrial safety team;</u> • <u>Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</u> <p><u>Recommendation of county medical program director.</u></p> <ul style="list-style-type: none"> • <u>Obtain the county MPD recommendation for recertification and endorsement of EMT specialized training.</u> • <u>The county MPD may require additional examinations to determine competency on department-approved MPD protocols prior to recommendation of recertification.</u> • <u>Required - MPD must sign application.</u> <p><u>Background check - may be required.</u></p>

(2) To voluntarily revert to a lower level of certification, an EMS provider must:

(a) For the CME method, complete the recertification education requirements identified in WAC 246-976-161 and 246-976-162, Tables A and B for the lower level of certification; or

(b) For the OTEP method, complete the recertification education requirements identified in WAC 246-976-161 and 246-976-163, Tables A and B at the lower level of certification; and

(c) Submit a completed certification application on forms provided by the department.

(3) An EMS provider may not provide EMS care with an expired certification.

(4) To apply for reissuance of an expired Washington state EMS certification:

(a) If a certification is expired for one year or less, the EMS provider must provide proof of the following to the county MPD or MPD delegate:

(i) Complete one additional year of annual recertification education requirements; and

(ii) For EMS providers completing the CME method, complete the requirements identified in Table A of this section; or

(iii) For EMS providers completing the OTEP method, complete the requirements identified in Table B of this section.

(b) If a certification is expired more than one year and less than two years, the EMS provider must provide proof of the following to the county MPD or MPD delegate:

(i) One additional year of annual recertification education requirements; and

(ii) Twenty-four hours of educational topics and hours specified by the department and the MPD; and

(iii) For EMS providers completing the CME method, complete the requirements identified in Table A of this section; or

(iv) For EMS providers completing OTEP, complete the requirements identified in Table B of this section.

(c) If a certification is expired for two years or longer, the EMS provider must provide proof of the following to the MPD or delegate:

(i) For nonparamedic EMS personnel:

(A) Complete a department-approved initial training program, and successfully complete department-approved knowledge and practical skill certification examinations;

(B) Complete the initial certification application requirements identified in WAC 246-976-141.

(ii) For paramedics whose certification has been expired between two and six years:

(A) Current status as a provider or instructor in the following: ACLS, PHTLS or BTLS, PALS or PEPPS, or state approved equivalent;

(B) Current status in health care provider level CPR;

(C) Completing a state approved forty-eight hour EMT-paramedic refresher training program or complete forty-eight hours of ALS training that consists of the following core content:

(I) Airway, breathing and cardiology - sixteen hours.

(II) Medical emergencies - eight hours.

(III) Trauma - six hours.

(IV) Obstetrics and pediatrics - sixteen hours.

(V) EMS operations - two hours.

(D) Successful completion of any additional required MPD and department-approved refresher training;

(E) Successful completion of MPD required clinical and field evaluations;

(F) Successful completion of department-approved knowledge and practical skill certification examinations;

(G) Complete the initial certification application requirements identified in WAC 246-976-141.

(d) A request for reissuance of a paramedic certification that has been expired greater than six years will be reviewed by the department to determine the disposition.

(5) Reinstatement of a suspended or revoked Washington state EMS certification.

(a) A person whose EMS certification is suspended or revoked may petition for reinstatement as provided in RCW 18.130.150:

(b) The petitioner must:

(i) Provide proof of completion of all requirements identified by the departmental disciplinary authority; and

(ii) Meet the reissuance requirements in this section.

(6) When EMS personnel change or add membership with an EMS agency, or their contact information changes, they must notify the department within thirty days of the change. Changes will be made on forms provided by the department.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-182 Authorized care—Scope of practice. (1) Certified EMS(~~(#E)~~) personnel are only authorized to provide patient care:

(a) When performing in a prehospital emergency setting or during interfacility ambulance transport; and

(b) When performing for a licensed EMS agency or an organization recognized by the secretary; and

(c) Within the scope of care that is:

~~((a))~~ (i) Included in the approved instructional guidelines/curriculum for the individual's level of certification; or

~~((b))~~ (ii) Included in approved specialized training; and

~~((c) That is)~~ (iii) Included in state approved county MPD protocols.

(2) ((When a patient is identified as needing care which is not authorized for the providers, the certified person in charge of that patient must consult with medical control as soon as possible,)) If protocols and regional patient care procedures do not provide ((adequate)) off-line direction for the situation, the certified person in charge of the patient must consult with their on-line medical control as soon as possible. Medical control can only authorize a certified person to perform within their scope of practice.

(3) ((For trauma patients,)) All prehospital providers must follow ((the)) state approved ((trauma)) triage procedures, regional patient care procedures and county MPD patient care protocols.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-191 Disciplinary actions. (1) The ~~((department will publish procedures for))~~ secretary is the disciplining authority under RCW 18.130.040 (2)(a).

(2) Modification, suspension, revocation, or denial of certification~~((The procedures))~~ will be consistent with the requirements of the Administrative Procedure Act (chapter 34.05 RCW), the Uniform Disciplinary Act (chapter 18.130 RCW), and ((practice and procedure)) chapter 246-10 WAC~~(3)~~.

~~((2))~~ The department will publish procedures:

~~(a) To investigate complaints and allegations against certified personnel;~~

~~(b) For)~~ (3) MPDs ((to recommend corrective action)) may perform counseling regarding the clinical practice of certified individuals.

~~((3))~~ (4) Before recommending ((revocation, suspension, modification, or denial of a certificate)) disciplinary action, the MPD must initiate ((corrective action)) protocol and procedural counseling with the certified individual, consistent with department ((procedures)) guidelines.

~~((4))~~ (5) The MPD may request the ((department)) secretary to summarily suspend certification of an individual if the MPD believes that continued certification ((will be detrimental to patient care)) is an immediate and critical threat to public health and safety.

~~((5) In cases where the MPD recommends denial of recertification, the department will investigate the individual, and may revoke his or her certification.)~~

~~((#))~~ The MPD may recommend denial or renewal of an individual's certification.

(7) As required by RCW 18.130.080, an employing or sponsoring agency ((disciplines a certified individual for conduct or circumstances as described in RCW 18.130.070, the Uniform Disciplinary Act, the agency must report the cause and the action taken to the department)) is subject to the reporting requirements identified in chapter 246-16 WAC. An employing or sponsoring agency must report to the department the following:

(a) When the certified individual's services have been terminated or restricted based upon a final determination that the individual has either committed an act or acts that may constitute unprofessional conduct; or

(b) That the certified individual may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition; or

(c) When a certified individual is disciplined by an employing or sponsoring agency for conduct or circumstances that would be unprofessional conduct under RCW 18.130.180 of the Uniform Disciplinary Act.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-260 Licenses required. (1) The ~~((department will publish procedures to))~~ secretary licenses ambulance and aid services and vehicles ~~((s))~~ to provide service that is consistent with the state plan and approved regional plans.

(2) To become licensed as an ambulance or aid service, an applicant must submit ~~((application forms to the department, including))~~:

(a) ~~((A declaration that the service is able to comply with standards, rules, and regulations of this chapter;~~

~~(b) A declaration that staffing will meet the personnel requirements of RCW 18.73.150 and 18.73.170;~~

~~(c) A declaration that operation will be consistent with the statewide and regional EMS/TC plans and approved patient care procedures;~~

~~(d) Evidence))~~ A completed application for licensure on forms provided by the department;

(b) Proof of ((liability)) the following insurance coverage:

(i) Motor vehicle liability coverage required in RCW 46.30.020 (ambulance and aid services only);

(ii) Professional and general liability coverage;

~~((e) A description of the general area to be served and the number of vehicles to be used. The description includes:~~

~~(i) The services to be offered (e.g., emergency response and/or interfacility transports);~~

~~(ii) The dispatch process, including a backup plan if the primary unit is unavailable;~~

~~(iii) A plan for tiered response that is consistent with approved regional patient care procedures;~~

~~(iv) A plan for rendezvous with other services that is consistent with approved regional patient care procedures;~~

~~((v))~~ (c) A map of the proposed response area;

~~((vi))~~ (d) The level of service to be provided: Basic life support (BLS), intermediate life support (ILS), or advanced life support (ALS) (paramedic); and the scheduled hours of operation ~~((; and~~

~~((vii))~~ Minimum staffing required for each level is as follows:

(i) For aid service response:

(A) A BLS level service will provide care with at least one person qualified in advanced first aid;

(B) An ILS level service will provide care with at least one ILS technician (AEMT);

(C) An ALS level service will provide care with at least one paramedic.

(ii) For ambulance services:

(A) A BLS level service will provide care and transport with at least one emergency medical technician (EMT) and one person trained in advanced first aid;

(B) An ILS service will provide care and transport with at least one ILS technician and one EMT;

(C) An ALS service will provide care and transport with at least one paramedic and one EMT or higher level of EMS certification;

(D) Licensed services that provide critical care interfacility ambulance transports, must have sufficient medical

personnel on each response to provide patient care specific to the transport;

(e) For licensed ambulance services, a written plan to continue patient transport if a vehicle becomes disabled, consistent with regional patient care procedures.

(3) To renew a license, submit application forms to the department at least thirty days before the expiration of the current license.

(4) Licensed ambulance and aid services must comply with ~~((the))~~ department-approved prehospital ~~((trauma))~~ triage procedures ~~((defined in WAC 246-976-010)).~~

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-270 Denial, suspension, revocation ~~((of license))~~. (1) The ~~((department))~~ secretary may suspend, modify, or revoke ~~((any ambulance or aid service))~~ an agency's license or verification issued under this chapter ~~((; or))~~. The secretary may deny licensure or verification to an applicant when it finds:

(a) Failure to comply with the requirements of chapters 18.71, 18.73, ~~((18.130,))~~ or 70.168 RCW, or other applicable laws or rules, or with this chapter;

(b) Failure to comply or ensure compliance with prehospital patient care protocols or regional patient care procedures;

(c) Failure to cooperate with the department in inspections or investigations;

(d) Failure to supply data as required in chapter 70.168 RCW and this chapter; or

(e) Failure to consistently meet trauma response times identified by the regional plan and approved by the department for trauma verified services.

(2) ~~((Under the provisions))~~ Modification, suspension, revocation, or denial of licensure or verification will be consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, and ~~((the Uniform Disciplinary Act, chapter 18.130 RCW, the department may impose sanctions against a licensed service as provided in chapter 18.130 RCW))~~ chapter 246-10 WAC. The ~~((department))~~ secretary will not take action against a licensed, nonverified service under this section for providing emergency trauma care consistent with regional patient care procedures when the wait for the arrival of a verified service would place the life of the patient in jeopardy or seriously compromise patient outcome.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-290 Ground ambulance vehicle standards. (1) Essential equipment for patient and provider safety and comfort must be in good working order.

(2) All ambulance vehicles must be clearly identified as an EMS vehicle and display the agency identification by ~~((appropriate))~~ emblems and markings on the front, side, and rear of the vehicle. A current state ambulance credential must be prominently displayed in a clear plastic cover positioned high on the partition behind the driver's seat.

(3) Tires must be in good condition (~~((with not less than two-thirty seconds inch useable tread, appropriately sized to support the weight of the vehicle when loaded))~~).

(4) The electrical system must meet the following requirements:

(a) Interior lighting in the driver compartment must be designed and located so that no glare is reflected from surrounding areas to the driver's eyes or line of vision from the instrument panel, switch panel, or other areas which may require illumination while the vehicle is in motion; and

(b) Interior lighting in the patient compartment must be (~~(adequate)~~) provided throughout the compartment, and provide an intensity of twenty foot-candles at the level of the patient; and

(c) Exterior lights must (~~(comply with the appropriate sections of Federal Motor Vehicle Safety Standards))~~ be fully operational, and include body-mounted flood lights over the (~~(rear)~~) patient loading doors (~~(which)~~) to provide (~~(adequate)~~) loading visibility; and

(d) Emergency warning lights must be provided in accordance with RCW 46.37.380, as administered by the state commission on equipment.

(5) Windshield wipers and washers must be dual, electric, multispeed, and (~~(maintained in good condition))~~ functional at all times.

(6) Battery and generator system:

(a) The battery (~~((with a minimum seventy ampere hour rating))~~) must be capable of sustaining all systems. It must be located in a ventilated area sealed off from the vehicle interior, and completely accessible for checking and removal;

(b) The generating system must be capable of supplying the maximum built-in DC electrical current requirements of the ambulance. If the electrical system uses fuses instead of circuit breakers, extra fuses must be provided.

(7) The ambulance must be equipped with:

(~~(a)~~) Seat belts that comply with Federal Motor Vehicle Safety Standards 207, 208, 209, and 210. Restraints must be provided in all seat positions in the vehicle, including the attendant station(-); and

(~~((8))~~) (~~(b)~~) Mirrors on the left side and right side of the vehicle. The location of mounting must provide maximum rear vision from the driver's seated position(-); and

(~~((9))~~) (~~(c)~~) One ABC two and one-half pound fire extinguisher.

(~~((10))~~) (8) Ambulance body requirements:

(a) The length of the patient compartment must be at least one hundred twelve inches in length, measured from the partition to the inside edge of the rear loading doors; and

(b) The width of the patient compartment, after cabinet and cot installation, must provide at least nine inches of clear walkway between cots or the squad bench; and

(c) The height of the patient compartment must be at least fifty-three inches at the center of the patient area, measured from floor to ceiling, exclusive of cabinets or equipment; and

(d) There must be secondary egress from the (~~(curb side of the patient compartment))~~ vehicle; and

(e) Back doors must open in a manner to increase the width for loading patients without blocking existing working lights of the vehicle; and

(f) The floor at the lowest level permitted by clearances. It must be flat and unencumbered in the access and work area, with no voids or pockets in the floor to side wall areas where water or moisture can become trapped to cause rusting (~~(and/))~~ or unsanitary conditions; and

(g) Floor covering applied to the top side of the floor surface. It must withstand washing with soap and water or disinfectant without damage to the surface. All joints in the floor covering must have minimal void between matching edges, cemented with a suitable water-proof and chemical-proof cement to eliminate the possibility of joints loosening or lifting; and

(h) The finish of the entire patient compartment must be impervious to soap and water and disinfectants to permit washing and sanitizing; and

(i) Exterior surfaces must be smooth, with appurtenances kept to a minimum; and

(j) Restraints must be provided for all litters. If the litter is floor supported on its own support wheels, a means must be provided to secure it in position. These restraints must permit quick attachment and detachment for quick transfer of patient.

(~~((11))~~) (9) Vehicle brakes, (~~((tires,))~~) regular and special electrical equipment, (~~((windshield wipers,))~~) heating and cooling units, safety belts, and window glass, must be (~~((in good working order))~~) functional at all times.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-300 Ground ambulance and aid (~~(vehicles))~~ service—Equipment. Ground ambulance and aid services must provide equipment listed in Table ((C)) A of this section on each licensed vehicle, when available for service.

Note: "asst" means assortment

TABLE ((C)) <u>A</u> : EQUIPMENT	AMBULANCE	AID VEHICLE
AIRWAY MANAGEMENT		
Airway Adjuncts		
Oral airway (((adult, sm, med, lg))) <u>adult and pediatric</u>	((1ea)) <u>asst</u>	((1ea)) <u>asst</u>
((Oral airway (pediatric: 00, 0, 1, 2, 3, 4))	<u>1ea</u>	<u>1ea</u>)
Suction		
Portable((, manual)))	1	1

Vehicle mounted and powered, providing: Minimum of 30 L/min. & vacuum > 300 mm Hg	1	0
Tubing, suction	1	1
Bulb syringe, pediatric	1	1
Rigid suction tips	2	1
Catheters as required by local protocol		
Water-soluble lubricant	<u>1</u>	<u>1</u>
Oxygen delivery system built in	1	0
3000 L Oxygen ((cylinder)) <u>supply, with regulator, 500 ((Lbs))</u> PSI minimum, or equivalent liquid oxygen system	1	0
300 L Oxygen ((cylinder)) <u>supply, with regulator, 500 ((Lbs))</u> PSI minimum, or equivalent liquid oxygen system	2	1
((Regulator, oxygen (0-15+ Liter))	+	+)
Cannula, nasal, adult	4	2
O ₂ mask, nonrebreather, adult	4	2
O ₂ mask, nonrebreather, pediatric	2	1
BVM, with O ₂ reservoir		
<u>Adult, pediatric, infant</u>	1 <u>ea</u>	1 <u>ea</u>
((Pediatric (w/sizes neonatal to adult))	+	+
<u>Pocket mask or equivalent</u>	+	+)
PATIENT ASSESSMENT AND CARE		
Assessment		
Sphygmomanometer		
Adult, large	1	((0)) <u>1</u>
Adult, regular	1	1
Pediatric	1	((0)) <u>1</u>
Stethoscope, adult	1	1
Thermometer, ((hypothermia and hyperthermia)) <u>per county protocol</u>	1((ea))	0
Flashlight, w/spare or rechargeable batteries & bulb	1	1
((*)) Defibrillation capability appropriate to the level of personnel.		
(((*)Note: The requirement for defibrillation takes effect January 1, 2002.)))	1	1
Personal infection control and protective equipment as required by the department of labor and industries		
<u>Length based tool for estimating pediatric medication and equipment sizes</u>	<u>1</u>	<u>1</u>
TRAUMA EMERGENCIES		
((Trauma registry identification bands)	Yes	Yes))
Triage identification for 12 patients <u>per county protocol</u>	Yes	Yes
Wound care		
Dressing, sterile	asst	asst
Dressing, sterile, trauma	2	2
Roller gauze bandage	asst	asst
Medical tape	asst	asst
Self adhesive bandage strips	asst	asst
Cold packs	4	2
Occlusive dressings	2	2
((Burn sheets)	2	2))
Scissors, bandage	1	1
Irrigation solution	2	1

Splinting		
Backboard with straps	2	1
Head ((immobilizer)) <u>immobilization equipment</u>	1	1
Pediatric immobilization device	1	((0)) 1
Extrication collars, rigid		
Adult (small, medium, large)	asst	asst
Pediatric or functionally equivalent sizes	asst	asst
Immobilizer, cervical/thoracic, adult	1	0
Splint, traction, adult w/straps	1	0
Splint, traction, pediatric, w/straps	1	0
Splint, adult (arm and leg)	2 ea	1 ea
Splint, pediatric (arm and leg)	1 ea	1 ea
General		
Litter, wheeled, collapsible, <u>with a functional restraint system per the manufacturer</u>	1	0
Pillows, plastic covered or disposable	2	0
Pillow case, <u>cloth or disposable</u>	4	0
Sheets, <u>cloth or disposable</u>	4	((0)) 2
Blankets	2	2
Towels, <u>cloth or disposable 12" x 23" minimum</u>	4	((0)) 2
Emesis collection device	1	1
Urinal	1	0
Bed pan	1	0
OB kit	1	1
<u>Epinephrine and supplies appropriate for level of certification per MPD protocols.</u>		
<u>Adult</u>	<u>1</u>	<u>1</u>
<u>Pediatric</u>	<u>1</u>	<u>1</u>
<u>Storage and handling of pharmaceuticals in ambulances and aid vehicles must be in compliance with the manufacturers' recommendations.</u>		
<u>Extrication plan: Agency must document how extrication will be provided when needed.</u>		
((Shovel	±	±
Hammer	±	±
Adjustable wrench, 8"	±	±
Hack saw, with blades	±	±
Crowbar, pinch point, 36" minimum	±	±
Screwdriver, straight tip, 10" minimum	±	±
Screwdriver, 3 Phillips, 10" minimum	±	±
Wrecking bar, 3' minimum	±	±
Locking pliers	±	±
Bolt cutters, 1/2" min. jaw spread	±	±
Rope, utility, 50' x 3/8"	±	±))

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-310 Ground ambulance and aid (~~vehicles~~) service—Communications equipment. (1) Licensed services must provide each licensed ambulance and aid vehicle with communication equipment which:

(a) Is consistent with state and regional plans;

(b) Is in good working order;

(c) Allows direct two-way communication between the vehicle and its dispatch control point; and

(d) Allows communication with medical control.

(2) If cellular telephones are used, there must also be another method of radio contact with dispatch and medical control for use when cellular service is unavailable.

(3) Licensed ambulance services must provide each licensed ambulance with communication equipment which:

(a) Allows direct two-way communication with medical control and all hospitals in the service area of the vehicle, from both the driver's and patient's compartment; and

(b) Incorporates appropriate encoding and selective signaling devices(~~(-and~~

~~(e) When transporting patients, allows communications with medical control and designated EMS/TC receiving facilities)).~~

AMENDATORY SECTION (Amending WSR 00-22-124, filed 11/1/00, effective 12/2/00)

WAC 246-976-320 Air ambulance services. The purpose of this rule is to ensure the consistent quality of medical care delivered by air ambulance services in the state of Washington.

(1) Air ambulance services must:

(a) Comply with all regulations and standards in this chapter pertaining to verified ambulance services and vehicles, except that WAC 246-976-290 and 246-976-300 are replaced for air ambulance services by subsection (4)(b) and (c) of this section;

~~(b) ((Comply with the standards in this section for all types of transports, including interfacility and prehospital transports;~~

~~(c) Be in current compliance with all state and Federal Aviation Administration statutes and regulations that apply to air carriers, including, but not limited to, those regulations that apply to certification requirements, operations, equipment, crew members, and maintenance, and any specific regulations that apply to air ambulance services;~~

~~(d) Air ambulance services must provide a physician director who is practicing medicine in the response area of the aircraft, as identified in the state EMS/TC plan.)) Comply with the standards in this section for all types of transports, including interfacility and prehospital transports;~~

(c) Provide proof of compliance with Federal Acquisition Regulation (FAR), 14 CFR Part 135 (October 10, 1978) of the operating requirements: commuter and on demand operations and rules governing persons on board such aircraft.

(2) Air ambulance services currently licensed or seeking relicensure (~~(after July 31, 2001,))~~ must have and maintain accreditation by the commission on accreditation of medical transport services (CAMTS) or another accrediting organization approved by the ~~((department))~~ secretary as having equivalent requirements as CAMTS for aeromedical transport. ~~((Until August 1, 2001, subsections (4) and (5) of this section apply to air ambulance services currently licensed or seeking relicensure.))~~

(3) Air ambulance services requesting initial licensure that are ineligible to attain accreditation because they lack a history of operation at the site, must meet the criteria of subsections (4) and (5) of this section and within four months of licensure must have completed an initial consultation with CAMTS or another accrediting organization approved by the ~~((department))~~ secretary as having equivalent requirements as CAMTS for aeromedical transport. A provisional license

will be granted for no longer than two years at which time the service must provide documentation that it is accredited by CAMTS or another accrediting organization approved by the ~~((department))~~ secretary as having equivalent requirements as CAMTS for aeromedical transport.

(4) Air ambulance services must provide:

(a) A physician director (~~((who is))~~):

~~(i) ((Practicing medicine in the response area of the aircraft, as identified in the state EMS/TC plan;))~~ Licensed to practice in the state of Washington;

(ii) Trained and experienced in emergency, trauma, and critical care;

(iii) Knowledgeable of the operation of air medical services; and

(iv) Responsible for supervising and evaluating the quality of patient care provided by the air medical flight personnel;

(b) If the air medical service utilizes Washington certified EMS personnel:

(i) The physician director must be a delegate of the MPD in the county where the air service declares its primary base of operation.

(ii) Certified EMS personnel must follow department-approved MPD protocols when providing care:

(c) Sufficient air medical personnel on each response to provide ((adequate)) patient care, specific to the mission, including:

(i) One specially trained, experienced registered nurse or paramedic; and

(ii) One other person who must be a physician, nurse, physician's assistant, respiratory therapist, paramedic, EMT, or other appropriate specialist appointed by the physician director. If an air ambulance responds directly to the scene of an incident, at least one of the air medical personnel must be trained in prehospital emergency care;

~~((=))~~ (d) Aircraft that, when operated as air ambulances:

(i) Are configured so that the medical ~~((attendants))~~ personnel can access the patient. The configuration must allow medical personnel to begin and maintain advanced life support and other treatment;

(ii) Allow loading and unloading the patient without excessive maneuvering or tilting of the stretcher;

(iii) Have appropriate communication equipment;

(A) The capability to ((insure internal crew and air to ground exchange of information)) communicate between flight personnel ((and)), hospitals, medical control, and the ((flight operations)) services communication center((-and air traffic control facilities));

(B) Helicopters must also have the capability to communicate with ground EMS services and public safety vehicles;

(iv) Are equipped with:

(A) ~~((Appropriate navigational aids;~~

~~((B)))~~ Airway management equipment, including:

(I) Oxygen;

(II) Suction;

(III) Ventilation and intubation equipment, adult and pediatric;

~~((C)))~~ (B) Cardiac monitor/defibrillator;

~~((D))~~ (C) Supplies, equipment, and medication as required by the program physician director, for emergency, cardiac, trauma, pediatric care, and other missions; and

~~((E))~~ (D) The ability to maintain appropriate patient temperature; ~~((and))~~

(v) Have ~~((adequate))~~ interior lighting for patient care ~~((arranged so as not to interfere with the pilot's vision;~~

~~((d) If using fixed-wing aircraft, pressurized, multiengine aircraft when appropriate to the mission;~~

~~((e) If using helicopter aircraft:~~

~~((i) A protective barrier sufficiently isolating the cockpit, to minimize in-flight distraction or interference;~~

~~((ii) Appropriate communication equipment to communicate with ground EMS/TC services and public safety vehicles, in addition to the communication equipment specified in ~~((e)(iii) of this subsection-))~~; and~~

(vi) Helicopter aircraft must have a protective barrier sufficiently isolating the cockpit, to minimize in-flight distraction or interference.

(5) All air medical personnel must:

(a) Be certified in ACLS;

(b) Be trained in:

(i) Emergency, trauma, and critical care;

(ii) Altitude physiology;

(iii) EMS communications;

(iv) Aircraft and flight safety; and

(v) The use of all patient care equipment on board the aircraft;

(c) Be familiar with survival techniques appropriate to the terrain;

(d) Perform under protocols.

(6) Exceptions:

(a) If aeromedical evacuation of a patient is necessary because of a life threatening condition and a licensed air ambulance is not available, the nearest available aircraft that can accommodate the patient may transport. The physician ordering the transport must justify the need for air transport of the patient in writing to the department within thirty days after the incident.

(b) Excluded from licensure requirements ~~((those))~~ are:

(i) Air services operating aircraft for primary purposes other than civilian air medical transport((-but which)). These services may be called ((into service)) to initiate an emergency air medical transport of a patient to the nearest available treatment facility or rendezvous point with other means of transportation. Examples are: United States Army Military Assistance to Safety and Traffic, United States Navy, United States Coast Guard, Search and Rescue, and the United States Department of Transportation;

(ii) Air ambulance services that solely transport patients into Washington state from points originating outside of the state of Washington.

AMENDATORY SECTION (Amending WSR 02-02-077, filed 12/31/01, effective 1/31/02)

WAC 246-976-330 Ambulance and aid services—Record requirements. (1) Each ambulance and aid service must maintain a record of, and submit to the department, the following information on request:

(a) Current certification levels of all personnel;

(b) Any changes in staff affiliation with the ambulance and aid service to include new employees or employee severance; and

(c) Make, model, and license number of all EMS response vehicles(;-and

(e) Each patient contact with at least the following information:

(i) Names and certification levels of all personnel;

(ii) Date and time of medical emergency;

(iii) Age of patient;

(iv) Applicable components of system response time as defined in this chapter;

(v) Patient vital signs;

(vi) Procedures performed on the patient;

(vii) Mechanism of injury or type of illness;

(viii) Patient destination;

(ix) For trauma patients, other data points identified in WAC 246-976-430 for the trauma registry).

(2) ((Transporting agencies)) The certified EMS provider in charge of patient care must provide ((an initial written report of patient care to the receiving facility at the time the patient is delivered. For patients meeting the state of Washington prehospital trauma triage (destination) procedures, as described in WAC 246-976-930(3), the transporting agency must provide additional trauma data elements described in WAC 246-976-430 to the receiving facility within ten days)) the following information to the receiving facility staff:

(a) At the time of arrival at the receiving facility, a minimum of a brief written or electronic patient report including agency name, EMS personnel, and:

(i) Date and time of the medical emergency;

(ii) Time of onset of symptoms;

(iii) Patient vital signs including serial vital signs where applicable;

(iv) Patient assessment findings;

(v) Procedures and therapies provided by EMS personnel;

(vi) Any changes in patient condition while in the care of the EMS personnel;

(vii) Mechanism of injury or type of illness.

(b) Within twenty-four hours of arrival, a complete written or electronic patient care report that includes at a minimum:

(i) Names and certification levels of all personnel providing patient care;

(ii) Date and time of medical emergency;

(iii) Age of patient;

(iv) Applicable components of system response time;

(v) Patient vital signs, including serial vital signs if applicable;

(vi) Patient assessment findings;

(vii) Procedures performed and therapies provided to the patient; this includes the times each procedure or therapy was provided;

(viii) Patient response to procedures and therapies while in the care of the EMS provider;

(ix) Mechanism of injury or type of illness;

(x) Patient destination.

(c) For trauma patients, all other data points identified in WAC 246-976-430 for inclusion in the trauma registry must be submitted within ten days of transporting the patient to the trauma center.

(3) Licensed services must make all patient care records available for inspection and duplication upon request of the county MPD or the department.

AMENDATORY SECTION (Amending WSR 00-22-124, filed 11/1/00, effective 12/2/00)

WAC 246-976-390 Trauma verification of ((trauma care)) prehospital EMS services. ((1) The department will:

(a) Publish procedures for verification. Verification will expire with the period of licensure. The application for verification will be incorporated in the application for licensure;

(b) Verify prehospital trauma care services in the following categories:

(i) Aid service: Basic, intermediate and advanced (paramedic) life support;

(ii) Ground ambulance service: Basic, intermediate and advanced (paramedic) life support;

(iii) Air ambulance service: After July 31, 2001, the department will consider that an air ambulance service has met the requirements of subsections (4), (6), and (9) of this section if it has been accredited by CAMTS or another accrediting organization approved by the department as having equivalent requirements as CAMTS for aeromedical transport;

(c) Review the minimum response times for verified prehospital trauma services at least biennially, considering data available from the trauma registry and with the advice of the steering committee;

(d) Forward applications for verification for aid and ground ambulance services to the appropriate regional council for review and comment;

(e) Approve an applicant to provide verified prehospital trauma care, based on satisfactory evaluations as described in this section;

(f) Notify the regional council and the MPD in writing of the name, location, and level of verified services;

(g) Renew approval of a verified service upon reapplication, if the service continues to meet standards established in this chapter and verification remains consistent with the regional plan.

(2) The department will identify minimum and maximum numbers of prehospital services, based on the approved regional and state plans. The department will:

(a) Establish and review biennially the minimum and maximum number of prehospital services based upon distribution and level of service identified for each response area in the approved regional plan.

(b) Evaluate an applicant for trauma verification based upon demonstrated ability of the provider to meet standards defined in this section 24 hours every day.

(c) Verify the trauma capabilities of a licensed prehospital service if it determines that the applicant:

(i) Proposes services that are identified in the regional plan for ground services, or the state plan for air ambulance services, in the proposed response areas;

(ii) Agrees to operate under approved regional patient care procedures and prehospital patient care protocols.

(3) Regional council responsibilities regarding verification are described in WAC 246-976-960.

(4) To apply for verification, a licensed ambulance or aid service must submit application on forms provided by the department, including:

(a) Documentation required for licensure specified by WAC 246-976-260(2);

(b) A policy that a trauma training program is required for all personnel responding to trauma incidents. The program must meet learning objectives established by the department and be approved by the MPD;

(c) Documentation that the provider has the ability twenty-four hours every day to deliver personnel and equipment required for verification to the scene of a trauma within the agency response times identified in this section; and

(d) Documentation that the provider will participate in an approved regional quality assurance program.

(5) Verified aid services must provide personnel on each trauma response including:

(a) Basic life support: At least one individual, first responder or above;

(b) Intermediate life support:

(i) At least one ILS technician; or

(ii) At least one IV/airway technician; or

(iii) At least two individuals, one IV technician and one airway technician.

(c) Advanced life support—Paramedic: At least one paramedic.

(6) Verified ambulance services must provide personnel on each trauma response including:

(a) Basic life support: At least two certified individuals—one EMT plus one first responder;

(b) Intermediate life support:

(i) One ILS technician, plus one EMT; or

(ii) One IV/airway technician, plus one EMT; or

(iii) One IV technician and one airway technician;

(c) Advanced life support—Paramedic: At least two certified individuals—one paramedic and one EMT.

(7) Verified BLS vehicles must carry equipment identified in WAC 246-976-300, Table C.

(8) Verified ILS and paramedic vehicles must provide equipment identified in Table D, in addition to meeting the requirements of WAC 246-976-300:

TABLE D: EQUIPMENT FOR VERIFIED TRAUMA SERVICES
(NOTE: "ASST" MEANS ASSORTMENTS)

AIRWAY MANAGEMENT

Airway Adjuncts

Adjunctive airways, per protocol

	AMBULANCE		AID VEHICLE	
	PAR	ILS	PAR	ILS
Adjunctive airways, per protocol	+	+	+	+

TABLE D: EQUIPMENT FOR VERIFIED TRAUMA SERVICES
(NOTE: "ASST" MEANS ASSORTMENTS)

	AMBULANCE		AID VEHICLE	
	PAR	HS	PAR	HS
Laryngoscope handle, spare batteries	+	+	+	+
Adult blades, set	+	+	+	+
Pediatric blades, straight (0, 1, 2)	1ea	1ea	1ea	1ea
Pediatric blades, curved (2)	1ea	1ea	1ea	1ea
McGill forceps, adult & pediatric	+	+	+	+
ET tubes, adult (±1/2 mm)	1ea	1ea	1ea	1ea
ET tubes, pediatric, with stylet				
Uncuffed (2.5–5.0 mm)	1ea	1ea	1ea	1ea
Cuffed or uncuffed (6.0 mm)	1ea	1ea	1ea	1ea
End-tidal CO ² detector	1ea	1ea	1ea	1ea
Oxygen saturation monitor	1ea	1ea	1ea	1ea
Suction				
Portable, powered	+	+	+	+
PATIENT ASSESSMENT AND CARE				
Sphygmomanometer				
Adult, large	+	+	+	+
Pediatric	+	+	+	+
TRAUMA EMERGENCIES				
IV access				
Administration sets				
Adult	+	+	+	+
Pediatric, w/volume control	4	4	2	2
Catheters, intravenous (14-24 ga)	asst	asst	asst	asst
Needles				
—Hypodermic	asst	asst	asst	asst
—Intraosseous, per protocol	2	2	+	+
Sharps container	+	+	+	+
Syringes	asst	asst	asst	asst
Glucose measuring supplies	Yes	Yes	Yes	Yes
Pressure infusion device	+	+	+	+
Medications according to local patient care protocols				

(9) Verified air ambulance services must meet equipment requirements described in WAC 246-976-320.

(10) Verified aid services must meet the following minimum agency response times for all major trauma responses to response areas as defined by the department and identified in the regional plan:

(a) To urban response areas: Eight minutes or less, eighty percent of the time;

(b) To suburban response areas: Fifteen minutes or less, eighty percent of the time;

(c) To rural response areas: Forty-five minutes or less, eighty percent of the time;

(d) To wilderness response areas: As soon as possible.

(11) Verified ground ambulance services must meet the following minimum agency response times for all major trauma responses to response areas as defined by the department and identified in the regional plan:

(a) To urban response areas: Ten minutes or less, eighty percent of the time;

(b) To suburban response areas: Twenty minutes or less, eighty percent of the time;

(c) To rural response areas: Forty-five minutes or less, eighty percent of the time;

(d) To wilderness response areas: As soon as possible.

(12) Verified air ambulance services must meet minimum agency response times as identified in the state plan.)

(1) The secretary verifies prehospital EMS services. Verification is a higher form of licensure that requires twenty-four-hour, seven day a week compliance with the standards outlined in chapter 70.168 RCW and this chapter. Verification will expire with the prehospital EMS service's period of licensure.

(2) To qualify for trauma verification, an agency must be a licensed ambulance or aid service as specified in WAC 246-976-260.

(3) The following EMS services may be verified:

(a) Aid service: Basic, intermediate (AEMT), and advanced (paramedic) life support;

(b) Ground ambulance service: Basic, intermediate (AEMT), and advanced (paramedic) life support;

(c) Air ambulance service.

(4) Personnel requirements:

(a) Verified aid services must provide personnel on each trauma response including:

(i) Basic life support: At least one individual who is an EMR or above;

(ii) Intermediate life support: At least one AEMT;

(iii) Advanced life support - paramedic: At least one paramedic;

(b) Verified ambulance services must provide personnel on each trauma response including:

(i) Basic life support: At least two certified individuals - one EMT plus one EMR;

(ii) Intermediate life support: One AEMT, plus one EMT;

(iii) Advanced life support - paramedic: At least two certified individuals - one paramedic and one EMT;

(c) Verified air ambulance services must provide personnel as identified in WAC 246-976-320.

(5) Equipment requirements:

(a) Verified BLS vehicles must carry equipment identified in WAC 246-976-300, Table A;

(b) Verified ILS and paramedic vehicles must provide equipment identified in Table A of this section, in addition to meeting the requirements of WAC 246-976-300;

(c) Verified air ambulance services must meet patient care equipment requirements described in WAC 246-976-320.

TABLE A: EQUIPMENT FOR VERIFIED TRAUMA SERVICES
(NOTE: "ASST" MEANS ASSORTMENTS. "X" INDICATES REQUIRED.)

AIRWAY MANAGEMENT

Airway adjuncts

Adjunctive airways, assorted per protocol

Laryngoscope handle, spare batteries

Adult blades, set

Pediatric blades, straight (0, 1, 2)

Pediatric blades, curved (2)

McGill forceps, adult & pediatric

ET tubes, adult and pediatric

Supraglottic airways per MPD protocol

End-tidal CO₂ detector

Oxygen saturation monitor

TRAUMA EMERGENCIES

IV access

Administration sets and intravenous fluids per protocol:

Adult

Pediatric volume control device

Catheters, intravenous (14-24 ga)

Needles

Hypodermic

Intraosseous, per protocol

Sharps container

Syringes

Glucose measuring supplies

Pressure infusion device

Length based tool for estimating pediatric medication and equipment sizes

Medications according to local patient care protocols

(6) Aid service response time requirements: Verified aid services must meet the following minimum agency response times as defined by the department and identified in the regional plan:

(a) To urban response areas: Eight minutes or less, eighty percent of the time;

(b) To suburban response areas: Fifteen minutes or less, eighty percent of the time;

	AMBULANCE		AID VEHICLE	
	PAR	ILS	PAR	ILS
<u>Adjunctive airways, assorted per protocol</u>	X	X	X	X
<u>Laryngoscope handle, spare batteries</u>	1	1	1	1
<u>Adult blades, set</u>	1	1	1	1
<u>Pediatric blades, straight (0, 1, 2)</u>	1 ea	1 ea	1 ea	1 ea
<u>Pediatric blades, curved (2)</u>	1 ea	1 ea	1 ea	1 ea
<u>McGill forceps, adult & pediatric</u>	1	1	1	1
<u>ET tubes, adult and pediatric</u>	asst	0	asst	0
<u>Supraglottic airways per MPD protocol</u>	X	X	X	X
<u>End-tidal CO₂ detector</u>	1 ea	1 ea	1 ea	1 ea
<u>Oxygen saturation monitor</u>	1 ea	1 ea	1 ea	1 ea
<u>Administration sets and intravenous fluids per protocol:</u>				
<u>Adult</u>	4	4	2	2
<u>Pediatric volume control device</u>	2	2	1	1
<u>Catheters, intravenous (14-24 ga)</u>	asst	asst	asst	asst
<u>Needles</u>				
<u>Hypodermic</u>	asst	asst	asst	asst
<u>Intraosseous, per protocol</u>	2	2	1	1
<u>Sharps container</u>	1	1	1	1
<u>Syringes</u>	asst	asst	asst	asst
<u>Glucose measuring supplies</u>	Yes	Yes	Yes	Yes
<u>Pressure infusion device</u>	1	1		
<u>Length based tool for estimating pediatric medication and equipment sizes</u>	1	1	1	1

(c) To rural response areas: Forty-five minutes or less, eighty percent of the time;

(d) To wilderness response areas: As soon as possible.

(7) Ground ambulance service response time requirements: Verified ground ambulance services must meet the following minimum agency response times for all EMS and trauma responses to response areas as defined by the department and identified in the regional plan:

(a) To urban response areas: Ten minutes or less, eighty percent of the time;

(b) To suburban response areas: Twenty minutes or less, eighty percent of the time;

(c) To rural response areas: Forty-five minutes or less, eighty percent of the time;

(d) To wilderness response areas: As soon as possible.

(8) Verified air ambulance services must meet minimum agency response times as identified in the state plan.

(9) Verified ambulance and aid services must comply with the approved prehospital trauma triage procedures defined in WAC 246-976-010.

(10) The department will:

(a) Identify minimum and maximum numbers of prehospital services, based on:

(i) The approved regional EMS and trauma plans, including: Distribution and level of service identified for each response area; and

(ii) The Washington state EMS and trauma plan;

(b) With the advice of the steering committee, consider all available data in reviewing response time standards for verified prehospital trauma services at least biennially;

(c) Administer the BLS/ILS/ALS verification application and evaluation process;

(d) Approve an applicant to provide verified prehospital trauma care, based on satisfactory evaluations as described in this section;

(e) Obtain comments from the regional council as to whether the application(s) appears to be consistent with the approved regional plan;

(f) Provide written notification to the applicant(s) of the final decision in the verification award;

(g) Notify the regional council and the MPD in writing of the name, location, and level of verified services;

(h) Approve renewal of a verified service upon reapplication, if the service continues to meet standards established in this chapter and verification remains consistent with the regional plan.

(11) The department may:

(a) Conduct a preverification site visit; and

(b) Grant a provisional verification not to exceed one hundred twenty days. The secretary may withdraw the provisional verification status if provisions of the service's proposal are not implemented within the one hundred twenty-day period, or as otherwise provided in chapter 70.168 RCW and this chapter.

NEW SECTION

WAC 246-976-395 To apply for initial verification or to change verification status as a prehospital EMS ser-

vice. (1) To select verified prehospital EMS services, the department will:

(a) Provide a description of the documents an applicant must submit to demonstrate that it meets the standards as identified in chapter 70.168 RCW and WAC 246-976-390;

(b) Conduct a preverification on-site review for:

(i) All ALS ambulance service applications;

(ii) All ILS ambulance service applications; and

(iii) All BLS ambulance applications if and when there is any question of duplication of services or lack of coordination of prehospital services within the region;

(c) Request comments from the region in which a verification application is received, to be used in the department's review;

(d) Apply the department's evaluation criteria; and

(e) Apply the department's decision criteria.

(2) To apply for verification you must:

(a) Be a licensed prehospital EMS ambulance or aid service as specified in WAC 246-976-260;

(b) Submit a completed application:

(i) If you are applying for verification in more than one region, you must submit a separate application for each region;

(ii) You must apply for verification when you are:

(A) An agency that responds to 9-1-1 emergencies as part of its role in the EMS system;

(B) A new business or legal entity that is formed through consolidation of existing services or a newly formed EMS agency;

(C) An EMS agency that seeks to provide prehospital emergency response in a region in which it previously has not been operating; or

(D) A service that is changing, or has changed its type of verification or its verification status.

(3) The department will evaluate each prehospital EMS service applicant on a point system. In the event there are two or more applicants, the secretary will verify the most qualified applicant. The decision to verify will be based on at least the following:

(a) Total evaluation points received on all completed applications:

(i) Applicants must receive a minimum of one hundred fifty points of the total two hundred points possible from the overall evaluation scoring tool to qualify for verification.

(ii) Applicants must receive a minimum of thirty points in the evaluation of its clinical and equipment capabilities section of the evaluation scoring tool to qualify for verification;

(b) Recommendations from the on-site review team, if applicable;

(c) Comment from the regional council(s);

(d) Dispatch plan;

(e) Response plan;

(f) Level of service;

(g) Type of transport, if applicable;

(h) Tiered response and rendezvous plan;

(i) Back-up plan to respond;

(j) Interagency relations;

(k) How the applicant's proposal avoids unnecessary duplication of resources or services;

(l) How the applicant's service is consistent with and will meet the specific needs as outlined in their approved regional EMS and trauma plan including the patient care procedures;

(m) Ability to meet vehicle requirements;

(n) Ability to meet staffing requirements;

(o) How certified EMS personnel have been, or will be, trained so they have the necessary understanding of department-approved MPD protocols, and their obligation to comply with the MPD protocols;

(p) Agreement to participate in the department-approved regional quality improvement program.

(4) Regional EMS and trauma care councils may provide comments to the department regarding the verification application, including written statements on the following if applicable:

(a) Compliance with the department-approved minimum and maximum number of verified trauma services for the level of verification being sought by the applicant;

(b) How the proposed service will impact care in the region to include discussion on:

(i) Clinical care;

(ii) Response time to prehospital incidents;

(iii) Resource availability; and

(iv) Unserved or under served trauma response areas;

(c) How the applicant's proposed service will impact existing verified services in the region.

(5) Regional EMS/TC councils will solicit and consider input from local EMS/TC councils where local councils exist.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-400 Verification—Noncompliance with standards. If the department finds that a verified prehospital trauma care service is out of compliance with verification standards:

(1) The department shall promptly notify in writing: The service, the MPD, and the local and regional EMS/TC councils.

(2) Within thirty days of the department's notification, the service must submit a corrective plan to the department, the MPD, and the local and regional councils outlining proposed action to return to compliance.

(3) If the service is either unable or unwilling to comply with the verification standards, under the provisions of chapter 34.05 RCW, the ~~((department))~~ secretary may suspend or revoke the verification. The department shall promptly notify the local and regional councils and the MPD of any revocation or suspension of verification.

If the MPD ~~((or))~~ the local council, or regional council receives information that a service is out of compliance with the regional plan, they may forward their recommendations for corrections to the department.

(4) The department will review the plan within thirty days, including consideration of any recommendations from the MPD ~~((or))~~ local council, and regional council. The department will notify the service whether the plan is accepted or rejected.

(5) The department will monitor the service's progress in fulfilling the terms of the approved plan.

(6) A verified prehospital service that is not in compliance with verification standards will not receive a participation grant.

AMENDATORY SECTION (Amending WSR 04-01-041, filed 12/10/03, effective 1/10/04)

WAC 246-976-890 Interhospital transfer guidelines and agreements. Designated trauma services must:

(1) Have written guidelines consistent with ~~((your))~~ their written scope of trauma service to identify and transfer patients with special care needs exceeding the capabilities of the trauma service~~((:))~~;

(2) Have written transfer agreements with other designated trauma services. The agreements must address the responsibility of the transferring hospital, the receiving hospital, and the prehospital transport agency, including a mechanism to assign medical control during interhospital transfer~~((:))~~;

(3) Have written guidelines, consistent with ~~((your))~~ their written scope of trauma service, to identify trauma patients who are transferred in from other facilities, whether admitted through the emergency department or directly into other hospital services~~((:))~~;

(4) Use verified prehospital trauma services for interfacility transfer of trauma patients.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

WAC 246-976-920 Medical program director. ~~((+))~~ The MPD must:

~~(a) Be knowledgeable in the administration and management of prehospital emergency medical care and services;~~

~~(b) Provide medical control and direction of EMS/TC certified personnel in their medical duties, by oral or written communication;~~

~~(c) Develop and adopt written prehospital patient care protocols to direct EMS/TC certified personnel in patient care. These protocols may not conflict with regional patient care procedures or with the authorized care of the certified prehospital personnel as described in WAC 246-976-182;~~

~~(d) Establish protocols for storing, dispensing, and administering controlled substances, in accordance with state and federal regulations and guidelines;~~

~~(e) Participate with the local and regional EMS/TC councils and emergency communications centers to develop and revise regional patient care procedures;~~

~~(f) Participate with the local and regional EMS/TC councils to develop and revise regional plans and make timely recommendations to the regional council;~~

~~(g) Work within the parameters of the approved regional patient care procedures and the regional plan;~~

~~(h) Supervise training of all EMS/TC certified personnel;~~

~~(i) Develop protocols for special training described in WAC 246-976-021(5);~~

~~(j) Periodically audit the medical care performance of EMS/TC certified personnel;~~

~~(k) Recommend to the department certification, recertification, or denial of certification of EMS/TC personnel;~~

(l) Recommend to the department disciplinary action to be taken against EMS/TC personnel, which may include modification, suspension, or revocation of certification;

(m) Recommend to the department individuals applying for recognition as senior EMS instructors.

(2) In accordance with department policies and procedures, the MPD may:

(a) Delegate duties to other physicians, except for duties described in subsection (1)(c), (k), and (l) of this section. The delegation must be in writing;

(i) The MPD must notify the department in writing of the names and duties of individuals so delegated, within fourteen days;

(ii) The MPD may remove delegated authority at any time, which shall be effective upon written notice to the delegate and the department;

(b) Delegate duties relating to training, evaluation, or examination of certified EMS/TC personnel, to qualified nonphysicians. The delegation must be in writing;

(c) Enter into EMS/TC medical control agreements with other MPDs;

(d) Recommend denial of certification to the department for any applicant the MPD can document is unable to function as an EMS provider, regardless of successful completion of training, evaluation, or examinations; and

(e) Utilize examinations to determine the knowledge and abilities of IV technicians, airway technicians, intermediate life support technicians, or paramedics prior to recommending applicants for certification or recertification.

(3) The department may withdraw the certification of an MPD for failure to comply with the Uniform Disciplinary Act (chapter 18.130 RCW) and other applicable statutes and regulations: (1) Qualifications - applicants for certification as a medical program director (MPD) must:

(a) Hold and maintain a current and valid license to practice medicine and surgery under chapter 18.71 RCW or osteopathic medicine and surgery under chapter 18.57 RCW; and

(b) Be qualified and knowledgeable in the administration and management of emergency medical care and services; and

(c) Complete a medical director training course approved by the department; and

(d) Be recommended for certification by the local medical community and local emergency medical services and trauma care council.

(2) MPD certification process. In certifying the MPD, the department will:

(a) Work with the local EMSTC council to identify physicians interested in serving as the MPD;

(b) Receive a letter of interest and curriculum vitae from the MPD candidate;

(c) Perform required background checks identified in RCW 18.130.064;

(d) Work with and provide technical assistance to local EMSTC councils on evaluating MPD candidates;

(e) Obtain letters of recommendation from the local EMSTC council and local medical community;

(f) Make final appointment of the MPD.

(3) The certified MPD must:

(a) Provide medical control and direction of EMS certified personnel in their medical duties. This is done by oral or written communication;

(b) Develop and adopt written prehospital patient care protocols to direct EMS certified personnel in patient care. These protocols may not conflict with regional patient care procedures. Protocols may not exceed the authorized care of the certified prehospital personnel as described in WAC 246-976-182;

(c) Establish policies for storing, dispensing, and administering controlled substances. Policies must be in accordance with state and federal regulations and guidelines;

(d) Participate with local and regional EMS/TC councils to develop and revise:

(i) Regional patient care procedures;

(ii) County operating procedures when applicable. COPS do not conflict with regional patient care procedures; and

(iii) Participate with the local and regional EMS/TC councils to develop and revise regional plans;

(e) Work within the parameters of the approved regional patient care procedures and the regional plan;

(f) Supervise training of all EMS certified personnel;

(g) Develop protocols for special training described in WAC 246-976-023(4);

(h) Periodically audit the medical care performance of EMS certified personnel;

(i) Recommend to the secretary certification, recertification, or denial of certification of EMS personnel;

(j) Recommend to the secretary disciplinary action to be taken against EMS personnel, which may include modification, suspension, or revocation of certification; and

(k) Recommend to the department individuals applying for recognition as senior EMS instructors.

(4) In accordance with department policies and procedures, the MPD may:

(a) Delegate duties to other physicians, except for duties described in subsection (3)(b), (i), (j), and (k) of this section. The delegation must be in writing;

(i) The MPD must notify the department in writing of the names and duties of individuals so delegated, within fourteen days of appointment;

(ii) The MPD may remove delegated authority at any time, which shall be effective upon written notice to the delegate and the department.

(b) Delegate duties relating to training, evaluation, or examination of certified EMS personnel, to qualified nonphysicians. The delegation must be in writing;

(c) Enter into EMS medical control agreements with other MPDs;

(d) Recommend denial of certification to the secretary for any applicant the MPD can document is unable to function as an EMS provider, regardless of successful completion of training, evaluation, or examinations; and

(e) Utilize examinations to determine the knowledge and abilities of certified EMS personnel prior to recommending applicants for certification or recertification.

(5) The secretary may withdraw the certification of an MPD for failure to comply with the Uniform Disciplinary

Act (chapter 18.130 RCW) and other applicable statutes and regulations.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-976-021	Training course requirements.
WAC 246-976-151	Reciprocity, challenges, reinstatement and other actions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-976-950	Licensing and certification committee.
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WSR 11-07-093
PERMANENT RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed March 22, 2011, 3:26 p.m., effective May 1, 2011]

Effective Date of Rule: May 1, 2011.

Purpose: Changes to all rules except 350-81 were made to clarify and streamline internal commission processes and process for users of commission rules. These changes are needed to reduce workload for commission staff as a result of its significantly reduced budget during the past biennium and going forward. Changes to rule 350-81 are required by remand from the Oregon Court of Appeals and Oregon Supreme Court and were the result of settlement discussions in another pending litigation matter. Interested persons may contact the commission office for copies of the relevant court decisions. There is no settlement agreement. These changes resulting from the court decisions have already been adopted into the management plan for the national scenic area and received the concurrence of the secretary of agriculture. The changes resulting from the settlement discussions are procedural for users and commission staff.

Citation of Existing Rules Affected by this Order: Repealing 350-120-0025, 350-120-0030 and 350-120-0040; and amending 350-30-0015, 350-30-0020, 350-30-0025, 350-30-0030, 350-30-0060, 350-30-0080, 350-40-0010, 350-40-0020, 350-40-0050, 350-40-0060, 350-40-0065, 350-40-0070, 350-40-0080, 350-50-0020, 350-50-0035, 350-50-0040, 350-50-0045, 350-50-0060, 350-50-0070, 350-50-0080, 350-50-0085, 350-50-0090, 350-50-0100, 350-60-0040, 350-60-0042, 350-60-0045, 350-60-0050, 350-60-0055, 350-60-0060, 350-60-0070, 350-60-0080, 350-60-0100, 350-60-0110, 350-60-0120, 350-60-0130, 350-60-0160, 350-60-0170, 350-60-0190, 350-60-0200, 350-60-0205, 350-60-0210, 350-70-0040, 350-70-0042, 350-70-0045, 350-70-0050, 350-70-0070, 350-70-0080, 350-70-

0090, 350-70-0120, 350-70-0170, 350-70-0200, 350-70-0210, 350-70-0220, 350-70-0225, 350-81-0020, 350-81-0082, 350-81-0540, 350-81-0560, 350-81-0570, 350-81-0580, 350-81-0590, and 350-120-0050.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150; 16 U.S.C. § 544e.

Adopted under notice filed as WSR 11-01-050 on December 7, 2010.

Changes Other than Editing from Proposed to Adopted Version: 350-50-035(1) was changed to clarify that mapping discrepancies are those created by using maps with different and coarse scales.

350-50-100(1) was changed to add a minimum of thirty days between issuing a director's report and scheduling a hearing.

350-60-060(5) (proposed new language) was not adopted.

350-60-040(5) and 350-70-040(6) were changed to specify that a document that is e-mailed prior to midnight on the due date is considered filed on that date.

350-60-205(1) and 350-70-225(1) and were changed to replace "prior to the start of the oral argument" with "prior to an oral decision."

350-60-220 and 350-70-230 were not amended.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 55, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 55, Repealed 3.

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

Date Adopted: March 8, 2011.

Nancy A. Andring
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-09 issue of the Register.

WSR 11-07-097
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-08—Filed March 23, 2011,
7:44 a.m., effective April 23, 2011]

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

Purpose: To set forth the definitions, process and procedures related to the data call required for preparing a report to the legislature on small group health benefit plan and association health plan market performance.

Statutory Authority for Adoption: RCW 48.02.060, chapter 162, Laws of 2010.

Adopted under notice filed as WSR 11-02-078 on January 5, 2011.

Changes Other than Editing from Proposed to Adopted Version: 1. The type of entry required for providing zip code information was changed from text to numeric.

2. The data field of contract holder is deleted.

3. The time frame for identifying the data call contract person was clarified.

4. The data field for producer compensation and association bylaws was identified as voluntary.

5. The limitation requiring attachments to be in pdf format was removed.

A final cost-benefit analysis is available by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7170, fax (360) 586-3109, e-mail megj@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 0, Repealed 0.

Date Adopted: March 23, 2011.

Mike Kreidler
Insurance Commissioner

Chapter 284-199 WAC

HEALTH INSURANCE MARKET PERFORMANCE DATA CALL RULES

NEW SECTION

WAC 284-199-001 Scope. This chapter applies to health care service contractors, health maintenance organizations, disability insurers, multiple employer welfare arrangements or any other company that bore risk between 2005 and 2008 for covered lives in the state of Washington, either through a small employer health plan, an association health plan, or any other arrangement to which two or more employers contribute to provide health care for employees. The chapter does not apply to direct patient provider primary care practices as defined in chapter 48.150 RCW.

(1) For purposes of this chapter only, the term "carrier" is used to refer to any entity identified in this chapter.

(2) This chapter explains to carriers the requirements associated with the commissioner's data call pursuant to chapter 172, Laws of 2010.

(3) This chapter is effective until midnight September 30, 2011.

NEW SECTION

WAC 284-199-005 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise.

(1) "Association health plan" means a health benefit plan or policy issued through an association either pursuant to a master contract or through individual or group contracts that predicate eligibility for enrollment in whole or in part on membership in an association. Multiple employer welfare arrangements and member governed groups are included in the definition of association for purposes of this definition.

(2) "Comprehensive medical plan" means a plan providing comprehensive health care services as described in RCW 48.46.020(4), 48.41.110(4) or 48.41.120.

(3) "Data call" means the commissioner's request for information pursuant to chapter 172, Laws of 2010.

(4) "Direct earned premium" means premium as defined in RCW 48.43.005, plus any rate credits or recoupment less any refunds, for the applicable period, whether received before, during or after the applicable period.

(5) "Eligibility" means the standards used to determine whether an applicant may enroll in a health benefit plan.

(6) "Enrollment" means the process, standards and practices used to enroll an applicant under a health benefit plan, regardless of whether the process, standards or practices are imposed by a carrier or an association or an administrative agent on their behalf.

(7) "Enrollee" means a person entitled to coverage for benefits under a health benefit plan, including an enrollee, subscriber, policyholder, beneficiary of a group plan, or an individual covered by any other health plan.

(8) "General administrative expenses" means actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses.

(9) "Health benefit plan" means any policy, contract or agreement offered to provide, arrange, reimburse or pay for a comprehensive medical plan.

(10) "Health plan premium" means the amount agreed upon as a fee for coverage under a comprehensive medical plan for a defined period of time, regardless of the entity responsible for paying the premium or its equivalent, exclusive of cost-sharing amounts paid by enrollees at the time of service.

(11) "Health plan rate" means the rate used to calculate the premium charged, received or deposited as consideration for a health benefit plan or the continuance of a health benefit plan.

(12) "Health status factors" means information about an enrollee or applicant used to evaluate the enrollee or applicant's eligibility for coverage or receipt of benefits under a comprehensive medical plan. Health status factors may include, but are not limited to, information about a person's health status, medical condition, claims experience, receipt of

health care, medical history, disability and evidence of insurability such as criminal history or domestic violence.

(13) "Incurred claims" means the sum of the following:

(a) Dollar amount of claims closed with payments; plus

(b) Reserves for reported claims at the end of the current year; minus

(c) Reserves for reported claims at the end of the previous year; plus

(d) Reserves for incurred but not reported claims at the end of the current year; minus

(e) Reserves for incurred but not reported claims at the end of the previous year; plus

(f) Reserves for loss adjustment expense at the end of the current year; minus

(g) Reserves for loss adjustment expense at the end of the previous year.

(14) "PPACA" means the Patient Protection and Affordable Coverage Act, P.L. 111-148 (2010).

(15) "Resident" means that person enrolled in a health benefit plan or applying for enrollment in a health benefit plan who resides in Washington state or whose employer is based in Washington state.

(16) "Small group health plan" means a health plan issued to a group of two to fifty or a grandfathered health plan issued to a small group of one in effect between 2005 and 2008.

(17) "Submission" means the transfer to and actual receipt by the commissioner of data, documents and information, performed by the carrier or the carrier's third-party expert consistent with the format, method and timing specified by the commissioner.

NEW SECTION

WAC 284-199-010 Acknowledgment. Carriers must acknowledge receipt of the data call by sending an electronic mail acknowledgment to the commissioner's mailbox: 1714survey@oic.wa.gov. The carrier must include the name, e-mail address and telephone number of the contact person within the organization regarding the data call if it has not already done so pursuant to WAC 284-199-050.

NEW SECTION

WAC 284-199-015 Aggregation of data. If a carrier determines that an association health plan block of business subject to the reporting requirements under chapter 172, Laws of 2010 covers fewer than ten thousand lives in any of the reporting years, the carrier may contract with a third party to aggregate the information with other carrier data that similarly qualifies.

(1) The third party must respond to the data call within the time frames required of the carrier, and follow the commissioner's instructions for submission. If the commissioner requires resubmission of the data, in whole or in part, the third party must respond within the time frame that the commissioner requires.

(2) No extensions of time may be granted by the commissioner in order to accommodate a carrier's election to report data for a plan on an aggregated basis.

(3) If the plan block of business size changes from year to year, and in any year covers more than ten thousand lives, the plan must report data on a nonaggregated basis for those years when the plan block of business size exceeds ten thousand lives.

(4) The data submitted by a third party aggregating data for multiple carriers must identify each carrier whose data is included in the submission, and include a statement executed by the carrier attesting to the accuracy of the data submitted by the carrier. The form of the statement is posted on the commissioner's web site.

NEW SECTION

WAC 284-199-020 Survey instrument. (1) The data call will be issued in the form of a survey instrument, template for narrative responses and record format instruction, containing questions requiring narrative as well as numeric responses. Carriers must respond to the survey instrument pursuant to the instructions posted on the commissioner's web site.

(2) The commissioner may request information not specifically referenced in chapter 172 (ESHB 1714), Laws of 2010. Carrier submission of data sets requested but not specifically referenced in chapter 172, Laws of 2010 are voluntary in nature, and will be included based on the commissioner's determination that they provide information necessary to respond to the legislature's request for a comparison of the small group and association health plan markets. Data sets that are voluntary will be specifically designated as such in the survey instrument.

NEW SECTION

WAC 284-199-025 Submission. Carriers and their third-party consulting experts must comply with the commissioner's data submission standards. Carriers are responsible for the accuracy and completeness of the data for all record groups requested through the data call, and for correcting errors identified during the data validation process in a timely manner, and delivering corrected data on or before the due dates set by the commissioner during the data validation process.

(1) Data, supporting documents and any other information necessary to respond to the commissioner's data call must be submitted to the commissioner by the carrier or their third-party consulting expert at the address specified in the instructions not later than 10:00 p.m. on the ninetieth day after these rules are adopted.

(2) Carriers must use the survey template form prepared and posted on the commissioner's web site when responding to the data call, and follow the instructions, requirements and guidelines for the record layout format also posted on the web site. Carriers may submit additional documents or other explanatory information with the completed survey template. These additional documents must be submitted to the commissioner in compliance with any other record layout format requirements included in the instructions.

(3) If a carrier submitted information to the United States Department of Health and Human Services pursuant to the data call referenced in 45 CFR 159.120(a), the carrier may

comment on any change in experience between 2005-2008, the time frame for data reported under this section, and 2009-2010, the time frame for data reported under the federal interim final rules.

(4) If a carrier elects to submit aggregated data, the aggregated submission statement must be completed and provided to the commissioner by the deadline for submission of the completed survey. The commissioner will post the aggregated submission statement on the agency web site before the deadline for submission of the data.

(5) Carriers must submit data for an individual company as one file, unless they are aggregating. One individual must coordinate, compile and submit the complete package to the administrator electronically, as explained in the instructions posted on the commissioner's web site.

(6) Carriers may submit data in batches for validation if the data is clearly identify in relation to the survey instrument.

NEW SECTION

WAC 284-199-030 Resubmission. If the commissioner requires a carrier to resubmit data because the data file was submitted in an incorrect format or does not otherwise comply with the specifications in this chapter, the carrier must respond within thirty calendar days of receiving a notice to resubmit.

NEW SECTION

WAC 284-199-035 Validation. The carrier must validate the completed survey by executing and submitting to the commissioner the statement of data validity posted on the commissioner's web site with the instructions related to this data call pursuant to chapter 172, Laws of 2010.

NEW SECTION

WAC 284-199-040 Data retention. Carriers must retain all data, including computer runs produced to support the data call submission, until midnight, September 30, 2011.

NEW SECTION

WAC 284-199-045 Data fields. The survey template will require reporting of the following data fields:

Field	Description	Type (numeric or text)	Notes
(1)	Type of business	Numeric and text	
(2)	Lines of coverage	Numeric or text	Drop down box
(3)	Resident enrollees on first day of year	Numeric	
(4)	Resident enrollees on last day of year	Numeric	
(5)	Resident enrollees in plan during year	Numeric	
(6)	Resident enrollee by type	Numeric	
(7)	Annual incurred claims	Numeric	
(8)	Annual net earned premium	Numeric	
(9)	Annual general administrative expenses	Numeric	Voluntary
(10)	Health status factors	Text	
(11)	Nonresident enrollees	Numeric	
(12)	Zip codes of nonresident enrollees	Numeric	
(13)	Zip codes of resident enrollees	Numeric	
(14)	Washington resident applicants rejected due to health status factors	Numeric	
(15)	Eligibility requirements	Text	
(16)	Percentage of plan enrollees for whom claims experience was used in setting plan rates	Numeric	Association health plans only
(17)	Percentage of plan enrollees for whom employer group size was used in setting plan rates	Numeric	Association health plans only
(18)	Required number of employees threshold for employers to qualify for coverage	Numeric	
(19)	Percentage of plan enrollees for whom health status factors was used in setting plan rates	Numeric	
(20)	Age group band enrollment	Numeric	
(21)	Average age for each band	Numeric	
(22)	Line item where enrollment for block of business is reported on annual statement	Numeric	

Field	Description	Type (numeric or text)	Notes
(23)	Producer compensation as a percentage of administrative expenses	Numeric	Voluntary
(24)	Association membership by-laws for reported associations	Text	Voluntary

NEW SECTION

WAC 284-199-050 Contact person. Carriers must notify the commissioner of the name of the person within their organization to whom the survey instrument and data call should be sent. The commissioner will contact the carrier through the person identified to communicate the data call, and to obtain answers to questions about the carrier's data submission. The notification must be submitted to 1714survey@oic.wa.gov, and must include the person's name, title, electronic mail address, physical address and telephone number. Carriers must provide the commissioner with notification within one week after the effective date of this chapter.

**WSR 11-07-106
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-43—Filed March 23, 2011, 11:09 a.m., effective April 23, 2011]

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

Purpose: These rule changes will protect rockfish stocks in Puget Sound.

Reasons Supporting Proposal: These changes are needed to comply with provisions [of] the Endangered Species Act (ESA) and to provide protection for rockfish species in Puget Sound. On July 27, 2010, a federal decision to list two species of rockfish as threatened, and one species of rockfish as endangered, in Puget Sound became effective. The intent of these regulations is to comply with the ESA and to protect the listed species from capture in these fisheries. While the ESA listing does not cover all of Puget Sound, the agency has concluded it is necessary to make these restrictions effective in all Puget Sound marine fish-shellfish management and catch reporting areas due to concern that leaving a small portion of Puget Sound open to these commercial fishing gears will concentrate fishing effort in that area, leading to challenges with conservation and conducting an orderly fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-48-011, 220-48-013, 220-48-016, 220-48-017, 220-48-028 and 220-48-031; and amending WAC 220-48-005, 220-48-015, 220-48-029, 220-48-032, 220-48-062, 220-48-071, and 220-52-051.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: 50 C.F.R., Parts 223 and 224.

Adopted under notice filed as WSR 10-21-118 on October 20, 2010.

Changes Other than Editing from Proposed to Adopted Version: The following rules were not adopted by the fish and wildlife commission based on public comment and the

Governor's Executive Order 10-06, which suspends noncritical rule making through December 2011. These WACs will be withdrawn: WAC 220-48-041 Commercial jig—Gear, 220-48-051 Troll lines—Bottomfish gear, 220-48-052 Bottomfish troll—Seasons, 220-49-012 Herring, anchovy and smelt fishing—Purse seine, and 220-49-020 Herring and anchovy—Seasons—Lawful gear—Purpose.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 7, Repealed 6; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 6.

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

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

Date Adopted: February 5, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 02-66, filed 3/27/02, effective 4/27/02)

WAC 220-48-005 Puget Sound bottomfish—General provisions. (1) It is unlawful to possess any English sole less than 12 inches in length taken by any commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(2) It is unlawful to possess any starry flounder less than 14 inches in length taken by any commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(3) It is unlawful to possess lingcod taken with any commercial gear the entire year in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 24A, 24B, 24C, 24D, 25B, 25C, 25D, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(4) It is unlawful to possess any lingcod less than 26 inches in length or greater than ((40)) 36 inches in length taken by any commercial gear in all state waters east of the Bonilla-Tatoosh line.

(5) It is unlawful to possess lingcod taken by any commercial gear from June 16 through April 30 in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 25A, 25E, and 29.

(6) It is unlawful to possess any species of shellfish taken with lawful bottomfish gear except as provided in WAC 220-52-063 and 220-52-066.

(7) Incidental catch.

(a) It is lawful to retain bottomfish taken incidental to any lawful salmon fishery, provided the bottomfish could be lawfully taken.

(b) It is unlawful to retain salmon or sturgeon taken incidental to any lawful bottomfish fishery in Puget Sound.

(c) It is unlawful to retain any species of shellfish taken incidental to any bottomfish fishery in Puget Sound, except that it is lawful to retain octopus and squid.

(d) It is unlawful to retain any whiting taken incidental to any bottomfish fishery in Catch Areas 24B, 24C or 26A except using pelagic trawl gear when these areas have been opened by the director for a directed whiting fishery.

(8) A vessel trip is defined as having occurred upon the initiation of transfer of catch from a fishing vessel.

(9) Pacific cod.

(a) It is unlawful to discard any Pacific cod taken by any commercial fishing gear.

(b) All Pacific cod taken by a commercial gear shall be landed at a licensed commercial dealer.

(10) Sablefish. It is unlawful to take more than 300 pounds of sablefish per vessel trip or more than 600 pounds of sablefish per two-month cumulative limit from open Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas. A two-month cumulative limit is the maximum amount of fish that may be taken and retained, possessed or landed per vessel per two-fixed calendar month period. The fixed two-month periods are January-February, March-April, May-June, July-August, September-October and November-December.

(11) Sixgill shark. It is unlawful to retain sixgill shark taken by commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(12) Rockfish. It is unlawful to retain any species of rockfish taken by commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

AMENDATORY SECTION (Amending Order 01-58, filed 4/18/01, effective 5/19/01)

WAC 220-48-015 Beam trawl and ((bottom)) otter trawl—Seasons. ((+)) It is ((lawful)) unlawful to fish for and possess bottomfish taken with ((bottom)) otter trawl and beam trawl gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas ((20A, 20B, 21A, 22A, 22B, 23A, 23B, 23C, 25A, and 25B the entire year with the following exceptions:

(a) ~~Those waters of Area 20A east of a line projected from Point Whitehorn to Sandy Point are closed the entire year.~~

(b) ~~Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and from the southwest corner of Point Roberts to Point Whitehorn to where these two lines are intersected by a line south from Kwomais Point in British Columbia and a line from Lilly Point to the north Alden Bank buoy are closed April 15 through May 31.~~

~~(c) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and Lilly Point to the north Alden Bank buoy to where those lines are intersected by a line projected approximately 230 degrees south from Birch Point to Alden Point on Patos Island are closed June 1 through June 30.~~

~~(d) Areas 20A, 20B, 21A, 22A and 22B are closed to all trawl fishing in waters less than 30 feet deep.~~

~~(e) Areas 20A, 20B, 21A, 22A and 22B are closed in waters deeper than 40 fathoms from 12:01 a.m. September 15 through December 31 except if the Pacific cod quota for these waters has not been taken by September 15, these waters may be opened by emergency rule for the taking of the Pacific cod quota.~~

~~(f) Area 23C is closed to otter trawl fishing the entire year in waters shallower than 50 fathoms and is closed to beam trawl fishing in waters less than 60 feet deep.~~

~~(g) Area 23C is closed to otter trawl Wednesday, Saturday and Sunday, January 1 through August 31, and closed to all otter trawl September 1 through December 31.~~

~~(2) It is lawful to fish for and possess bottomfish taken with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A and 25B the entire year with the following exceptions:~~

~~(a) All of Area 25A is closed February 1 through April 15 of each year.~~

~~(b) Those waters of Area 25A lying southerly and westerly of a line projected from Kiapot Point to Gibson Spit (Sequim Bay) are closed the entire year.~~

~~(c) Areas 23A, 25A and 25B are closed to beam trawl fishing in waters less than 60 feet deep.~~

~~(3) It is unlawful to fish for or possess bottomfish taken with otter trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A and 25B the entire year.~~

~~(4) It is unlawful to take, fish for or possess bottomfish taken with bottom trawl or beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 21B, 23D, 24A, 24B, 24C, 24D, 25C, 25D, 25E, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, 28D, and 29 the entire year.~~

~~(5) It is unlawful to take more than 500 pounds of rockfish with beam trawl and bottom trawl gear during any vessel trip in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas).~~

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

WAC 220-48-029 Set net—Dogfish—Seasons. ((+)) It is unlawful to take, fish for and possess dogfish and other species of bottomfish taken with dogfish set net gear for commercial purposes in ((the following)) all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas ((except during the seasons designated below:

(a) Areas 20A and 20B — November 1 through June 15.

(b) Area 21A — March 1 through June 15.

(c) Areas 21B, 22A, 22B, 23A, and 23B — Closed all year.

(d) Areas 23C and 23D — September 16 through June 15.

(e) Areas 24A, 24B, and 24D—September 16 through June 15.

(f) Area 24C—September 16 through June 15, except those waters south of a line projected due east of East Point on Whidbey Island are closed all year.

(g) Areas 25A, 25B and that portion of Area 25C west of a line from Twin Spits to the Port Gamble Millstaek—September 16 through June 15.

(h) Area 25D and that portion of 25C east of line from Twin Spits to the Port Gamble Millstaek—Closed all year.

(i) Area 25E—Closed all year.

(j) Area 26A—September 16 through June 15, except those waters southerly and westerly of a line between the ferry dock at Mukilteo and the ferry dock at Clinton are closed all year.

(k) Area 26B—September 16 through June 15, except those waters provided for in WAC 220-20-020(4) (Shilshole Bay) are closed at all times and those waters west of a line from Point Jefferson to Point Monroe are closed from January 1 to April 15. Those waters west of a line projected 178 degrees true from the end of the Indianola dock to the landfall on the south shore of Port Madison are closed at all times.

(l) Area 26C—Open April 16 through June 15 and September 16 through December 31, except those waters north of a line projected true east of Point Bolin and those waters west of a line projected 178 degrees true from the end of the Indianola dock to the landfall on the south shore of Port Madison are closed at all times.

(m) Area 26D—September 16 through June 15, except Quartermaster Harbor and those waters south of lines projected from Dash Point to Point Piner on Maury Island and from Point Daleo true west to the Kitsap Peninsula are closed all year.

(n) Areas 27A, 27B, and 27C—Closed all year.

(o) Area 28A—September 16 through June 15, except those waters north of a line projected true east of Fox Point on Fox Island, and east of a line projected due north from the northwest tip of Fox Island are closed all year.

(p) Areas 28B, 28C, and 28D—September 16 through June 15, except those waters provided for in WAC 220-20-010(6) (upper Carr Inlet).

(q) Area 29—September 16 through June 15.

(2) Incidental catch: It is unlawful to retain any shellfish or fish other than bottomfish).

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

WAC 220-48-032 Set line—Seasons. ~~((1) Set line fishing for dogfish and other bottomfish is open))~~ It is unlawful to take, fish for and possess any species of bottomfish taken with set line gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas ~~((year-round except as provided in this section.~~

(2) It is unlawful to take, fish for, and possess dogfish and other bottomfish taken with set lines in:

(a) All Marine Fish-Shellfish Management and Catch Reporting Areas June 16 through September 15.

(b) That portion of Area 26C north of a line projected due east from Point Bolin to Bainbridge Island is closed all year.

(c) That portion of Area 26D south of lines projected due west of Point Daleo on Vashon Island, and from Dash Point to Point Piner on Maury Island, is closed all year.

(d) That portion of Area 28A east of a line projected due north from the northwest tip of Fox Island, and north of a line projected due east from Fox Point on Fox Island is closed all year.

(e) Those waters provided for in WAC 220-20-010(6) and 220-20-020(4).

(f) Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C.

(3) Incidental catch: It is unlawful to retain any shellfish and any fish other than bottomfish, and the cumulative weight of rockfish and lingcod shall not exceed 30 pounds for any vessel trip in all open Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas).

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-48-071 Bottomfish pots—Gear and seasons. (1) It ~~((shall be))~~ is unlawful to take, fish for, and possess bottomfish for commercial purposes with bottomfish pot gear as described in WAC 220-16-145, except in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

~~((a) Areas 20A, 21A, 21B, 23A, and 23B—Open April 15 through November 30.~~

~~(b) Areas 23C and 23D—Open December 1 through April 14.~~

~~(c) All other areas are closed the entire year, except by permit from the director.)~~ Areas 23C and 29 open only by permit from the director.

(2) Licensing: A bottomfish pot fishery license is the license required to operate the gear provided for in this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-48-011	Beam trawl and otter trawl—Gear.
WAC 220-48-013	Beam trawl and otter trawl logbooks.
WAC 220-48-016	Pelagic trawl—Gear—Licensing.
WAC 220-48-017	Pelagic trawl—Seasons.
WAC 220-48-028	Set net—Dogfish—Gear.
WAC 220-48-031	Set line—Gear.

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

WAC 220-48-062 Drag seines—Seasons. It is unlawful to take, fish for, and possess bottomfish with drag seine gear for commercial purposes except in the following Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

- (1) Areas 28A, 28B, 28C, and 28D - Open January 1 through April 30.
- (2) All other areas - Open September 1 through April 30, except Areas 27A, 27B, ~~((and))~~ 27C, and 29 are closed year-round.

AMENDATORY SECTION (Amending Order 05-275, filed 12/9/05, effective 1/9/06)

WAC 220-52-051 Shrimp fishery—Puget Sound. (1) A Puget Sound shrimp pot license or a Puget Sound shrimp trawl license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp pot licenses and Puget Sound shrimp trawl licenses may designate a single alternate operator per license.

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except during seasons opened by emergency rule:

- (a) Gear restrictions -
 - (i) In all areas, maximum 100 pots per fisher except for dual licensees as provided for in RCW 77.70.410.
 - (ii) In all areas:
 - (A) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.
 - (B) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.
 - (C) The maximum perimeter of shrimp pots must not exceed ten feet and the maximum height must not exceed two feet.
 - (D) It is unlawful to set or pull shrimp pot gear from one hour after official sunset to one hour before official sunrise.

(b) Spot shrimp size restriction: It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1 and 3/16 inches. Carapace length is defined as the length between the posterior mid-dorsal margin to the posterior-most part of the eye-stalk orbit.

- (c) Area restrictions:
 - (i) Pot gear closed in all Puget Sound Shrimp Districts except the Port Townsend Shrimp District.
 - (ii) Pot gear closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.

(3) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule ~~((:))~~ and authorized by a permit issued by the director.

(a) Gear restrictions - Beam trawl gear only. Otter trawl gear may not be used.

(i) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.

(ii) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 25A, 25B, and 29 is 60 feet.

- (b) It is unlawful to retain spot shrimp.
- (c) Area restrictions:
 - (i) Shrimp trawl fishing closed in all Puget Sound Shrimp Districts.
 - (ii) Shrimp trawl fishing closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.

(d) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.

(e) It is lawful to fish for shrimp in Puget Sound with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Area 21A only in those waters north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

(f) The following restrictions apply to shrimp beam trawl harvest in Marine Fish-Shellfish Management and Catch Reporting Area 20A:

- (i) Closed in waters east of a line from the southwest corner of Point Roberts to Sandy Point.
- (ii) Closed in waters shallower than 20 fathoms.
- (g) It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.

(h) It is unlawful to fish for, retain, land or deliver shrimp taken with trawl gear without a valid Puget Sound shrimp trawl fishery permit.

(i) It is unlawful to take, retain, land, or deliver any shrimp taken with trawl gear without complying with all provisions of a Puget Sound shrimp trawl fishery permit.

(j) A violation of this subsection is punishable under RCW 77.15.750.

(4) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a licensed wholesale dealer, or if transferred at sea, without transfer to a licensed wholesale dealer. A fisher who is a licensed wholesale dealer may complete and return a fish receiving ticket to satisfy the requirements of this subsection.

(5) For purposes of shrimp pot harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (catch areas) are modified as follows:

(a) That portion of Catch Area 22A south of a line due east from the international boundary to Lime Kiln Point light on San Juan Island, then south of the shores of San Juan Island, then south of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island, then south of the shores of Lopez Island to Point Colville shall be considered to be part of Catch Area 23A.

(b) Catch Area 23A is divided into four subareas:

(i) 23A-E (east) is those waters of Catch Area 23A east of 122°57'W. Long. and north of 48°22.5'N. Lat.

(ii) 23A-W (west) is those waters of Catch Area 23A west of 122°57'W. Long. and north of 48°22.5'N. Lat.

(iii) 23A-C (central) is those waters of Catch Area 23 south of 48°22.5'N. Lat. and east of a line projected 335° true from the Dungeness lighthouse.

(iv) 23A-S (south) is those waters of Catch Area 23A west of a line projected 335° true from the Dungeness lighthouse.

(c) Catch Area 26A is divided into two subareas:

(i) 26A-E (east) is those waters of Catch Area 26A north and east of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.

(ii) 26A-W (west) is those waters of Catch Area 26A south and west of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.

(d) Catch Area 26B is divided into two subareas:

(i) 26B-1 is those waters of Catch Area 26B westerly of a line projected from West Point to Alki Point.

(ii) 26B-2 is those waters easterly of a line projected from West Point to Alki Point.

(6) For purpose of shrimp trawl harvest allocation and catch reporting, 23A East is that portion of Catch Area 23A, east of a line projected true north from the Dungeness lighthouse. 23A West is that portion of Catch Area 23A, west of the line described herein.

(7) The following areas are defined as Puget Sound Shrimp Management Areas:

(a) Shrimp Management Area 1A: Waters of Catch Area 20B west of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and all waters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island, west of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island.

(b) Shrimp Management Area 1B: Waters of Catch Area 20B east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island, east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, and east of a line projected true south from Point Colville, and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

(c) Shrimp Management Area 1C: Waters of Catch Areas 20A, 21B, 22B, and waters of Catch Area 21A not included in Management Area 1B.

(d) Shrimp Management Area 2E: Waters of Catch Areas 24A, 24B, 24C, 24D, and 26A-E (east).

(e) Shrimp Management Area 2W: Waters of Catch Areas 25B, 25C, 25D, and 26A-W (west).

(f) Shrimp Management Area 3: Waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

(g) Shrimp Management Area 4: Waters of Catch Areas 26B and 26C.

(h) Shrimp Management Area 5: Waters of Catch Areas 27A, 27B, and 27C.

(i) Shrimp Management Area 6: Waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(8) In Shrimp Management Areas 1A, 1B and 1C, all catch must be reported by Management Area and Catch Area combined, either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, 1C-20A, 1C-21A, 1C-21B, or 1C-22B.

WSR 11-07-107

PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-30—Filed March 23, 2011, 11:13 a.m., effective April 23, 2011]

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

Purpose: The purpose of the proposal is to provide additional protection for bottomfish resources in Marine Catch Area 4 east of the Bonilla-Tatoosh line by reducing the aggregate bottomfish daily limit from fifteen to ten in WAC 220-56-235.

Reasons Supporting Proposal: Although public comments indicated more support for the status quo than for other alternatives that the department recommended and the fish and wildlife commission adopted, these rule changes are necessary to provide additional protection to bottomfish resources in this area. The reduced aggregate bag limit falls in line with the changes made early in 2010 that reduced the daily sublimit for rockfish from ten to six, which is part of the aggregate bag limit. These rule changes do not close areas that the public felt would create negative economic impacts, and they do not limit access for small-boat fishermen.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-235 Possession limits—Bottomfish.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: 50 C.F.R., Parts 223 and 224.

Adopted under notice filed as WSR 10-21-117 on October 10, 2010.

Changes Other than Editing from Proposed to Adopted Version: The fish and wildlife commission considered but decided not to make changes to WAC 220-16-890, 220-16-900, 220-16-910, 220-16-920, 220-16-930, 220-16-940, and 220-20-100. These WACs will be withdrawn.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 5, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

ALTERNATIVE 1 - OPTION 2

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-56-235 Possession limits—Bottomfish. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4) - 15 fish in the aggregate, except east of the Bonilla-Tatoosh line - 10 fish in the aggregate, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod - 2 fish:

(i) Minimum length 22 inches in Catch Record Card Areas 1 through 3.

(ii) Minimum length 24 inches in Catch Record Card Area 4.

(b) Rockfish - 10 fish. Release all canary and yelloweye rockfish. In Marine Area 4 east of the Bonilla Tatoosh Line: 6 fish. Only black or blue rockfish may be retained.

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolf-eel - 0 fish from Catch Record Card Area 4.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30 only black or blue rockfish may be retained.
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in Marine Area 5 west of Slip Point	3 fish only black or blue rockfish may be retained.
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in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pollock	2 fish
Pacific hake	2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	0 fish

(d) Catch Area 12: Closed.

(e) It is unlawful to possess lingcod taken by angling or by spear fishing less than 26 inches in length or greater than 36 inches in length.

(f) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(g) It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.

(h) In Catch Record Area 5, the daily limit for rockfish is the first legal rockfish caught, except west of Slip Point the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

**WSR 11-07-108
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-42—Filed March 23, 2011, 11:17 a.m., effective April 23, 2011]

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

Purpose: The purpose of the proposal is to close the otter trawl fishery for scallops in all areas of Puget Sound, due to concerns over the adverse impacts of otter-trawl fishing on rockfish in Puget Sound.

Reasons Supporting Proposal: This regulation change is needed to comply with provisions [of] the Endangered Spe-

cies Act (ESA) and to provide protection for rockfish species in Puget Sound. On July 27, 2010, a federal decision to list two species of rockfish as threatened, and one species of rockfish as endangered, in Puget Sound became effective. The intent of this regulation is to comply with the ESA and to protect the listed species from capture in the scallop trawl fisheries. While the ESA listing does not cover all of Puget Sound, the agency has concluded that it is necessary to make these restrictions effective in all Puget Sound marine fish-shellfish management and catch reporting areas due to concern that leaving a small portion of Puget Sound open to this commercial fishing gear will concentrate fishing effort in that area, leading to challenges with conservation and conducting an orderly fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-069 Scallop fishery—Puget Sound.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: 50 C.F.R., Parts 223 and 224.

Adopted under notice filed as WSR 10-21-122 on October 20, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: February 5, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 00-153, filed 8/16/00, effective 9/16/00)

WAC 220-52-069 Scallop fishery—Puget Sound. It is unlawful to fish for or possess scallops taken for commercial purposes from Puget Sound except as provided for in this section:

(1)(a) Rock scallops and weathervane scallops. It is unlawful at any time to take or possess rock or weathervane scallops taken for commercial purposes from Puget Sound unless a person has first obtained a scallop brood stock permit issued by the department. The permit will specify the species, location, time, and quantity of scallops that can be taken for brood stock or culture purposes.

(b) Licensing:

~~((i))~~ A shellfish dive fishery license is a license that allows a permittee to retain rock and weathervane scallops for brood stock purposes.

~~((ii) Shrimp trawl—Puget Sound and food fish trawl—Puget Sound fishery licenses are licenses that allow a permittee to retain weathervane scallops for brood stock purposes.)~~

(2) Pink scallops and spiny scallops.

(a) General provisions:

(i) Pink and spiny scallops may be harvested from Puget Sound at any time.

(ii) The minimum commercial pink or spiny scallop size is 2 inches in length from the hinge to the outer margin of the shell.

(iii) Persons fishing for pink or spiny scallops must have approval of the Washington state department of health. Scallops may only be taken from areas approved by the department of health and any fisher taking pink or spiny scallops must have on board the harvesting vessel a valid department of health shellfish toxin sampling agreement.

(iv) No other shellfish except octopus and squid ~~((or food fish))~~ may be retained while scallop fishing or while scallop are possessed aboard the scallop fishing vessel.

(b) Trawl gear provisions: Otter trawl gear may not be used to fish for scallops in Puget Sound at any time.

~~((i) Trawlers may only use single beam trawls not exceeding ten feet in width and having mesh size no smaller than two inches in the intermediate portion and cod end of the trawl.~~

~~(ii) Trawling for scallops is prohibited in waters less than 120 feet below mean lower low water.~~

~~(iii) Trawling for scallops is prohibited in the following areas:~~

~~(A) All waters closed to bottomfish trawl in WAC 220-48-015.~~

~~(B) Shrimp Districts 1 and 3 as defined in WAC 220-52-051.~~

~~(C) Sea Urchin Districts 1 and 2 closed waters defined in WAC 220-52-073 (1)(a)(i), (ii), and (1)(b)(ii).~~

~~(iv) Licensing: A food fish trawl—Puget Sound fishery license is the license required to operate the gear provided for in this section.)~~

(c) Shellfish diver gear provisions:

(i) Diving for scallops is prohibited in Sea Urchin Districts 1 and 2 closed waters as defined in WAC 220-52-073 (1)(a)(i), (ii), (1)(b)(i), and (ii).

(ii) Licensing: A shellfish dive fishery license is the license required to take scallops with shellfish diver gear.