

WSR 05-22-007
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 20, 2005, Filed 3:29 p.m., , effective November 20, 2005]

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

Purpose: To revise current rules (chapter 392-109 WAC) regarding election of members to the State Board of Education to reflect 2005 legislative changes.

Citation of Existing Rules Affected by this Order: Amending chapter 392-109 WAC.

Statutory Authority for Adoption: Chapter 28A.305 RCW and ESSB 5732.

Adopted under notice filed as WSR 05-18-061 on September 6, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 13, 2005.

Dr. Berry Bergeson
 Superintendent of
 Public Instruction

AMENDATORY SECTION (Amending Order 18, filed 7/19/90, effective 8/19/90)

WAC 392-109-037 Purpose and authority. (1) The purpose of this chapter is to provide for the annual election of members to the state board of education by establishing policies and procedures which implement the statutory election process for such positions.

(2) Authority for this chapter is RCW ((28A.305.020)) 28A.305.102 which authorizes the superintendent of public instruction to adopt rules and ((regulations)) procedures for the conduct of election ((for)) of members ((of)) to the state board of education.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-040 ((Purpose)) Composition. The state board of education consists of ((nine)) sixteen members: Seven members appointed by the governor; five members, including two from eastern Washington and three from western Washington, elected by the members of public school boards of directors((-)); one member elected by approved private school boards of directors ((and)); the superintendent of

public instruction ((who is an ex officio member of the board. The purpose of this chapter is to provide for the annual election of members to the state board of education by establishing policies and procedures which implement the statutory election process for such positions)); and two student representatives selected by the state board of education.

AMENDATORY SECTION (Amending Order 18, filed 7/19/90, effective 8/19/90)

WAC 392-109-043 Election officer. In accordance with RCW ((28A.305.020)) 28A.305.102 the superintendent of public instruction or his or her designee shall serve as the election officer for the coordination and conduct of the election of members ((of)) to the state board of education.

AMENDATORY SECTION (Amending Order 80-20, filed 6/17/80)

WAC 392-109-045 Definitions. As used in this chapter the term:

(1) "Board of directors" shall mean:

(a) The statutory, multimember board of directors of a public school district; ~~((and))~~ or

(b) The person or multimember body recognized by ((a)) an approved private school as having the final authority for policy decisions which govern the operation of the private school.

(2) ~~((("Chairperson" shall mean a member of a private school board of directors who has been selected by the board either to act as the chief officer of the board or to tabulate and cast the private school's vote pursuant to this chapter.))~~ "Elector" shall mean:

(a) Each individual member of a public school board of directors; or

(b) An approved private school board of directors as a whole.

(3) "Approved private school" shall mean a school which((:

(a) ~~Operates any of the grades one through twelve; and~~

(b) Is certified)) is approved by the state board of education pursuant to chapter 180-90 WAC, as now or hereafter amended, as being in compliance with statutory standards.

(4) "Eastern Washington region" shall mean the region comprised of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(5) "Western Washington region" shall mean the region comprised of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

(6) "Weighted vote" shall mean the total number of electoral votes assigned to an elector for:

(a) Public schools: Each elector shall be entitled to a number of electoral votes equal to:

School District Student

<u>Enrollment</u>	<u>Each Elector Receives</u>
<u>1</u> = <u>1,000</u>	<u>1 vote</u>
<u>1,001</u> = <u>2,000</u>	<u>2 votes</u>
<u>2,001</u> = <u>3,000</u>	<u>3 votes</u>
<u>3,001</u> = <u>4,000</u>	<u>4 votes</u>
<u>4,001</u> = <u>5,000</u>	<u>5 votes</u>
<u>5,001</u> = <u>6,000</u>	<u>6 votes</u>
<u>6,001</u> = <u>7,000</u>	<u>7 votes</u>
<u>7,001</u> = <u>8,000</u>	<u>8 votes</u>
<u>8,001</u> = <u>9,000</u>	<u>9 votes</u>
<u>9,001</u> = <u>10,000</u>	<u>10 votes</u>
<u>10,001</u> = <u>15,000</u>	<u>11 votes</u>
<u>15,001</u> = <u>20,000</u>	<u>12 votes</u>
<u>20,001</u> = <u>25,000</u>	<u>13 votes</u>
<u>25,001</u> = <u>30,000</u>	<u>14 votes</u>
<u>30,001</u> = <u>35,000</u>	<u>15 votes</u>
<u>35,001</u> = <u>40,000</u>	<u>16 votes</u>
<u>40,001</u> = <u>or greater</u>	<u>17 votes</u>

(b) Approved private schools: Each approved private school shall be entitled to a number of electoral votes equal to the actual number of students enrolled.

(7) "Student enrollment" shall mean the number of students enrolled during October of the preceding school year as reported to the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-047 Annual elections. Election ~~(s for)~~ of members ~~(of)~~ to the state board of education shall be conducted each year preceding ~~(the)~~ a year in which the term of one or more members expires, and as required by RCW ~~((28A.305.090))~~ 28A.305.102 following a vacancy on the board.

NEW SECTION

WAC 392-109-048 Election timeline. An official election timeline shall be published by the superintendent of public instruction at the call of each yearly election that shall include all necessary dates for the conduct of election.

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-050 Information necessary for the conduct of elections—Responsibility of school officials. It shall be the responsibility of each member of a board of directors to assure that the superintendent of public instruction is provided current and correct information necessary ~~((to))~~ for the conduct of the elections provided for in this chapter. Forms published by the superintendent of public instruction for the purpose of providing the following essential information shall be obtained, completed and submitted on a current basis:

(1) Approved private schools: The mailing address and previous ~~((September))~~ October student enrollment ~~((for each private school));~~ and

(2) Public school districts: The name, legal residence, mailing address and ~~((congressional district number))~~ region, as defined in WAC 392-109-034, of residence for each member of a board of directors.

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-060 Publicity and call of election. On or before August twenty-fifth of each year ~~((or if such date is a Saturday, Sunday, or holiday the state working day immediately preceding such date))~~ the superintendent of public instruction shall ~~((give written))~~ publicize notice of an election to be held for each ~~((voting))~~ position on the state board of education subject to election ~~((and for the nonvoting position if it is subject to election))~~ by public and approved private school boards of directors. Notice shall be ~~((accomplished))~~ made by, but not limited to:

(1) ~~((Mailing))~~ An official press release containing the call of election ~~((notice))~~ materials citing the election rules, declaration and affidavit of candidacy, biographical data form, ((tentative certification of electors, calendar and rules to each member of a public school district board of directors; and

~~((2)) Mailing copies of the call of election notice, declaration of candidacy, biographical data form, tentative certification of electors, calendar and rules to each private school addressed as follows: Chairperson of the board of directors, e/o principal or chief administrator, (name and address of the particular private school). It shall be the responsibility of each such chairperson to duplicate the call of election notice, calendar and rules if necessary and provide a copy of each to each member of the private school's board of directors))~~ and election timeline.

(2) Making the call of election materials in subsection (1) of this section available by contacting: Administrative Resource Services, Office of the Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200.

(3) Making the call of election materials in subsection (1) of this section available on the superintendent of public instruction's official web site at www.k12.wa.us.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-065 Candidates—Eligibility—Filing.

(1) Eligibility: A person is eligible to be a candidate for only one ~~((vacancy))~~ position on the state board of education at a time.

(a) A candidate for a vacancy among the ~~((nine))~~ five positions on the state board elected by members of public school boards of directors must be a resident of the ~~((congressional district))~~ region represented by the position and meet the other qualifications established by RCW ~~((28A.305-040))~~ 28A.305.102; and

(b) A candidate for a vacancy in the position on the state board elected by private schools (~~boards of directors~~) must be a resident of the state of Washington and meet the other qualifications established by RCW (~~28A.305.040~~) 28A.305.102.

(2) Forms for filing: A person who desires to be a candidate shall complete:

(a) The declaration and affidavit of candidacy (~~and affidavit~~) form provided for in WAC 392-109-070; and

(b) The biographical data form provided for in WAC 392-109-075: Provided, That a declarant may elect not to submit biographical data.

(3) Filing period: The filing period for candidates for any position on the state board of education (~~is from September 1 through September 16. Any declaration of candidacy that is not received by the superintendent of public instruction on or before 5:00 p.m. September 16 shall not be accepted and such a declarant shall not be a candidate. Provided, That any declaration that is postmarked on or before midnight September 16 and received by mail prior to the printing of ballots shall be accepted. Provided further, That any declaration received pursuant to the United States mail on or before 5:00 p.m. September 21 that is not postmarked or legibly postmarked shall also be accepted~~) elected by either public or approved private school boards of directors shall be no less than seven days in duration and occur a minimum of sixty days prior to election and shall be included on the election timeline. Declarations not received by 5:00 p.m. on the indicated date will not be included on the certified list of candidates.

(4) Filing deadline: The filing deadline for candidacy shall be 5:00 p.m. on the date included on the election timeline.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-070 Declaration and affidavit of candidacy form. The declaration and affidavit of candidacy form which each candidate is required to substantially complete and to file as a condition to having his or her name placed on an official ballot is available from the superintendent of public instruction and shall be as follows:

I,, solemnly swear (or affirm): That (if filing for a position elected by members of public school boards of directors) I reside in the (~~Congressional District~~) Region of the state of Washington (~~(or)~~) (OR if filing for the position elected by private schools (~~boards of directors~~)) I reside within the state of Washington; That I am aware that if elected, I cannot concurrently serve as a member of the state board of education and as an employee of any school, college, university, or other educational institution, or any educational service district superintendent's office, or in the office of the superintendent of public instruction, or as a member of the board of directors of either a common school district or a private school; and, That I hereby declare myself a candidate for membership on the state board of education for Region, Position No. a term (~~(of years)~~) beginning on the second Monday in January, (~~(19)) 20.~~ subject to the election to be held during the month of (~~Octo-~~

~~ber~~) November, ((19)) 20., and I request that my name be listed on the ballot (~~(therefor)~~) thereof.

Further, I solemnly swear (or affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

(Print Name) _____
(Signature) _____
Address: _____

Telephone number _____

State of Washington
County of _____

Signed and sworn to (or affirmed) before me on (date) by (name of person making statement).

(Seal or stamp) (Signature) _____
Notary Public
My appointment expires _____

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-075 Biographical data form. (1) The superintendent of public instruction shall provide a biographical data form not exceeding (~~(two)) one~~ letter size double spaced minimum twelve point font typewritten page(~~s~~) in length which each candidate may complete. (~~Completed forms submitted to the superintendent of public instruction by a candidate must be camera ready.~~)

(2) Biographical data forms shall be reproduced as submitted and distributed by the superintendent of public instruction with the official ballots to each (~~(voter))~~ elector.

(3) Candidates may submit a two-inch by two-inch headshot photograph with this form.

(4) Filing of this form is not required.

AMENDATORY SECTION (Amending Order 81-10, filed 8/7/81)

WAC 392-109-077 Withdrawal of candidacy. Any candidate may withdraw his or her declaration of candidacy by delivering a written, signed and notarized statement of withdrawal to the superintendent of public instruction on or before 5:00 p.m. (~~(September 21))~~ on the date included on the election timeline. A candidate's failure to withdraw as prescribed above shall result in the inclusion of the candidate's name on the appropriate election ballot.

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-078 Certificate of electors. (1) The list of eligible (~~(voters))~~ electors shall remain open for changes and deletions until 5:00 p.m. (~~(September 26 or in the event such date is a Saturday, Sunday, or holiday, until 5:00 p.m. the working day immediately following such date))~~ on the date included on the election timeline.

(2) The superintendent of public instruction as soon thereafter as is practical shall certify the list of electors and the weighted vote for each elector to be used for election purposes.

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-080 Ballots—Contents. The ballot for each position subject to election pursuant to this chapter shall:

(1) Contain the names of each candidate eligible for the particular position. ~~((Ballots for voting positions shall))~~

(2) Be prepared for each ~~((congressional district and the names of candidates thereon shall be rotated))~~ region. ~~((In addition to the names of candidates, each ballot shall))~~

(3) Set forth the number of electoral ~~((points))~~ votes to which each ~~((voter))~~ elector is entitled ~~((, as follows:))~~

(1) Public school board members: Each member of a public school district board of directors shall be entitled to a number of electoral points equal to:

(a) The actual number of students enrolled in the school district during September of the current calendar year and reported to the superintendent of public instruction for basic education apportionment purposes; or

(b) If such figure is unavailable by 5:00 p.m. September 26 or in the event such date is a Saturday, Sunday, or holiday, the working day immediately following such date, the actual number of students enrolled and last reported to the superintendent of public instruction for basic education apportionment purposes: Provided, That each member of the board of directors of a public school district that permanently or temporarily has more than five statutory directors shall have his or her electoral points recomputed by multiplying the foregoing enrollment number by a fraction, the denominator of which shall be the number of directors, and the numerator of which shall be five.

(2) Private schools: Each private school board of directors shall be entitled to a number of electoral points equal to the actual number of students enrolled in each private school under the governance of the board during September of the preceding calendar year and reported to the superintendent of public instruction).

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-085 Ballots and envelopes—Mailing to ~~((voters))~~ electors. (1) ~~((On or before October 1))~~ Ballots shall be mailed to ~~((voters))~~ electors on the date included on the election timeline, together with two envelopes to be used for voting.

(a) The outer and larger envelope (i.e., official ballot return envelope) shall:

~~((a))~~ (i) Be labeled "official ballot return envelope";

~~((b))~~ (ii) Be preaddressed with the "superintendent of public instruction" as addressee; and

~~((c))~~ Have provision for prepaid postage; and

~~((d))~~ (iii) Have provision for the identification of the ~~((voter))~~ elector, his or her school district or school and his or her ~~((congressional district if pertinent))~~ home address.

(b) The inner and smaller envelope shall be unlabeled and unmarked.

(2) One official ballot and the two envelopes to be used for voting purposes, any candidates' biographical data and pertinent instructions for voting purposes shall be mailed to each member of a public school district board of directors.

(3) One official ballot, ~~((a number of copies of the ballot,))~~ two envelopes to be used for voting purposes, any candidates' biographical data and pertinent instructions for voting purposes shall be mailed to each approved private school addressed ~~((as follows: Chairperson of the board of directors, or principal or))~~ to the chief administrator ~~((, (name and address of the particular))~~ of each approved private school ~~((. It shall be the responsibility of each such chairperson to duplicate the ballot, biographical data and pertinent instructions for voting purposes if necessary and provide a copy to each member of the private school's board of directors)).~~

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-090 Voting—Marking and return of ballots. (1) ~~((Public school board members:))~~ Each member of a public school district board of directors may vote for one of the candidates for each position named on his or her official ballot by placing an "x" or other mark in the space provided next to the name of a candidate.

(2) ~~((Private school board members:))~~ Each ~~((member of a))~~ approved private school ~~((board of directors shall return his or her marked ballot to the chairperson of the board. The chairperson shall tabulate the votes and be entitled to cast one vote for the candidate who receives a majority of the board members' votes. The chairperson shall then mark the official ballot accordingly))~~ may vote for one candidate on the official ballot by placing an "x" or other mark in the space provided next to the name of a candidate.

(3) ~~((Return of ballots:))~~ Each member of a public school district board of directors and each ~~((chairperson of a))~~ approved private school ~~((board of directors))~~ shall complete voting by:

(a) Placing ~~((his or her))~~ the marked official ballot in the smaller, unmarked envelope and sealing the same;

(b) Placing the smaller unmarked envelope containing the official ballot in the larger preaddressed envelope marked "official ballot return envelope" and sealing the same; and

(c) ~~((If not already designated, completing the following information on the face of the official ballot return envelope: Name, identification of school district or private school and, in the case of public school district board members, identification of the congressional district of residence; and~~

~~((d))~~ Affixing proper postage and placing the official ballot return envelope in the United States mail or otherwise delivering the envelope to the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-095 Election ~~((board))~~ committee—Appointment and composition. The ~~((state board of education))~~ superintendent of public instruction shall annually

appoint a three member election ~~((board))~~ committee and at least one alternate who shall serve thereon in the absence of a regular member of the election ~~((board))~~ committee. Counting of votes cast at elections conducted pursuant to this chapter shall be ~~((counted))~~ supervised by the superintendent of public instruction or his or her designee and the election ~~((board))~~ committee.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-100 Receipt of ballots and count of votes. (1) As official ballot return envelopes are received by the superintendent of public instruction, a preliminary determination shall be made as to the eligibility of the ~~((voter))~~ elector, and a record shall be made on a list of eligible ~~((voters))~~ electors and approved private schools that the ~~((voter or school))~~ elector has voted.

(2) Official ballot return envelopes not submitted in compliance with this chapter and other envelopes containing ballots shall be set aside for a final review and acceptance or rejection by the election ~~((board))~~ committee.

~~((2))~~ (3) The election ~~((board))~~ committee shall convene for the purpose of counting votes on ~~((or before October 25 or if such date is a Saturday, Sunday, or holiday, on or before the state working day immediately preceding such date at a date, time and place designated by the superintendent of public instruction))~~ the date included on the election timeline.

(a) Official ballot return envelopes ~~((that are))~~ accepted by the election ~~((board))~~ committee shall be opened~~(;)~~ and the inner unmarked envelopes containing the official ballots shall be removed and placed aside~~(;)~~ still sealed.

(b) The inner unmarked envelopes shall then be opened and the votes counted by the election ~~((board))~~ committee.

~~((3))~~ (4) No record shall be made or maintained of the candidate for ~~((which))~~ whom any ~~((voter))~~ elector cast his or her vote.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-105 Ineligible votes. The following ballots and votes shall be declared void and shall not be accepted:

- (1) Votes for write-in candidates;
- (2) Votes cast on other than an official ballot provided pursuant to this chapter;
- (3) Ballots which contain a vote for two or more of the named candidates;
- (4) Ballots contained in other than an official ballot return envelope provided pursuant to this chapter;
- (5) Ballots contained in an official ballot return envelope upon which the ~~((voter))~~ elector is not designated by name;
- (6) Ballots received after 5:00 p.m. ~~((October 16:))~~ on the date included on the election timeline. Provided, that any official ballot return envelope that is postmarked on or before midnight ~~((October 16))~~ of the above date and received pursuant to the United States mail prior to the initial counting of votes by the election ~~((board))~~ committee shall be accepted~~(; Provided further, That any official ballot return envelope~~

~~received pursuant to the United States mail on or before 5:00 p.m. on October 21 that is not postmarked or legibly postmarked shall also be accepted);~~ and

(7) Such other ballots or votes as the election ~~((board))~~ committee shall determine to be unidentifiable or unlawful.

NEW SECTION

WAC 392-109-111 Run-off election. If no candidate for any one position receives a minimum of fifty percent plus one of the total votes for such position, the superintendent of public instruction shall call a run-off election between the two candidates receiving the two highest vote totals for such position.

NEW SECTION

WAC 392-109-112 Dispute resolution. (1) Any public school district board member or any approved private school eligible to vote for a candidate for membership on the state board of education or any candidate for the position, within ten days after the superintendent of public instruction's reporting of election, may contest the election of a candidate for any of the following causes:

(a) Because the person whose right is being contested gave a bribe or reward to an elector for the purpose of procuring the candidate's election, or offered to do so; or

(b) On account of illegal votes.

(2) An action contesting an election pursuant to this chapter shall be conducted in compliance with chapter 29A.68 RCW, as now or hereafter amended.

AMENDATORY SECTION (Amending Order 84-8, filed 5/15/84)

WAC 392-109-115 ~~((Certification))~~ Report and certification of election. ~~((Within ten calendar days after the date upon which the votes were counted, but no sooner than eight calendar days after the votes were counted by the election board, the superintendent of public instruction shall officially certify the name or names of candidates elected by signing and forwarding written notice to the secretary of state.))~~ (1) On the date included on the election timeline, but no later than December 15, if a candidate receives a minimum of fifty percent plus one of the total votes for a position, the superintendent shall publicly announce and certify the election results; or

(2) If a candidate does not receive a minimum of fifty percent plus one of the total votes for a position, the superintendent shall publicly announce the need for a run-off election; the results of which shall be announced and certified no more than ten days after election.

AMENDATORY SECTION (Amending Order 90-01, filed 1/31/90, effective 3/3/90)

WAC 392-109-117 Publishing of names. As soon as reasonably possible after each annual election the superintendent of public instruction shall publish the names of the ~~((directors))~~ electors and approved private schools who voted in the election.

AMENDATORY SECTION (Amending Order 96-05, filed 3/21/96, effective 4/21/96)

WAC 392-109-120 Vacancies and special elections.

(1) Whenever a vacancy among members elected by public school boards of directors occurs on the state board of education, from any cause whatsoever, it shall be the duty of the remaining members representing public school boards of directors to fill such vacancy by appointment consistent with the appropriate regional position being vacated, and the person so appointed shall continue in office until his or her successor has been specially elected.

(2) Whenever a vacancy of the approved private school elected member occurs on the state board of education, from any cause whatsoever, it shall be the duty of the private school advisory committee to fill such vacancy consistent with qualifications in RCW 28A.305.102 and the person so appointed shall continue in office until his or her successor has been specially elected.

(3) When a vacancy occurs, the superintendent of public instruction shall include such a position in the call of election the following year; a special election to be held in the same manner as other elections provided for in this chapter, at which election a successor shall be elected to hold office for the unexpired term of the member whose position was vacated.

(4) Special elections provided for in RCW ((28A.305-030 (new congressional districts), 28A.305.060 (run-off elections) and 28A.305.090 (vacancies))) 28A.305.102 shall be conducted in accordance with ((the pertinent procedural and substantive provisions of)) this chapter((, including the time schedules governing the conduct of elections, as modified by the superintendent of public instruction to accommodate the special nature of the election and special statutory dates and requirements)).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-109-055	Publicity.
WAC 392-109-058	Tentative certification of electors.
WAC 392-109-072	Candidates for new congressional district positions—First elections—Term of office.
WAC 392-109-110	Recount of votes cast—Automatic—By request.

**WSR 05-22-008
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed October 20, 2005, 3:32 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: The rules are part of the state funding formula for K-12 education. The 2005 legislature added a sixth criteria to the list of additional criteria for all credits earned by certificated instructional staff after September 1, 1995, for application to the salary schedule developed by the legislative evaluation and accountability program committee. Also, a reference is updated from the State Board of Education to the Washington professional educator standards board.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-262.

Statutory Authority for Adoption: RCW 28A.150.290

(1).

Other Authority: RCW 28A.415.023.

Adopted under notice filed as WSR 05-17-174 on August 23, 2005.

Changes Other than Editing from Proposed to Adopted Version: The reference in subsection (1)(c) of the WAC is updated from the State Board of Education to the Washington Professional Educator Standards Board.

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Date Adopted: October 20, 2005.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

WAC 392-121-262 Definition—Additional criteria for all credits. Credits earned after September 1, 1995, must satisfy the following criteria in addition to those found in WAC 392-121-255, 392-121-257, and 392-121-259:

(1) At the time credits are recognized by the school district the content of the course must meet at least one of the following:

(a) It is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) It pertains to the individual's current assignment or expected assignment for the following school year;

(c) It is necessary for obtaining endorsement as prescribed by the ((state board of education)) Washington professional educator standards board;

(d) It is specifically required for obtaining advanced levels of certification; ((or))

(e) It is included in a college or university degree program that pertains to the individual's current assignment or potential future assignment as a certificated instructional staff; or

(f) It addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff;

(2) Credits which have been determined to meet one or more of the criteria in subsection (1) of this section shall continue to be recognized in subsequent school years and by subsequent school district employers; and

(3) Credits not recognized in a school year may be recognized in a subsequent school year if there is a change in the qualifying criteria such as a change in state board of education rules, a change in the district's strategic plan, a change in the school-based plan for the school in which the individual is assigned, a change in the individual's assignment, or a change in the individual's employer.

WSR 05-22-009
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed October 21, 2005, 1:39 p.m., effective November 21, 2005]

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

Purpose: The proposed rules repeal the old rules, and make them comply with the Governor's Executive Order 05-03, Plain Talk. This will make the rules more user friendly for licensees and the public.

The proposed rules modernize and clarify existing rules, and add many changes required by the new law passed in 2003 (SSB 5452, chapter 86, Laws of 2003), and 2005 (ESSB 5415, chapter 256, Laws of 2005). In summary the proposed rule:

- Incorporates the statutory definitions, including the amendments and additions from the 2003 act;
- Provides a more detailed description of the director's authority to conduct examinations and investigations;
- Conforms the consequences of late filing of annual assessment fees to the 2003 statutory changes;
- Eliminates securities and letters of credit as alternatives to the required surety bond;
- Establishes minimum requirements for small loan applications;
- Provides interpretive guidance regarding payment plans;
- Expands the requirements for disclosure statements to borrowers; and
- Makes additions to record-keeping requirements.

These changes will assist licensees in operating their businesses in compliance with the new law. It deletes references to older provisions of the law no longer used by licensees such as eliminating securities and letters of credit as alternatives to the required surety bond. The new rule also clarifies

exactly what the director's authorities are in examinations and investigations. The new law requires that licensees offer payment plans to borrowers after four successive loans, and it also requires more disclosures that the licensee must provide to the borrower. This rule will assist licensees in providing the payment plan and the disclosures.

Citation of Existing Rules Affected by this Order: Repealing chapter 208-630 WAC. Please see below for list of repealed WAC.

Statutory Authority for Adoption: RCW 31.04.165.

Other Authority: RCW 43.320.040, 31.45.030, 31.45.-050, 31.45.200.

Adopted under notice filed as WSR 05-18-095 on September 7, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 25, Amended 60, Repealed 24.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 3, 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 5, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 25, Amended 60, Repealed 24; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 17, 2005.

Scott Jarvis
Agency Director

NEW SECTION

WAC 208-630-110 What definitions are required to understand these rules? The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means chapter 31.45 RCW.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with another person.

"Agent" for purposes of RCW 31.45.079 means a person who, pursuant to the terms of a written agreement and for compensation, performs small loan agent services on behalf of an exempt entity.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

"RCW" means the *Revised Code of Washington*.

"Small loan agent services" means all or substantially all of the following services:

- (1) Marketing and advertising small loans;
- (2) Taking small loan applications;
- (3) Assisting customers in completing small loan documentation;
- (4) Providing required disclosures;
- (5) Disbursing small loan proceeds;
- (6) Collecting small loans;
- (7) Retaining documents and records; and
- (8) Making reports.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would impair materially the net worth of a licensee or create an abnormal risk of loss to its customers.

LICENSING REQUIREMENTS

NEW SECTION

WAC 208-630-120 What does a business have to do to operate as a check casher and seller, or to make small loans as a payday lender? In order to engage in the business of check cashing and selling, a business must apply and obtain from the department a check cashing or selling license. A check casher or seller must first obtain a small loan endorsement to its license to make small loans in accordance with chapter 31.45 RCW and this chapter.

NEW SECTION

WAC 208-630-130 How does a business apply for a check casher's or seller's license or a small loan endorsement to a check casher's or seller's license? Each applicant for a check casher license, or check seller license, or a small loan endorsement to a check casher's or seller's license must apply to the director by filing the following:

(1) An application in a form prescribed by the director including at least the following information:

(a) The legal name, residence, and business address of the applicant if the applicant is an individual or sole proprietorship, and in addition, if the applicant is a partnership, corporation, limited liability company, limited liability partnership, trust, company, or association, the name and address of every member, partner, officer, controlling person, and board director;

(b) The trade name or name under which the applicant will do business under the act;

(c) The street and mailing address of each location in which the applicant will engage in business under the act;

(d) The location at which the applicant's records will be kept; and

(e) Financial statements and any other pertinent information the director may require with respect to the applicant and its board directors, officers, trustees, members, or employees, including information regarding any civil litigation filed within the preceding ten years against the applicant or controlling person of the applicant;

(2) A surety bond and related power of attorney, or other security acceptable to the director in an amount equal to the penal sum of the required bond as set forth in this rule. In lieu of the bond, the applicant may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond in accordance with RCW 31.45.030 (5)(b) and (e) and this rule;

(3) A current financial statement as of the most recent quarter end prepared in accordance with generally accepted accounting principles which includes a statement of assets and liabilities and a profit and loss statement;

(4) Information on the applicant's or any affiliate's current or previous small loan or related type business in this state or any other state, including, but not limited to, name, address, city, state, licensing authority, and whether any enforcement action is pending or has been taken against the applicant in any state;

(5) Upon request, a complete set of fingerprints and a recent photograph of each sole proprietor, owner, director, officer, partner, member, and controlling person; and

(6) An application fee.

Any information in the application regarding a personal residential address or telephone number, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret is exempt from the public disclosure requirements of chapter 42.17 RCW.

NEW SECTION

WAC 208-630-140 Once a business finishes the application process, when does the director issue a license? If the director determines that all licensing criteria of chapter 31.45 RCW have been met and the appropriate fees paid, the director shall issue a nontransferable license for the applicant to engage in the business of cashing and/or selling checks or a small loan endorsement to a license.

NEW SECTION

WAC 208-630-150 When does the license expire? The license and small loan endorsement will remain continuously in effect until surrendered, suspended, or revoked.

NEW SECTION

WAC 208-630-160 Does each location where a licensee makes small loans have to have a small loan endorsement? The law requires a small loan endorsement for each location where a licensee makes small loans. These locations include, in addition to traditional staffed locations, unstaffed locations at which electronic or telephonic terminals such as facsimile machines, telephones, computer terminals or similar devices are available to the public to provide access to small loans, whether or not the locations are located within the premises of an exempt entity.

NEW SECTION

WAC 208-630-170 Where may a licensee make small loans? A small loan endorsement may authorize a licensee to make small loans at a location other than the licensed location where it cashes and sells checks.

NEW SECTION

WAC 208-630-180 Is there a bond requirement for licensees? A licensee engaged in any business under chapter 31.45 RCW must obtain a bond. The bond must run to the benefit of the state and any person or persons who suffer loss. The licensee must file the bond with the director at the beginning of each calendar year. The bond must be issued by a surety which meets the requirements of chapter 48.28 RCW. The bond form must be acceptable to the director. The licensee may obtain a copy of an acceptable form from the department.

NEW SECTION

WAC 208-630-190 What type of bond is necessary and what are the conditions? The bond shall be continuous and conditioned upon the licensee faithfully abiding by chapter 31.45 RCW and all rules in this chapter. It shall also be conditioned upon the licensee paying all persons who purchase monetary instruments from the licensee the face value of any monetary instrument dishonored by the drawee financial institution due to insufficient funds or by reason of the account having been closed. The surety shall only be liable for the face value of the dishonored monetary instrument, and shall not be liable for any interest or consequential damages. For a licensee with a small loan endorsement, the bond shall run to the benefit of the state and any person or persons who suffer loss due to the licensee's violation of chapter 31.45 RCW or this chapter.

NEW SECTION

WAC 208-630-200 How is a bond canceled? The bond may be canceled by the surety by giving written notice to the director and licensee of its intent to cancel the bond. The can-

cellation is effective thirty days after the notice is received by the director.

NEW SECTION

WAC 208-630-210 What is the liability of the surety under the bond? Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The surety shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

NEW SECTION

WAC 208-630-220 Who may make claims against the bond? Any person who is a purchaser of a monetary instrument from the licensee having a claim against the licensee for the dishonor of any monetary instrument by the drawee financial institution due to insufficient funds or by reason of the account having been closed, or any person who obtained a small loan from the licensee and was damaged by the licensee's violation of chapter 31.45 RCW or this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the monetary instrument was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any action must be brought not later than one year after the dishonor of the monetary instrument on which the claim is based. If the claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

NEW SECTION

WAC 208-630-230 What if there are claims against the bond? The licensee must notify the department of any claim against the bond within ten days after receiving notice of a claim.

NEW SECTION

WAC 208-630-240 What is the amount of bond needed for licensees engaging only in check selling? The penal sum of the surety bond for a person with a check seller license shall not be less than the amount established in the following table:

Highest Monthly Liability*	Required Bond	Plus Percentage of Excess
Up to \$50,000	Highest Monthly Liability or \$10,000, whichever is greater	\$0
\$50,001 to \$100,000	\$50,000	.5 above \$50,000
\$100,001 and above	\$75,000	.25 above \$100,000

* The monthly liability is the total sum of checks for a given month. The "highest monthly liability" shall be determined by multiplying the highest monthly liability of checks from the preceding calendar year by seventy-five percent.

NEW SECTION

WAC 208-630-250 What is the amount of bond needed if a licensee has a small loan endorsement? The required penal sum of the bond for a small loan endorsement must be ten thousand dollars plus an additional one thousand dollars for each endorsed branch office beyond one branch.

NEW SECTION

WAC 208-630-260 Does a licensee have any alternative to maintaining a surety bond? In lieu of the surety bond required in this rule, an applicant or licensee may substitute one of the following alternatives with the approval of the director. Any alternative to the surety bond shall secure the same obligations as would the surety bond. The amount of alternative substituted under subsection (1) or (2) of this section must be equal to or greater than the amount of the required surety bond.

(1) **Time deposit.** An assignment in favor of the director of a certificate of deposit. The certificate of deposit must be issued by a financial institution in the state whose deposits or shares are insured by an agency of the government of the United States. The depositor is entitled to receive all interest and dividends on the certificate of deposit.

(2) **Demonstration of net worth.** A licensee or applicant for a small loan endorsement may demonstrate net worth in excess of three times the amount of the required bond. The licensee shall notify the director within ten business days of any date upon which its net worth decreases below the required amount. A licensee that fails to maintain the required level of net worth and continues to operate under a small loan endorsement will be required to immediately obtain a surety bond and maintain it for five years after the date of noncompliance. During this five-year period, the director will not accept a demonstration of net worth in lieu of a surety bond.

(3) **Reports required.** A licensee that maintains net worth in lieu of a surety bond shall submit annually to the director an audited financial statement and within forty-five days after the close of each quarter a supplementary year-to-date financial statement prepared in accordance with generally accepted accounting principles. The financial statements

must include at a minimum a statement of assets and liabilities and a profit and loss statement. The director may continue to require other documents, agreements or information necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(4) **Bad debts and judgments.** A licensee that maintains net worth in lieu of a surety bond may not consider bad debts and certain judgments as assets. The director may approve exceptions in writing. The licensee must charge off its books any debt upon which any payment is six months or more past due. The licensee may not count as an asset any judgment more than two years old which has not been paid. Time consumed by an appeal from a judgment is not counted in the two-year limit.

(5) **Noncompliance.** A licensee that does not comply with this section must obtain and file with the director a surety bond in the required amount in WAC 208-630-030 by the date specified by the director.

NEW SECTION

WAC 208-630-270 When and under what circumstances may the director have access to the criminal history of an applicant or licensee, or controlling person? (1) The director may review any criminal history record information maintained by any federal, state, or local law enforcement agency relating to:

(a) An applicant for a license or small loan endorsement under chapter 31.45 RCW; or

(b) A controlling person of an applicant for a license under chapter 31.45 RCW.

(2) The director may deny, suspend or revoke a license if the applicant, licensee, or controlling person of the applicant or licensee fails to provide a complete set of fingerprints and a recent photograph on request.

(3) All criminal history record information received by the director is confidential information and is for exclusive use of the director and the division of consumer services. Except on court order or as provided by subsection (4) of this section, or otherwise provided by law, the information may not be released or otherwise disclosed to any other person or agency.

(4) The director may not provide a person being investigated under this section with a copy of the person's criminal history record obtained pursuant to subsection (1) of this section. This subsection does not prevent the director from disclosing to the person the dates and places of arrests, offenses, and dispositions contained in the criminal history records.

LICENSING FEES

NEW SECTION

WAC 208-630-280 Does a licensee have to pay a fee for a license application? At the time an applicant files for a license, the applicant must pay to the director a deposit fee for investigating and processing the application.

NEW SECTION

WAC 208-630-290 How much are the fees for various license applications, and when does a licensee pay them? (1) The director shall collect a fee of sixty-nine dollars per employee hour expended for services, plus actual expenses, for review, investigation and processing of:

- (a) New license applications;
- (b) Small loan endorsement applications;
- (c) Additional locations;
- (d) Change of control;
- (e) Relocation of office;
- (f) Voluntary or involuntary liquidation of licensee.

(2) The director may require a lump sum payment in advance to cover the anticipated cost of review and investigation of the activities described in this section.

NEW SECTION

WAC 208-630-300 What happens if a licensee pays a lump sum payment in advance, and there is a surplus or deficiency in the application deposit? If the deposit required exceeds the actual amount derived in WAC 208-630-290(1), the amount in excess shall be refunded.

If the deposit fee does not cover the costs of investigation and processing, the applicant will pay for any additional cost, which will be itemized and billed by the director.

NEW SECTION

WAC 208-630-310 Is the licensee's deposit fee refundable? The deposit fee is not refundable if the application is denied or withdrawn, or if the license is issued. The director will apply the deposit fee to the actual cost of investigating and processing the application.

EXAMINATION AND INVESTIGATIONNEW SECTION

WAC 208-630-320 What examination authority does the director have? The director determines the frequency of examinations for the purpose of determining compliance with chapter 31.45 RCW and these rules.

The director or designee may at any time examine the records and documents used in the business of any licensee or licensee's agent wherever located.

The director or designee may examine the records and documents of any person the director believes is engaging in unlicensed business governed by chapter 31.45 RCW wherever located.

NEW SECTION

WAC 208-630-330 May the director accept other reports in lieu of an examination? The director or designees may accept reports prepared by independent certified professionals or prepared by another state or the federal government in lieu of, in whole or in part, an examination performed by the director.

NEW SECTION

WAC 208-630-340 What should a licensee expect the director to review during an examination? In conducting examinations the director or designee may:

(1) Obtain access, during reasonable business hours, to the offices and places of business, books, accounts, papers, files, records, computers, safes and vaults of any person in possession of information relevant to the examination;

(2) Interview any person the director or designee believes has information relative to the examination, including, but not limited to, any party to the transaction;

(3) Obtain statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(4) Require the production of copies of any items in subsection (1) of this section;

(5) Require assistance and cooperation, from any licensee or employee or agent of any licensee under examination with respect to the conduct and subject matter of the examination;

(6) Conduct meetings and exit review with owners, managers or employees of the licensee being examined;

(7) Require a response from the subject of the examination.

NEW SECTION

WAC 208-630-350 Who pays for the costs of an examination? Every licensee must pay to the director the actual cost of examining and supervising each licensed place of business at the examination hourly rate of sixty-nine dollars per person per hour expended, plus actual expenses, which for out-of-state exams includes, without limitation, travel, lodging and per diem expense.

NEW SECTION

WAC 208-630-360 Whether a business has a license or not, what should the business know about an investigation? The director or designee may conduct investigations at any time, in or outside of the state, to determine whether any person has violated or is about to violate chapter 31.45 RCW, these rules, or any order issued under these laws and rules. For that purpose the director or designee may conduct inquiries, interviews and examinations of any person relevant to the investigation.

NEW SECTION

WAC 208-630-370 What powers does the director have during an investigation? The director or designee may investigate the business of a licensee, or other business or personal financial records of any person subject to investigation. In conducting investigations, the director or designee may:

(1) Have access to any location where records of the subject of the investigation are located, including offices, places of business, commercial storage facilities, computers, safes and vaults for the purposes of obtaining, reviewing or copy-

ing books, accounts, papers, files, or records, including electronic records, or records in any format;

(2) Administer oaths and affirmations;

(3) Subpoena witnesses and compel their attendance at a time and place determined by the director or designee, and compel their testimony regarding any matter related to an investigation or examination under chapter 31.45 RCW or these rules, including:

(a) Testimony regarding the existence, description, nature, custody, condition and location of any relevant evidence;

(b) The identity and location of persons having knowledge of any matter related to the investigation; and

(c) Any matter reasonably calculated to lead to the discovery of material evidence.

(4) Subpoena the production of any books, records in any format, documents or other tangible things, or physical or documentary evidence or matter;

(5) Conduct oral examination, under oath or otherwise, publicly or privately, of any controlling person, employee, agent or independent contractor of a licensee;

(6) Conduct oral examination, under oath or otherwise, publicly or privately, of any person whose testimony is deemed relevant to the investigation;

(7) Copy, or request to be copied, any items described in subsection (1) of this section, or if the director or designee determines that:

(a) There is danger that original records may be destroyed, altered, or removed denying the director access; or

(b) Original documents are necessary for the preparation of criminal referral or trial, the director may take possession of originals of any items described in subsection (1) of this section, regardless of the source of such items. Originals and/or copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director or designee.

(8) Conduct analysis and review of any items described in subsection (1) of this section;

(9) Require assistance, as necessary, from any employee or person subject to investigation under this section with respect to the conduct and subject matter of the investigation;

(10) Conduct meetings and exit reviews with owners, managers, officers, or employees of any person subject to investigation or examination under this chapter;

(11) Conduct meetings and share information with other regulatory or law enforcement agencies; and

(12) Prepare and deliver, as deemed necessary, a report of investigation requiring a response from the recipient.

The director may investigate the business and records of any person who the director has reason to believe is engaging in business which requires a license under chapter 31.45 RCW.

NEW SECTION

WAC 208-630-380 What are the fees for an investigation? Unless the person investigated is not required to hold a license, the person must pay the cost of the investigation at the hourly rate of sixty-nine dollars per person per hour expended, plus actual expenses, which for out-of-state inves-

tigations includes, without limitation, travel, lodging and per diem expense.

NEW SECTION

WAC 208-630-390 May the director hire other specialists to assist with examinations and investigations, and who will pay for them? (1) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators, to conduct, or assist in the conduct of examinations, or investigations. Fees for services provided to the director by such professionals and specialists under this paragraph will be billed at such rates and in the manner described in WAC 208-630-350 and 208-630-380.

(2) The director may order the retention of such professionals and specialists as auditors, or investigators to conduct, or assist in the conduct of audits or investigations. Unless the director determines that the person investigated is not required to hold a license or otherwise should not bear the cost, the actual cost of these services will be borne by the person who is the subject of the audit, or investigation.

ASSESSMENTS AND REPORTING REQUIREMENTS

NEW SECTION

WAC 208-630-400 Once licensed, what fees must a licensee pay to keep a license current? (1) The director will charge each licensee an annual assessment at the rate set forth in subsection (2) of this section. Assessments for a calendar year will be computed on total volume of transactions as of December 31 of the previous calendar year.

(2) The annual assessment rate is:

(a) For check cashers:

(i) If the volume of checks cashed is one million dollars or less, there is no annual assessment;

(ii) If the volume of checks cashed is over one million dollars, the annual assessment is five hundred thirteen dollars and ninety-five cents per licensed location.

(b) For check sellers:

(i) If the volume of checks sold is one million dollars or less, there is no annual assessment;

(ii) If the volume of checks sold is over one million dollars, the annual assessment is five hundred thirteen dollars and ninety-five cents per licensed location.

(c) For licensees with small loan endorsements, in addition to (a) and/or (b) of this subsection:

(i) If the volume of small loans made is one million dollars or less, there is no annual assessment;

(ii) If the volume of small loans made is over one million dollars, the annual assessment is five hundred thirteen dollars and ninety-five cents per licensed location.

(3) For purposes of this section, "volume" includes all transactions made under this chapter and chapter 31.45 RCW by a Washington licensed check casher or check seller at all licensed locations.

NEW SECTION

WAC 208-630-410 What happens if a licensee is late with an annual assessment fee? If a licensee does not pay its annual assessment fee by April 15, the director must send the licensee a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after the annual assessment fee due date, unless the department is not open for business on that date, then the licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the next day the department is open for business. If the payment of both the annual assessment fee and the late fee does not arrive prior to such time and date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment fee due date.

NEW SECTION

WAC 208-630-420 How can a license be reinstated after it expires? The director may reinstate the license if, within twenty days after the effective date of expiration, the licensee:

- (1) Pays both the annual assessment fee and the late fee; and
- (2) Attests under penalty of perjury that it did not engage in conduct requiring a license under this chapter during the period its license was expired. The director may confirm the licensee's attestation by an investigation.

NEW SECTION

WAC 208-630-430 When may a licensee expect a fee increase? The department intends to increase its fee and assessment rates each year for several bienniums. The department intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2005-2007 biennium.

- (1) On July 1, 2005, the fee and assessment rates as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025. However, there will be no rate increase under this subsection (1) for assessments described in WAC 208-630-022 (2)(a)(i), (b)(i) and (c)(i).
- (2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

NEW SECTION

WAC 208-630-440 How will a licensee know about fee increases? By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

NEW SECTION

WAC 208-630-450 When may the director waive fees? The director may waive any or all of the fees and assessments imposed, in whole or in part, when he or she determines that both of the following factors are present:

- (1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and
- (2) That such course of action would be fiscally prudent.

NEW SECTION

WAC 208-630-460 When must a licensee inform the director of significant changes in business? A licensee must notify the director in writing within fifteen days of the occurrence of any of the following significant developments:

- (1) Licensee filing for bankruptcy or reorganization.
- (2) Notification of the initiation of license revocation procedures in any state against the licensee.
- (3) The filing of criminal charges or a criminal indictment or information, in any way related to check cashing, check selling or small loan activities of the licensee, key officer, board director, or controlling person, including, but not limited to, the handling and/or reporting of moneys received and/or instruments sold.
- (4) A licensee, sole proprietor, owner, director, officer, partner, member or controlling person being convicted of a crime.
- (5) A change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire ten percent of the stock, or the ability of a person or group acting in concert to elect a majority of the board directors or otherwise effect a change in policy of the corporation. The director may require such information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control shall mean any change in controlling persons of the organization either active or passive. Change of control investigation fees shall be billed to the persons or group at the rate billed for applications.

REQUIREMENTS FOR CHECK CASHING AND MAKING SMALL LOANS (PAYDAY LENDING)

NEW SECTION

WAC 208-630-470 What types of information must a licensee include on a borrower's application for a small loan? The licensee must require and maintain an application for each borrower in each small loan transaction. Each application must contain the borrower's full name, Social Security number or other unique identifier acceptable to the director, current address, loan origination date, and whether the applicant is a military borrower at any time prior to the termination date of the loan. As used in this section "other unique identifier" means a state identification card, a passport, a document issued by the Immigration and Naturalization Service of the United States that provides identification of the borrower, a matricula consular, a driver's license, or other forms as approved by the director.

Licenses may rely upon an applicant representation regarding the applicant's military status, and are not required to conduct an independent investigation regarding military status.

NEW SECTION

WAC 208-630-480 How must a licensee maintain customer small loan applications? The licensee may maintain a single master application in paper or electronic form that the licensee updates each time a customer takes out a new loan.

NEW SECTION

WAC 208-630-490 What information must the note or small loan agreement contain? Each small loan made under a small loan endorsement pursuant to chapter 31.45 RCW must be evidenced by a written note or loan agreement which must contain at least the following:

- (1) The origination date of the loan;
- (2) The principal of the loan;
- (3) The manner in which the loan is to be repaid, including a statement of whether any check held in connection with a small loan may be redeemed in cash and if so, a statement of the date and time after which the licensee may choose not to permit redemption;
- (4) The termination date of the loan;
- (5) The dollar amount of fees and the method of calculating fees;
- (6) The annual percentage rate as defined in the federal Truth in Lending Act; and
- (7) The signature or electronic signature of the borrower.

NEW SECTION

WAC 208-630-500 When must a licensee provide a note or small loan agreement to the borrower? A licensee must provide a copy of the note or loan agreement (or if in electronic form, make available) to the borrower at the time the borrower executes the note or loan agreement.

NEW SECTION

WAC 208-630-510 When does a borrower have a right to enter into a statutory payment plan? A borrower has a right to convert a small loan to a statutory payment plan after four successive loans and prior to default on the last loan.

NEW SECTION

WAC 208-630-520 If a borrower and licensee enter into a statutory payment plan, what is the term of the payment plan? A payment plan under the provisions of RCW 31.45.084 must be for a period of at least sixty days unless a shorter period is agreed to by both the borrower and the licensee.

NEW SECTION

WAC 208-630-530 If a borrower and licensee enter into a statutory payment plan, how must the payments be structured? A payment plan under the provisions of RCW 31.45.084 must provide for at least three separate payments which, unless otherwise requested by the borrower and agreed to in writing by the lender, shall be:

(1) Equal to the total amount of the payment plan divided by the number of payments (subject to reasonable rounding); and

(2) Due at substantially equivalent intervals. For example, a sixty-day, three hundred fifty dollar payment plan entered into on May 1 providing for payments of one hundred twenty dollars on May 20, one hundred twenty dollars on June 11, and one hundred ten dollars on June 29, complies with this rule.

NEW SECTION

WAC 208-630-540 Must a licensee comply with the federal Truth in Lending Act when entering into a payment plan? An agreement to enter into a payment plan under the provisions of RCW 31.45.084 must comply with the federal Truth in Lending Act, 15 U.S.C. Sec. 1601.

NEW SECTION

WAC 208-630-550 May the licensee and the borrower enter into a payment plan prior to the fourth consecutive loan? A licensee is not prohibited from entering into a payment plan with a borrower at any time prior to the time a borrower's right to a statutory payment plan is triggered under RCW 31.45.084. Any payment plan other than a statutory payment plan may be on any terms on which a licensee and borrower may agree.

NEW SECTION

WAC 208-630-560 What types of disclosures must a licensee make to a borrower? (1) A licensee must deliver to the borrower at the time the licensee makes a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act.

(2) A licensee must deliver to the borrower at the time the licensee makes the small loan a disclosure of the right to rescind the loan and the right to convert the loan to a payment plan.

NEW SECTION

WAC 208-630-570 What must be included in the disclosures? The disclosure referred to in WAC 208-630-560(2) must be substantially in the following form:

Your right to a payment plan.

If this is your fourth (or greater) successive loan, and if you are not in default, you may convert your loan to a payment plan with us. "Successive loans" means loans made to you by us with no more than three business days between the repayment in full of one loan and the beginning date of the next loan.

A payment plan will allow you, by paying a one time fee equal to the finance charge on your loan, to pay all that you owe in at least three payments over a period of at least sixty days.

Your right to rescind (cancel) this loan. You have the right to rescind (cancel) this loan by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you any postdated check or electronic equivalent you have given to us.

NEW SECTION

WAC 208-630-580 In addition to providing disclosures to the borrower, does a licensee have to post any disclosures? Licensees that make small loans must post at each location where small loans are made a conspicuous notice substantially in the form set forth in the preceding question.

NEW SECTION

WAC 208-630-590 How must a licensee format disclosures? All disclosures must be presented in a manner and physical format that is clear, conspicuous and designed to call attention to each right and responsibility of the borrower and lender being disclosed. Such statements may be provided separately or included within the note or loan agreement.

NEW SECTION

WAC 208-630-600 What documentation must a licensee keep to show that the licensee has made the proper disclosures? A licensee must maintain in its files sufficient information to show compliance with the consumer disclosure requirements of chapter 31.45 RCW, these rules, and state and federal law.

NEW SECTION

WAC 208-630-610 Are there accounting and financial records that a licensee must keep? Licensees must maintain as a minimum the following records for at least two years.

(1) A licensee must maintain a record of transactions conducted. Such a record may be limited to the following provided a sufficient audit trail is available through records obtainable from the licensee's bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;
- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) Payment plan payment due dates;

(1) The information required to be maintained for applications in the rule.

(2) Licensees must maintain a cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) Records of the disbursement of loan proceeds and the receipt of all payments on the balance of small loans must be kept and must indicate the date of the transaction, the borrower's name, amount, and whether the disbursement or payment is on a loan or payment plan.

NEW SECTION

WAC 208-630-620 In what form must a licensee maintain accounting and financial records? Licensees may maintain records required in combined form, hand or machine posted, or automated, and licensees may maintain them on any electronic, magnetic, optical or other storage media. However the licensee must maintain the necessary technology to permit access to the records by the department for the period required by law.

NEW SECTION

WAC 208-630-630 May the director ask a licensee for records regarding the previous day's transactions? Upon request of the director or director's designee a licensee must within one business day make available, either directly or through a third party, a record of the previous day's transactions.

NEW SECTION

WAC 208-630-640 What specific accounting records must a licensee maintain? Licensees must maintain a general ledger containing records of all assets, liabilities, capital, income, and expenses. The licensee must post a general ledger from the daily record of checks cashed or other record of original entry, at least monthly, and it must be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices.

NEW SECTION

WAC 208-630-650 May a licensee maintain a consolidated general ledger if the licensee has two or more locations? A licensee may maintain a consolidated general ledger reflecting activity at two or more locations by the same licensee provided that the licensee maintain books of original entry separately for each location.

NEW SECTION

WAC 208-630-660 What must a licensee have in employees' personnel files? Every licensee must maintain

personnel files for its employees. Each file must contain the employee's full name, date of birth, date of hire and date of termination, last known address and Social Security number.

NEW SECTION

WAC 208-630-670 For licensees with small loan endorsements what information must the licensee keep in every loan file? For licensees with small loan endorsements, each loan file must contain at least a copy of the application, a copy of the note or loan agreement and a copy of any disclosure statement. As used in this section, "application" means any information received by the licensee from the borrower for the purposes of making a lending decision, including, but not limited to, personal employment history and credit history.

NEW SECTION

WAC 208-630-680 Are there specific banking requirements for check sellers? All monetary instruments issued by check sellers must be drawn on a financial institution domiciled in the United States.

NEW SECTION

WAC 208-630-690 When must a check casher deposit a monetary instrument? Once a licensee cashes a monetary instrument the licensee must send the monetary instrument for deposit to the licensee's account at a depository financial institution located in Washington state or send it for collection not later than the close of business on the third business day after the day on which the licensee accepted the monetary instrument for cash. This subsection does not apply if the licensee accepted the monetary instrument as part of a small loan transaction under chapter 31.45 RCW.

NEW SECTION

WAC 208-630-700 When may a licensee deposit a monetary instrument accepted in the course of making a small loan? A licensee with a small loan endorsement may not deposit a monetary instrument accepted in the course of making a small loan under the act prior to the termination date and any time disclosed on the note or small loan agreement.

NEW SECTION

WAC 208-630-710 What other federal and state laws and regulations must a licensee comply with? Each licensee must comply with applicable federal and state laws including, but not limited to, the following:

- (1) Chapter 63.29 RCW, the Uniform Unclaimed Property Act; and
- (2) The federal Truth in Lending Act.

NEW SECTION

WAC 208-630-720 Is a licensee required to register with the Secretary of the Treasury? Each licensee must register with the Secretary of the Treasury of the United States if required by 31 U.S.C. Section 5330 or any regulations promulgated thereunder.

NEW SECTION

WAC 208-630-730 What records and actions does a licensee need to take to assure the licensee is correctly reporting under the Bank Secrecy Act? Each licensee shall maintain detailed records to satisfy currency transaction reporting and suspicious activity reporting requirements of the United States Treasury Department.

Each licensee shall implement an antimoney laundering program that includes the development of internal policies, procedures and controls, training of employees, the appointment of a compliance officer, and the appointment of an external reviewer of the antimoney laundering program if required by 31 U.S.C. Section 5318(h).

NEW SECTION

WAC 208-630-740 What obligation does a licensee have to assure that employees comply with the laws and rules regarding payday lending and check cashing and selling? Each licensee shall ensure that any employee or person who engages in business on behalf of the licensee under authority granted by chapter 31.45 RCW has sufficient understanding of the statutes and rules applicable to its business to assure compliance with such statutes and rules.

NEW SECTION

WAC 208-630-750 What fees may licensees charge to collect a delinquent small loan? A licensee when collecting a delinquent small loan may:

(1) Agree with the borrower for the payment of fees for a credit report received from a recognized credit reporting company when the licensee pays these fees to an unaffiliated third party for services. In no event may the fee exceed the actual cost charged by the provider of the credit report.

(2) Charge or collect a fee equal to or less than twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

NEW SECTION

WAC 208-630-760 What are the legal restrictions on making small loans? A licensee with a small loan endorsement is subject to various restrictions.

NEW SECTION

WAC 208-630-770 May a licensee allow a borrower to refinance or "rollover" a small loan with another small loan? A licensee may not allow a borrower to use a new small loan to pay off an existing small loan by the same

lender or an affiliate of the lender. Licensees may not apply the proceeds from any small loan to any other loan from the same lender or affiliate of the lender.

NEW SECTION

WAC 208-630-780 May a licensee use a name or place of business other than that named on the license or small loan endorsement? A licensee may not make any loan under authority granted by chapter 31.45 RCW under any name or at any place of business other than that named on the license and small loan endorsement.

NEW SECTION

WAC 208-630-790 What is the limit on the amount of checks a licensee may hold from one borrower? A licensee may not hold a check or checks in an aggregate face amount of more than seven hundred dollars plus allowable fees from any one borrower at any one time.

NEW SECTION

WAC 208-630-800 May a licensee holding a borrower's check for a period longer than the statutory limit of forty-five days charge additional fees? A licensee may hold a check for more than forty-five days if requested to do so by the borrower. The licensee may not charge additional fees for holding the check.

NEW SECTION

WAC 208-630-810 May a licensee charge additional fees to cash monetary instruments issued as part of a small loan? The licensee may not charge an additional fee to cash a monetary instrument issued as part of a small loan made under chapter 31.45 RCW.

NEW SECTION

WAC 208-630-820 May a licensee charge any fees if a borrower decides to convert their loan to a payment plan? A licensee may not charge any fee or impose any other burden upon the decision of a borrower to convert their small loan to a payment plan as provided under RCW 31.45.084, other than the terms and conditions expressly authorized by RCW 31.45.084.

NEW SECTION

WAC 208-630-830 What are a licensee's annual financial and reporting requirements? Each licensee must submit the reports of its Washington activities described in this section, on a form prescribed and made available by the director, due not later than one hundred five days after the close of the calendar year (or fiscal year if a licensee has established a fiscal year different from the calendar year). Licensees must make each report for the prior calendar year or fiscal year, which shall be referred to in these rules as the "period." A consolidated annual report must contain:

- (1) The total number of employees and annual payroll during the period;
- (2) The total number and dollar volume of transactions during the period;
- (3) The total dollar amount of fees collected during the period;
- (4) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;
- (5) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;
- (6) The total number and dollar amount of charge-offs (losses), net of any recoveries, for the period;
- (7) The total dollar amount of net income before and after taxes earned under authority of this chapter.

NEW SECTION

WAC 208-630-840 Who may a licensee hire to prepare the financial statements in the annual report? Financial statements contained in the annual report may be prepared by outside accountants or by the licensee's own accountants.

NEW SECTION

WAC 208-630-850 What information must a licensee have in the annual assessment report? An annual assessment report must contain:

- (1) The total dollar volume of checks cashed during the period, if applicable; and
- (2) The total dollar volume of checks sold during the period, if applicable.

NEW SECTION

WAC 208-630-860 If licensee has a small loan endorsement, what other reports must be filed? For all licensees with small loan endorsements a report containing the following:

- (1) The total dollar volume of small loans made during the period, including payment plan loans;
- (2) The total number of loans made for the period;
- (3) The total number of borrowers for the period;
- (4) The number of borrowers whose accounts were referred to collection agencies;
- (5) The number of loans rescinded during the period;
- (6) The number of borrowers entering into a payment plan;
- (7) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;
- (8) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and
- (9) The number of active military borrowers during the period.

NEW SECTION

WAC 208-630-870 If a licensee has a loan volume of at least ten million dollars in principal in the year prior, what additional reports must the licensee file with the director? For licensees with small loan endorsements and total loan volume of at least ten million dollars in principal in the one year period just prior to the period under report, a report containing the following in a form prescribed by the director:

- (1) The number of loans per borrower for the period;
- (2) The number of loans per military borrower during the period; and
- (3) The number of loans with terms in each of the following categories for the period:
 - (a) One to seven days;
 - (b) Eight to fourteen days;
 - (c) Fifteen to Twenty-one days;
 - (d) Twenty-two to thirty-one days; and
 - (e) Thirty-two or more days.

NEW SECTION

WAC 208-630-880 What must a check seller report when surrendering or revoking a license? A licensee engaged in the business of selling monetary instruments whose license has been surrendered or revoked shall submit to the director, at its own expense, on or before one hundred five days after the effective date of such surrender or revocation, a closing annual report containing audited financial statements as of such effective date. This closing annual report shall cover the twelve months ending with such closure date or for such other period as the director may specify. If the report, certificate, or opinion of the independent accountant is in any way qualified, the director may require the licensee to take such action as appropriate to permit an independent accountant to remove such qualification from the report, certificate, or opinion. Such report shall include relevant information specified by the director.

NEW SECTION

WAC 208-630-890 What must a licensee, other than a check seller, report when surrendering or revoking a license? A licensee not engaged in the business of selling monetary instruments whose license has been surrendered or revoked shall submit to the director at its own expense, on or before one hundred five days after the effective date of such surrender or revocation, a closing annual report covering the twelve months ending with such closure date or for such other period as the director may specify. Financial statements contained in this closing report may be prepared by outside accountants or by the licensee's own accountants.

NEW SECTION

WAC 208-630-900 What additional information must a licensee include with annual reports and financial statements? The reports and financial statements in the consolidated annual report, the report for all licensees with small loan endorsements, and the report for licensees with small

loan endorsements over ten million dollars in principal in the one year prior to the reporting period must include at least a balance sheet and a statement of income together with such other relevant information as the director may require, prepared in accordance with general accepted accounting principles. The reports and financial statements in the report for licensees with small loan endorsements over ten million dollars in the one year prior to the reporting period must be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards.

NEW SECTION

WAC 208-630-910 May a licensee request an extension of time to comply with reporting requirements? For good cause and upon written request, the director may extend the time for compliance with reporting requirements.

NEW SECTION

WAC 208-630-920 Under what circumstances would a licensee submit unaudited financial statements to the director? A licensee shall, when requested by the director, for good cause, submit its unaudited financial statement, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income as of the date and for the period specified by the director.

NEW SECTION

WAC 208-630-930 When may the director reject financial statements and other reports submitted to the director by the licensee? The director may reject any financial statement, report, certificate, or opinion filed pursuant to this section. The director must notify the licensee or other person required to make such filing of its rejection and the cause thereof.

NEW SECTION

WAC 208-630-940 How much time does a licensee have to correct the deficiency in financial statements or other reports? Within thirty days after the receipt of such notice, the licensee or other person shall correct such deficiency. The director shall retain a copy of all filings so rejected.

NEW SECTION

WAC 208-630-950 What are the trust accounting requirements that a licensee must comply with? (1) At least monthly a licensee in the business of selling checks shall withdraw from the trust account an amount equal to fees earned for the corresponding period from the sale of monetary instruments. The remaining balance of the trust account must be sufficient to cover all monetary instruments that remain outstanding and drawn against the trust account.

(2) A licensee is prohibited from allowing the bank of account to charge back checks or drafts deposited to the trust account and subsequently dishonored against said trust account.

(3) A licensee, whose license has been suspended, terminated, or not renewed, shall not make withdrawals from the trust account without the director's consent, until a closing report has been received according to these rules.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-630-005	Definitions.
WAC 208-630-010	Application deposit fee.
WAC 208-630-015	Examinations.
WAC 208-630-020	Schedule of fees paid by licensees and applicants.
WAC 208-630-021	Application review and investigation fee.
WAC 208-630-022	Annual assessment charge.
WAC 208-630-023	Examination fees.
WAC 208-630-02303	Fee increase.
WAC 208-630-02305	Waiver of fees.
WAC 208-630-025	Application for small loan endorsement to a check cashier or check seller license.
WAC 208-630-030	Surety bond.
WAC 208-630-035	Alternatives to the surety bond.
WAC 208-630-040	Access to criminal history information.
WAC 208-630-050	Issuance of license or small loan endorsement.
WAC 208-630-060	Disclosure of significant developments.
WAC 208-630-065	The note.
WAC 208-630-068	Contents of disclosure statement to borrower.
WAC 208-630-070	Accounting and financial records.
WAC 208-630-075	Monetary instruments—Deposit requirements.
WAC 208-630-080	Licensees are required to comply with federal and state laws including but not limited to the following.

WAC 208-630-085	Licensee with small loan endorsement—Powers—Restrictions.
WAC 208-630-090	Audit report by licensee—Financial statements.
WAC 208-630-095	Knowledge of the law and regulations.
WAC 208-630-100	Trust accounts—Limitations and prohibitions.

WSR 05-22-022

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed October 24, 2005, 3:39 p.m., effective November 24, 2005]

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

Purpose: To place current policies into rule, eliminate some existing policies, and to clarify existing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-02-050, 314-16-190 and 314-16-196; and amending WAC 314-02-010, 314-02-015, 314-02-020, 314-02-025, 314-02-030, 314-02-035, 314-02-045, 314-02-055, 314-02-095, and 314-16-195.

Statutory Authority for Adoption: RCW 66.04.010, 66.08.030, 66.24.410, 66.44.310, and 66.44.420.

Adopted under notice filed as WSR 05-12-141 on June 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: The rule requires licensees who conduct live entertainment in their dedicated dining area and serve liquor after a certain hour to either restrict this area from access by persons under the age of 21, or allow minors and stop serving alcohol. The previous filing set the hour at 10:00 p.m. The final version sets this hour at 11:00 p.m. Additional changes were made to further clarify the rule language.

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 2, Amended 10, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 10, 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 2, Amended 10, Repealed 3.

Date Adopted: October 18, 2005.

Merritt D. Long
Chairman

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(2) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

(3) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

(4) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

(5) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

(6) "Liquor" means beer, wine, or spirits (per RCW 66.04.010(19) - Definitions).

~~((5))~~ (7) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

(8) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. ~~((Persons under twenty-one years of age))~~ Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

(9) "Minor" means a person under twenty-one years of age.

(10) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

NEW SECTION

WAC 314-02-014 What is a food counter, a liquor bar, and a service bar and are minors allowed in these areas?

	Allowed in areas where minors are permitted?	Area where alcoholic beverages are prepared.
A food counter is a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service. Alcoholic beverages are not prepared at a food counter.	yes	no

	Allowed in areas where minors are permitted?	Area where alcoholic beverages are prepared.
A liquor bar is a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. This includes alcohol dispensers that are placed on or attached to the table or counter. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.	no	yes
A service bar is a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.	yes	yes

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

(a) Serve spirits by the individual serving for on-premises consumption;

(b) Serve beer by the bottle or can or by tap for on-premises consumption; and

(c) Serve wine for on-premises consumption (see RCW 66.24.400 regarding patrons removing recorked wine from the premises).

(2) Per RCW 66.24.400, this license prohibits licensees from selling alcohol for off-premises consumption except for a licensee having an endorsement that allows the licensee to sell, for off-premises consumption, wine vinted and bottled in the state of Washington that has a label exclusive to the licensee's restaurant.

(3) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 11:00 a.m. and 11:00 p.m., five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(4) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.420, the annual fee for a spirits, beer, and wine restaurant license is graduated, as follows:

Amount of customer service area dedicated to dining	Annual fee
100%	\$1,000
50 - 99%	\$1,600
Less than 50%	\$2,000

(2) In order for an area to qualify as a dedicated dining area it must be a separate and distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. Areas dedicated to live music or entertainment, such as dance floors or stages are not considered dedicated dining areas. Dedicated dining areas may not contain:

(a) Liquor bars (see definition under WAC 314-02-010(2)); or

(b) Areas dedicated to games or gaming devices.

(3) The fee for a spirits, beer, and wine restaurant license outside of an incorporated city or town will be prorated according to the calendar quarters the licensee is open for business. This proration does not apply in the case of a suspension or revocation of the license.

(4) A duplicate license is required in order to sell liquor from more than one site on your property. These sites must be located on the same property and owned by the same licensee. The following types of businesses may apply for a duplicate license:

Type of Business	Annual fee per duplicate license
Airport terminal	25% of annual license fee
Civic center (such as a convention center)	\$10
Privately owned facility open to the public	\$20

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of the licensed premises are off-limits to minors. (RCW 66.44.310(2)) Minors may not purchase, possess, or consume liquor, and may not enter any areas that are classified as off-limits to minors. (RCW 66.44.290 and 66.44.310) The purpose of this rule is to clarify the ways in which licensees can prevent minors from consuming alcohol or entering restricted areas.

(2) Dedicated dining areas - If a spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee that allows minors chooses to have live music, Karaoke, patron dancing, live entertainment, or contests involving physical participation by patrons in the dedicated dining area after 11:00 p.m., the licensee must either:

(a) Request board approval to reclassify the dining area to a lounge for the period of time that live entertainment is conducted, thus restricting minors during that time; or

(b) Notify the board's licensing and regulation division in writing at least forty-eight hours in advance that the sale, service, and consumption of liquor will end in the dedicated dining area after 11:00 p.m.

Request or notifications may cover one event or a series of recurring events over a period of time.

(3) **Barriers** - Licensees must place (~~identifiable~~) barriers around ~~game rooms and~~ areas that are (~~restricted from persons under twenty-one years of age~~) classified as off-limits to minors.

(a) The barriers must clearly separate restricted areas, and must be at least forty-two inches high.

(b) The barriers must be permanently affixed (folding or retractable doors or other barriers that are permanently affixed are acceptable). Those licensees that have been approved by the board for moveable barriers prior to the effective date of this rule may keep their movable barriers until the licensee requests alterations to the premises or the premises change ownership.

(c) Liquor bars cannot be used as the required barriers (see definition of liquor bar in WAC 314-02-010(7)).

(d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.

(e) "Minor prohibited" signs, as required by WAC (~~314-16-025~~) 314-11-060(1), must be posted at each entrance to (~~such~~) restricted areas.

(~~(2)~~) (4) If the business allows minors, the business's primary entrance must open directly into a dedicated dining area or into a neutral area, such as a lobby or foyer, that leads directly to a dedicated dining area. Minors must be able to access restrooms without passing through a lounge or other age-restricted area.

(5) **Floor plans** - When applying for a license, the applicant must provide to the board's licensing and regulation division two copies of a detailed drawing of the entire premises. The drawing must:

(a) Be drawn one foot to one-quarter-inch scale;

(b) Have all rooms labeled according to their use; e.g., dining room, lounge, game room, kitchen, etc.; and

(c) Have all barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-030 Can a spirits, beer, and wine restaurant exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine restaurant licensee may exclude (~~persons under twenty-one years of age~~) minors from the entire premises at all times or at certain times as approved by the board.

(1) To exclude (~~persons under twenty-one years of age~~) minors from the entire licensed premises at all times or at certain times, the applicant or licensee must:

(a) Indicate during the liquor license application process that he/she does not wish to have (~~persons under twenty-one years of age~~) minors on the entire premises at (~~any time~~) all times or at certain times indicated by the applicant or licensee; or

(b) If already licensed as a spirits, beer, and wine restaurant that allows ~~((person under twenty-one years of age))~~ minors, the applicant may request permission from the board's licensing and regulation division to exclude ~~((persons under twenty-one years of age, per))~~ minors at all times or at certain times indicated by the applicant or licensee. See WAC 314-02-130 for instructions on requesting this approval.

(c) Spirits, beer, and wine restaurant licensees who exclude ~~((persons twenty-one years of age))~~ minors from the entire premises at all times or at certain times must(~~(-~~

~~(i) Place the required barriers around dedicated dining areas (see WAC 314-02-025(1)); and~~

~~(ii))~~ meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035.

(d) During the times that a spirits, beer, and wine restaurant licensee excludes minors from the entire premises, the licensee may not employ minors. (See WAC 314-11-040 for more information on employing minors.)

(2) Restaurants that have less than fifteen percent of their total customer service area dedicated to dining must exclude ~~((persons under twenty-one years of age))~~ minors from the entire premises. The licensee must:

(a) Pay the two thousand dollars annual license fee; and

(b) Meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035.

~~(3) ((To exclude persons under twenty-one years of age from the entire licensed premises during a portion of the day or week or on a one-time-only basis, the applicant or licensee must:~~

~~(a) Request permission from the board, see WAC 314-02-130(1); and~~

~~(b) Meet all other requirements of the license, including the food service requirements outlined in WAC 314-02-035.~~

~~(4))~~ See WAC ~~((314-16-025))~~ 314-11-060(1) regarding requirements for "minors prohibited" signage.

NEW SECTION

WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put barriers around their dedicated dining area(s)? Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times are only required to place the barriers described in WAC 314-02-025(2) around dedicated dining areas for the purpose of paying the one thousand six hundred dollar annual fee. Restaurants that do not allow minors at any time and do not wish to have barriers around their dining area(s) must pay the two thousand dollar annual license fee. (See WAC 314-02-020 for an explanation of fees.)

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1) A spirits, beer, and wine restaurant licensee must serve at least four complete meals. Per RCW 66.24.410(2), a com-

plete meal does not include hamburgers, sandwiches, salads, or fry orders. For purposes of this title:

(a) "Complete meal" means an entree and at least one additional course.

(b) "Entree" means the main course of a meal. To qualify as one of the four required complete meals, the entree must require the use of a dining implement to eat, and cannot consist of a hamburger, sandwich, salad, or fry order.

~~((2))~~ (2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required ((by)) under this section and RCW 66.24.410(2) ((and WAC 314-16-190)).

~~((3))~~ (3) The complete meals must be prepared on the restaurant premises.

~~((4))~~ (4) A chef or cook must be on duty while complete meals are offered.

~~((5))~~ (5) A menu must be available to customers that lists, at a minimum, the required complete meals.

~~((6))~~ (6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

~~((7))~~ (7) Restaurants that have one hundred percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

~~((8))~~ (8) Restaurants with less than one hundred percent dedicated dining area (restaurants in the one thousand six hundred dollar or two thousand dollar fee category) must maintain complete meal service for a minimum of five hours a day during the hours of 11:00 a.m. and 11:00 p.m. on any day liquor is served. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, under such terms and conditions as the board determines are in the best interests of the public.

(a) Minimum food service, such as sandwiches, hamburgers, or fry orders, must be available outside of these hours.

(b) Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

~~((9))~~ (9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. If applicable, a statement that minimum food service is available outside of those hours must also be posted or listed on the menu.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$200

Privilege	Annual fee
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(~~((29))~~)(30).

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-055 Can a beer and/or wine restaurant exclude ~~((persons under twenty one years of age))~~ minors from the dining area? (1) To exclude ~~((persons under twenty one years of age))~~ minors from the dining area during a portion of the day or week or on a one-time-only basis, the applicant or licensee must request permission from the board (see WAC 314-02-130(1)).

(2) See WAC ~~((314-16-025))~~ 314-11-060(1) regarding requirements for "minors prohibited" signage.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-095 What is a public house license? (1) Per RCW 66.24.580, a public house licensee is allowed to:

(a) Manufacture between two hundred fifty gallons and two thousand four hundred barrels of beer on the premises per year;

(b) Serve beer by the bottle or can or by tap for on-premises consumption; and

(c) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).

(2) The annual fee for this license is one thousand dollars.

(3) If a public house licensee wishes to allow persons under twenty-one years of age on the premises, the licensee must meet the requirements of a beer and/or wine restaurant license, per WAC 314-02-045 and ~~((314-02-050))~~ 314-02-025.

(4) Public house licensees may apply for a spirits, beer, and wine restaurant license, in order to sell spirits by the indi-

vidual serving for on-premises consumption (see WAC 314-02-015).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-02-050

What are the floor space requirements to obtain and maintain a beer and/or wine restaurant license?

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-16-195 Spirits, beer and wine restaurant restricted—Qualifications. (1) Spirits, beer and wine restaurant restricted licensees shall govern their operations in selling liquor in accordance with the regulations set forth in Titles I and II. Such licensees may sell liquor in accordance with these regulations, only to members, invited guests, and holders of cards as authorized by subsection (3) of this section. Spirits, beer and wine restaurant restricted licensees shall not be prohibited from renting, leasing, or donating all or a portion of their facilities for, or making services available to, an activity where the public is invited or admitted under the conditions specified in subsection (4) of this section.

(2)(a) Applications for new spirits, beer and wine restaurant restricted licenses shall be on forms prescribed by the board and shall be accompanied by proof that:

(i) The business has been in operation for at least one year immediately prior to the date of its application. Such proof should include records of membership as well as an indication as to numbers and types of membership.

(ii) Membership or admission will not be denied to any person because of race, creed, color, national origin, sex or the presence of any sensory, mental or physical handicap.

(b) Applications for renewal shall be made on forms prescribed by the board and shall be accompanied by such information as the board may request.

(c) Spirits, beer and wine restaurant restricted applicants and licensees must meet the provisions of WAC ~~((314-16-190 (1), (2), (3), (4), (5) and (7)))~~ 314-02-035.

(3)(a) Guest privilege cards may be issued only as follows:

(i) For spirits, beer and wine restaurant restricted licensees within the limits of any city or town, only to those persons residing outside of an area ten miles from the limits of such city or town.

(ii) For spirits, beer and wine restaurant restricted licensees outside of any city or town only to those persons residing outside an area fifteen miles from the location of such licensee: Provided, That where such area limitation encroaches upon the limits of any city or town, the entire corporate limits of such city or town shall be included in the prohibited area.

(iii) Such guest privilege cards shall be issued for a reasonable period and must be numbered serially, with a record of the issuance of each such card to be filed on the licensed

premises in such a manner as to be readily accessible for inspection.

(iv) The mileage restrictions in (i) and (ii) of this subsection may be waived for special events upon written approval of the board.

(b) Guests may be introduced when accompanied at all times by a member and may remain as long as such member is present: Provided, That any such guest may only enjoy the privileges of the organization a reasonable number of times in any one calendar year.

(c) Persons who are members in good standing of a licensed spirits, beer and wine restaurant restricted organization may enjoy the privileges of any other licensed spirits, beer and wine restaurant restricted organization: Provided, That the operating rules of such organization authorize reciprocal privileges: Provided further, That (a) and (b) of this subsection shall not apply to members of such organizations while exercising reciprocal privileges.

(4) If the licensee at any time rents any portion of the premises for any purpose other than to their membership or at any time holds any function within the premises to which the public is generally invited or admitted, then such portion devoted to liquor service must be closed to the public generally and no one admitted therein except for bona fide members and guests. If the premises does not have an area which can be so closed, then no liquor service whatever may be permitted during the entire time when such activity is taking place or when the public is generally admitted in the premises.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 314-16-190 Spirits, beer and wine restaurant—Qualifications.
- WAC 314-16-196 Spirits, beer and wine restaurant—Floor space requirements—Conditions for service bar only premises.

WSR 05-22-025
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 25, 2005, 9:37 a.m., effective November 25, 2005]

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

Purpose: Chapter 296-46B WAC, Electrical safety standards, administration, and installation, the purpose of the rule making is to make clarifications to chapter 296-46B WAC.

The department is adopting the following changes:

- WAC 296-46B-030 will include manufacturing training facilities.
- WAC 296-46B-110 will allow Class B electricians to install thermostats, security systems, intercoms, and other specific types of low voltage systems. This will

align inspection practices to reflect safety issues and inspections.

- WAC 296-46B-900 will include low-risk types of installations into the list of work where no inspection is required.
- WAC 296-46B-905 will update definitions. We will not be increasing fees with this rule making.
- WAC 296-46B-915 will allow the program to issue warnings for certain violations. If an entity continues to violate the rules after a warning a subsequent violation may be considered to be serious in nature and have a higher penalty.
- WAC 296-46B-920 will clarify that most specialty electricians cannot perform any plumbing work regulated under chapter 18.106 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-030, 296-46B-110, 296-46B-900, 296-46B-905, 296-46B-915, and 296-46B-920.

Statutory Authority for Adoption: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551.

Adopted under notice filed as WSR 05-17-167 on August 23, 2005.

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 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: October 25, 2005.

Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-030 Industrial control panel and industrial utilization equipment inspection. Specific definitions.

(1) Specific definitions for this section:

- (a) "**Department evaluation**" means a review in accordance with subsection (2)(c) of this section.
- (b) "**Food processing plants**" include buildings or facilities used in a manufacturing process, but do not include:
 - (i) Municipal or other government facilities;
 - (ii) Educational facilities or portions thereof;
 - (iii) Institutional facilities or portions thereof;
 - (iv) Restaurants;

- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(c) In RCW 19.28.010, "**industrial control panel**" means a factory or user wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices used in the manufacturing process to control industrial utilization equipment. The panel may include disconnecting means and motor branch circuit protective devices. Industrial control panels include only those used in a manufacturing process in a food processing or industrial plant.

(d) "**Industrial plants**" include buildings or facilities used in a manufacturing process or a manufacturing training facility (e.g., educational shop area in an educational or institutional facility), but do not include:

- (i) Municipal or other government facilities;
- (ii) Other educational facilities or portions thereof;
- (iii) Other institutional facilities or portions thereof;
- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(e) "**Industrial utilization equipment**" means equipment directly used in a manufacturing process in a food processing or industrial plant, in particular the processing, treatment, moving, or packaging of a material. Industrial utilization equipment does not include: Cold storage, warehousing, or similar storage equipment.

(f) "**Manufacturing process**" means to make or process a raw material or part into a finished product for sale using industrial utilization equipment. A manufacturing process does not include the storage of a product for future distribution (e.g., cold storage, warehousing, and similar storage activity).

(g) "**Normal department inspection**" is a part of the department electrical inspection process included with the general wiring inspection of a building, structure, or other electrical installation. Normal department inspection will only be made for equipment solely using listed or field evaluated components and wired to the requirements of the NEC. Fees for the normal department inspections required under this chapter are included in the electrical work permit fee calculated for the installation and are not a separate inspection fee. However, inspection time associated with such equipment is subject to the progress inspection rates in WAC 296-46B-905.

(h) For the purposes of this section, "**panel**" means a single box or enclosure containing the components comprising an industrial control panel. A panel does not include any wiring methods connecting multiple panels or connecting a panel(s) and other electrical equipment.

Safety standards.

(2) Industrial control panels and industrial utilization equipment will be determined to meet the minimum electrical safety standards for installations by:

(a) Listing, or field evaluation of the entire panel or equipment;

(b) Normal department inspection for compliance with codes and rules adopted under this chapter; or

(c) By department evaluation showing compliance with appropriate standards. Appropriate standards are NEMA, ANSI, NFPA 79, UL 508A or International Electrotechnical Commission 60204 or their equivalent. Industrial utilization equipment is required to conform to a nationally or internationally recognized standard applicable for the particular industrial utilization equipment. Compliance must be shown as follows:

(i) The equipment's manufacturer must document, by letter to the equipment owner, the equipment's conformity to an appropriate standard(s). The letter must state:

(A) The equipment manufacturer's name;

(B) The type of equipment;

(C) The equipment model number;

(D) The equipment serial number;

(E) The equipment supply voltage, amperes, phasing;

(F) The standard(s) used to manufacture the equipment.

Except for the reference of construction requirements to ensure the product can be installed in accordance with the National Electrical Code, the National Electrical Code is not considered a standard for the purposes of this section;

(G) Fault current interrupting rating of the equipment or the owner may provide documentation showing that the fault current available at the point where the building wiring connects to the equipment is less than 5,000 AIC; and

(H) The date the equipment was manufactured. Equipment that was manufactured prior to January 1, 1985, is not required to meet (c)(i)(F) of this subsection.

(ii) The equipment owner must document, by letter to the chief electrical inspector, the equipment's usage as industrial utilization equipment as described in this section and provide a copy of the equipment manufacturer's letter described in (c)(i) of this subsection. The owner's letter must be accompanied by the fee required in WAC 296-46B-905(14).

For the purposes of this section, the owner must be a food processing or industrial plant as described in this section.

(iii) The chief electrical inspector will evaluate the equipment manufacturer's letter, equipment owner's letter, and the individual equipment.

If the equipment is determined to have had electrical modifications since the date of manufacture, the chief electrical inspector will not approve equipment using this method.

(iv) If required by the chief electrical inspector, the owner must provide the department with a copy, in English, of the standard(s) used and any documentation required by the chief electrical inspector to support the claims made in the equipment manufacturer's or owner's letter. At the request of the owner, the department will obtain a copy of any necessary standard to complete the review. If, per the owner's request, the department obtains the copy of the standard, the owner will be billed for all costs associated with obtaining the standard.

If the industrial utilization equipment has been determined to be manufactured to a standard(s) appropriate for industrial utilization equipment as determined by the chief

electrical inspector per RCW 19.28.010(1), the equipment will be marked with a department label.

The department will charge a marking fee as required in WAC 296-46B-905(14). Once marked by the department, the equipment is suitable for installation anywhere within the state without modification so long as the equipment is being used as industrial utilization equipment. If payment for marking is not received by the department within thirty days of marking the equipment, the department's mark(s) will be removed and the equipment ordered removed from service.

(v) If the equipment usage is changed to other than industrial utilization equipment or electrical modifications are made to the equipment, the equipment must be successfully listed or field evaluated by a laboratory approved by the department.

(vi) The equipment must be permanently installed at the owner's facility and inspected per the requirements of RCW 19.28.101.

(3) The department may authorize, on a case-by-case basis, use of the industrial control panel or equipment, for a period not to exceed six months or as approved by the chief electrical inspector after use is begun, before its final inspection, listing, or evaluation.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-110 General—Requirements for electrical installations.

012 Mechanical execution of work.

(1) Unused openings. Unused openings in boxes, raceways, auxiliary gutters, cabinets, cutout boxes, meter socket enclosures, equipment cases, or housings shall be effectively closed to afford protection substantially equivalent to the wall of the equipment. Where metallic plugs or plates are used with nonmetallic enclosures, they shall be recessed at least 6 mm (1/4") from the outer surface of the enclosure. Unused openings do not include weep holes, unused mounting holes, or any other opening with less than .15 square inches of open area.

016 Flash protection.

(2) The flash protection marking required by NEC 110.16 must be an identification plate or label approved by the electrical inspector and may be installed either in the field or in the factory. The plate or label may be mounted using adhesive.

022 Identification of disconnecting means.

(3) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other than dwelling units, the identification plate must include the identification designation of the circuit source panelboard that supplies the disconnect.

(4) Where electrical equipment is installed to obtain a series combination rating, the identification as required by NEC 110.22, must be in the form of an identification plate that is substantially yellow in color. The words "CAUTION -

SERIES COMBINATION RATED SYSTEM" must be on the label in letters at least 13 mm (1/2") high.

030 Over 600 volts - general.

(5) Each cable operating at over 600 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.

(6) Only licensed electrical contractors can use the Class B basic electrical inspection - random inspection process. Health care, large commercial, or industrial facilities using an employee who is a certified electrician(s) can use the Class B basic electrical inspection - random inspection process after permission from the chief electrical inspector.

(7) If the Class B basic electrical inspection - random inspection process is used, the following requirements must be met:

(a) The certified electrician/telecommunications worker performing the installation must affix a Class B installation label on the cover of the panelboard or overcurrent device supplying power to the circuit or equipment prior to beginning the work.

(b) The job site portion of the label must include the following:

(i) Date of the work;

(ii) Electrical/telecommunication contractor's name;

(iii) Electrical/telecommunication contractor's license number;

(iv) Installing electrician's certificate number; and

(v) Short description of the work.

(c) The contractor portion of the label must include the following:

(i) Date of the work;

(ii) Electrical/telecommunication contractor's license number;

(iii) Installing electrician's certificate number, except for telecommunication work;

(iv) Job site address;

(v) Contact telephone number for the job site (to be used to arrange inspection); and

(vi) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The electrical/telecommunication contractor must return the contractor's portion of the label to the Department of Labor & Industries, Electrical Section, Chief Electrical Inspector, P.O. 4460, Olympia, WA 98506-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(8) Class B basic installation labels will be sold in blocks. Installations where a Class B basic installation label is used will be inspected on a random basis as determined by the department.

(a) If any such random inspection fails, a subsequent installation in the block must be inspected.

(b) If any such subsequent installation fails inspection, all installations in the block must be inspected.

(9) Any electrical/telecommunication contractor or other entity using the Class B basic electrical inspection - random

inspection process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(10) Class B basic electrical work means work other than Class A basic electrical work. See WAC 296-46B-900(8) for Class A definition. A cover inspection is required for all fire-wall penetrations.

(a) Class B basic electrical work includes the following:

~~((a))~~ (i) Extension of not more than one branch electrical circuit limited to one hundred twenty volts and twenty amps each where:

~~((i))~~ (A) No cover inspection is necessary; and

~~((ii))~~ (B) The extension does not supply more than two devices or outlets as defined by the NEC(~~(:)~~). A device allowed in an extended circuit includes: General use snap switches/receptacles, luminaires, thermostats, speakers, etc., but does not include wiring/cabling systems, isolating switches, magnetic contactors, motor controllers, etc.

~~((b))~~ (ii) Like-in-kind replacement of ~~((a single luminaire not exceeding two hundred seventy-seven volts and twenty amps;))~~:

(A) A single luminaire not exceeding two hundred seventy-seven volts and twenty amps;

(B) A motor larger than ten horsepower; or

(C) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance;

(D) An electric/gas/oil furnace not exceeding 240 volts and 100 amps when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(E) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit or refrigeration unit not exceeding 240 volts, 30 minimum circuit amps when the unit is connected to an existing branch circuit;

(F) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 30 amps.

~~((e))~~ Like-in-kind replacement of a motor larger than ten horsepower;

~~((d))~~ (iii) The following low voltage systems:

~~((i))~~ (A) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings;

~~((ii))~~ (B) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC.

~~((e))~~ The like-in-kind replacement of an:

~~(i) Electric/gas/oil furnace not exceeding 240 volts and 100 amps when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or~~

~~(ii) Unit heater, air conditioning unit or refrigeration unit not exceeding 240 volts, 30 minimum circuit amps when the unit is connected to an existing branch circuit;~~

~~((f))~~ (C) The installation of device(s) or wiring for Class 2 or 3 thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(D) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470;

(iv) The replacement of not more than ten standard receptacles with GFCI receptacles;

~~((g))~~ (v) ~~The ((combination replacement))~~ conversion of not more than ten ((switches or)) snap switches to dimmers ((used for)) for the use of controlling a luminaire(s) conversion. ((; and

~~(h) The installation of a thermostat and/or thermostat cable where the thermostat cable is fished or extended in an existing building.~~

~~A device allowed in an extended circuit includes: General use snap switches/receptacles, luminaires, thermostats, speakers, etc., but does not include wiring/cabling systems, isolating switches, magnetic contactors, motor controllers, etc.))~~

(b) Class B basic electrical work does not include any work in:

~~((a))~~ (i) Areas classified as Class 1, Class 2, Class 3, or Zone locations per ~~((the))~~ NEC 500;

~~((b))~~ (ii) Areas regulated by NEC 517 or 680; ~~((e))~~

~~((e))~~ (iii) Any work where electrical plan review is required(~~(:)~~); or

(iv) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-900 Electrical work permits and fees. General.

(1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is completely and legibly filled out and readily available;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions and/or a legible map is provided for the inspectors' use.

(2) An electrical work permit is valid for only one specific site address.

(3) Except as provided in subsection (8) of this section, a valid electrical work permit must be posted on the job site at a readily accessible and conspicuous location prior to begin-

ning electrical work and at all times until the electrical inspection process is completed.

Permit - responsibility for.

(4) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed by that entity. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department.

(5) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(6) Except for emergency repairs to existing electrical systems, electrical work permits must be obtained and posted at the job site prior to beginning the installation or alteration. An electrical work permit for emergency repairs to existing electrical systems must be obtained and posted at the job site no later than the next business day after the work is begun.

(7) Fees must be paid in accordance with the inspection fee schedule, WAC 296-46B-905. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review.

Permit - requirements for.

(8) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The like-in-kind replacement of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; component(s) of electric signs, outline lighting, skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; ten horsepower or smaller motor; ~~(and)~~

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit that contains multiple components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) containing various control components or any appliance/equipment described in WAC 296-46B-110(10) for Class B permits.

A provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label.

(9) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multi-family dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

Permit - inspection and approval.

(10) Requests for inspections.

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any

part of the installation has been energized, whichever occurs first.

(b) Requests for after hours or weekend inspections must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Emergency requests to inspect repairs necessary to preserve life and equipment safety may be requested at any time.

(d) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(11) Final inspection approval will not be made until all inspection fees are paid in full.

Permit - duration/refunds.

(12) Electrical work permits will expire one year after the date of purchase unless electrical work is actively and consistently in progress and inspections requested. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permits where the electrical installation has begun; or

(c) Any electrical work permit where an electrical inspection or electrical inspection request has been made.

Permit - annual telecommunications.

(13) The chief electrical inspector can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit.

Permit - annual electrical.

(14) The chief electrical inspector can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a single plant or building location. This type of permit does not include new or increased service or new square footage.

Provisional electrical work permit - use/duration/refunds.

(15) Only licensed electrical or telecommunications contractors can use provisional electrical work permits.

(16) If a provisional electrical work permit label is used, the following requirements must be met:

(a) Prior to beginning the work, the certified electrician or telecommunications worker performing the installation must affix the provisional electrical work permit label on the cover of the panelboard, overcurrent device, or telecommunications equipment supplying the circuit or equipment.

(b) The job site portion of the label must include the following:

(i) Date the work is begun;

(ii) Contractor's name;

(iii) Contractor's license number; and

(iv) Short description of the work.

(c) The contractor portion of the label must include the following:

(i) Date the work is begun;

(ii) Contractor's license number;

(iii) Job site address;

(iv) Owner's name; and

(v) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The contractor must return the contractor's portion of the label to the department of labor and industries, electrical section office having jurisdiction for the inspection, within two working days after the job site portion of the label is affixed. Either receipt by department of labor and industries or postmark to a valid department of labor and industries electrical address is acceptable for meeting this requirement.

(f) The contractor must return the contractor's portion of the label to the Department of Labor & Industries, Chief Electrical Inspector, within five working days after destroying or voiding any label.

(g) The contractor is responsible for safekeeping of all purchased labels.

(17) Refunds are not available for provisional electrical work permit labels.

(18) Provisional electrical work permit labels will be sold in blocks of twenty.

(19) Any contractor purchasing a provisional electrical work permit label may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

Class B electrical work permit - use.

(20) The electrical contractor must return the contractor's portion of the Class B label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(21) The electrical contractor is responsible for safekeeping of all purchased Class B labels.

AMENDATORY SECTION (Amending WSR 04-21-086, filed 10/20/04, effective 11/22/04)

WAC 296-46B-905 Inspection fees. To calculate inspection fees, the amperage is based on the conductor

ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (new construction).

Notes:

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	\$73.00
Each additional 500 sq. ft. or portion of	\$23.40
(ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property	\$30.50
(iii) Each outbuilding or detached garage - inspected separately	\$48.10
(iv) Each swimming pool - inspected with the service	\$48.10
(v) Each swimming pool - inspected separately	\$73.00
(vi) Each hot tub, spa, or sauna - inspected with the service	\$30.50
(vii) Each hot tub, spa, or sauna - inspected separately	\$48.10
(viii) Each septic pumping system - inspected with the service	\$30.50
(ix) Each septic pumping system - inspected separately	\$48.10

(b) Multifamily residential and miscellaneous residential structures, services and feeders (new construction).

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$78.70	\$23.40
201 to 400	\$97.80	\$ 48.10
401 to 600	\$134.30	\$66.90
601 to 800	\$172.30	\$91.80
801 and over	\$245.70	\$184.30

(c) Single or multifamily altered services or feeders including circuits.

(i) Each altered service and/or altered feeder

Ampacity	Service or Feeder
0 to 200	\$66.90
201 to 600	\$97.80
601 and over	\$147.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$36.30

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	\$48.10
(ii) Each additional circuit (see note above)	\$5.30

(e) Mobile homes, modular homes, mobile home parks, and RV parks.

(i) Mobile home or modular home service or feeder only	\$48.10
(ii) Mobile home service and feeder	\$78.70

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder	\$48.10
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	\$30.50

(2) Commercial/industrial.

(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated from (2)(a)(table) of this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Service/feeders

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$78.70	\$48.10
101 to 200	\$95.80	\$61.30
201 to 400	\$184.30	\$73.00
401 to 600	\$214.80	\$85.80
601 to 800	\$277.70	\$116.90
801 to 1000	\$339.00	\$141.40
1001 and over	\$369.80	\$197.30

(b) Altered services or feeders (no circuits).

(i) Service/feeders

Ampacity	Service or Feeder
0 to 200	\$78.70
201 to 600	\$184.30
601 to 1000	\$277.70
1001 and over	\$308.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$66.90

(c) Circuits only.

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

(i) First 5 circuits per branch circuit panel	\$61.30
(ii) Each additional circuit per branch circuit panel	\$5.30
(d) Over 600 volts surcharge per permit.	\$61.30

(3) Temporary service(s).

Note:

(1) See WAC 296-46B-527 for information about temporary installations.
 (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service or Feeder	Additional Feeder
0 to 60	\$42.20	\$21.60
61 to 100	\$48.10	\$23.40
101 to 200	\$61.30	\$30.50
201 to 400	\$73.00	\$36.40
401 to 600	\$97.80	\$48.10
601 and over	\$110.90	\$55.30

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

- (a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$5.30
- (b) Towers - when not inspected at the same time as a service and feeders - 1 to 6 towers \$73.00
- (c) Each additional tower \$5.30

(5) Miscellaneous - commercial/industrial and residential.

(a) A Class 2 low-voltage thermostat (controlling a single piece of utilization equipment) and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat \$36.40
- (ii) Each additional thermostat inspected at the same time as the first \$11.40

(b) Class 2 or 3 low-voltage systems and telecommunications systems. Includes all telecommunications installations, fire alarm ((and burglar alarm)), nurse call, ((intercom, security systems,)) energy management control systems, ((HVAC/refrigeration control systems (other than thermostats above,)) industrial and automation control systems, lighting control systems, ((stand-alone sound systems, public address,)) and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-110 for Class B work.

- (i) First 2500 sq. ft. or less \$42.20
- (ii) Each additional 2500 sq. ft. or portion thereof \$11.40

(c) Signs and outline lighting.

- (i) First sign (no service included) \$36.40
- (ii) Each additional sign inspected at the same time on the same building or structure \$17.30

(d) Berth at a marina or dock.

Note:

Five berths or more shall be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL (a) (i) above.

- (i) Berth at a marina or dock \$48.10
- (ii) Each additional berth inspected at the same time \$30.50
- (e) Yard pole, pedestal, or other meter loops only.
- (i) Yard pole, pedestal, or other meter loops only \$48.10
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$11.40

(f) Emergency inspections requested outside of normal working hours.

Regular fee plus surcharge of: \$91.80

(g) Generators.

Note:

Permanently installed generators: Refer to the appropriate residential or commercial new/alterd service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$66.90

(h) Electrical - annual permit fee.

Note:

See WAC 296-46B-900(14).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$1,765.50
4 to 6 plant electricians	24	\$3,532.80
7 to 12 plant electricians	36	\$5,298.90
13 to 25 plant electricians	52	\$7,066.20
More than 25 plant electricians	52	\$8,833.50

(i) Telecommunications - annual permit fee.

Note:

(1) See WAC 296-46B-900(13).
 (2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum \$146.10
 Each additional hour, or portion thereof, of portal-to-portal inspection time \$73.00

(j) Permit requiring ditch cover inspection only.

Each 1/2 hour, or portion thereof \$36.40

(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor. \$61.30

(6) Carnival inspections.

(a) First carnival field inspection each calendar year.

- (i) Each ride and generator truck \$17.30
- (ii) Each remote distribution equipment, concession, or gaming show \$5.30
- (iii) If the calculated fee for first carnival field inspection above is less than \$89.00, the minimum inspection fee shall be: \$91.80

(b) Subsequent carnival inspections.

- (i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$91.80
- (ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$5.30

(c) Concession(s) or ride(s) not part of a carnival.

- (i) First field inspection each year of a single concession or ride, not part of a carnival \$73.00
- (ii) Subsequent inspection of a single concession or ride, not part of a carnival \$48.10

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) \$73.00

(b) Submitter notifies the department that work is ready for inspection when it is not ready.	\$36.40
(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.	\$36.40
(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	\$36.40
(e) Each trip necessary to remove a noncompliance notice.	\$36.40
(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.	\$36.40
(g) Installations that are covered or concealed before inspection.	\$36.40
(8) Progress inspections.	
Note:	
The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.	
On partial or progress inspections, each 1/2 hour.	\$36.40
(9) Plan review.	
Fee is thirty-five percent of the electrical work permit fee as determined by WAC 296-46B-905, plus a plan review submission and shipping/handling fee of:	\$61.30
(a) Supplemental submissions of plans per hour or fraction of an hour of review time.	\$73.00
(b) Plan review shipping and handling fee.	\$17.30
(10) Out-of-state inspections.	
(a) Permit fees will be charged according to the fees listed in this section.	
(b) Travel expenses:	
All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.	
(11) Other inspections.	
Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	\$73.00
(12) Refund processing fee.	
All requests for permit fee refunds will be assessed a processing fee. (Refund processing fees will not be charged for electrical contractors, using the contractor deposit system, who request less than twenty-four refunds during a rolling calendar year.)	\$11.40
(13) Variance request processing fee.	
Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	\$73.00
(14) Marking of industrial utilization equipment.	
(a) Standard(s) letter review (per hour of review time).	\$73.00
(b) Equipment marking - charged portal-to-portal per hour:	\$73.00
(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.	

(15) Class B basic electrical work labels.	
(a) Block of twenty Class B basic electrical work labels (not refundable).	\$200.00
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour).	\$36.40
(16) Provisional electrical work permit labels.	
(a) Block of twenty provisional electrical work permit labels.	\$200.00

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-915 Civil penalty schedule. Each day that a violation occurs will be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of continued, repeated or gross violation of the provisions of chapter 19.28 RCW or this chapter, or if property damage or bodily injury occurs as a result of the failure of a person, firm, partnership, corporation, or other entity to comply with chapter 19.28 RCW or this chapter the department may double the penalty amounts shown in subsections (1) through (13) of this section.

Continued or repeated violation may occur if the person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW, chapter 296-46B WAC has received one or more written warnings of a similar violation within a one-year period.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:	
(a) That convey or utilize electrical current without having a valid electrical contractor's license.	
(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.	
First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000
(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.	
First offense:	\$250
Each offense thereafter:	\$500
(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.	
First offense:	\$250
Each offense thereafter:	\$500
(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.	
First offense:	\$250

Each offense thereafter:	\$500
(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.	
First offense:	\$250
Each offense thereafter:	\$500
(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.	
First offense:	\$50 (see note E)
Second offense:	\$250
Each offense thereafter:	\$500
(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.	
First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000
(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.	
First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$2,000
Definition:	
The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."	
(9) Covering or concealing installations prior to inspection.	
First offense:	\$250 (see note E)
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(10) Failing to make corrections within fifteen days of notification by the department.	
Exception:	
Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.	
First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(11) Failing to obtain or post an electrical/telecommunications work permit or provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.	
Exception:	
In cases of emergency repairs to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.	
First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.	

(a) Failing to be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator or master electrician.	
First offense:	\$1,000
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.	
First offense:	\$100
Second offense:	\$250
Third offense:	\$1,000
Each offense thereafter:	\$3,000
(c) Failing to ensure that the proper electrical safety procedures are used.	
First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(d) Failing to ensure that all electrical labels, permits, and certificates required to perform electrical work are used.	
First offense:	\$250
Each offense thereafter:	\$500
(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).	
First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000
(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.	
Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.	
First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.	
First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$3,000
(13) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.	
RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.	
First offense:	\$250
Each offense thereafter:	\$500
All other chapter 19.28 RCW provisions and the rules developed pursuant to them.	
First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

- E: Upon written request to the chief electrical inspector, the penalty amount will be waived for the first citation issued within a three-year period. The written request must be received by the department no later than twenty days after notice of penalty. If a subsequent citation is issued within a three-year period and found to be a final judgment, the penalty amount for the first citation will be reinstated and immediately due and payable. Penalty waivers will not be granted for any citation being appealed under WAC 296-46B-995(11).

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) General electrical (01): A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150.

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings not exceeding three stories above grade. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures such as, but not limited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring occupancies defined in WAC 296-46B-010(14), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores.

(iii) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

(c) **Domestic well (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor

controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems.

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, or repair exterior luminaires that are mounted on a pole or other structure with like-in-kind components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) To form or pour a concrete pole base used to support a sign;

(C) To operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) To assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

Limited energy electrical contractors may perform all telecommunications work under their specialty (06) electrical license and administrator's certificate.

(f) **HVAC/refrigeration systems:**

(i) See WAC 296-46B-020 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard (see Figure 920-1 and Figure 920-2);

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the whip. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

(B) Install, repair, replace, or maintain:

- Integrated building control systems, other than HVAC/refrigeration systems;
- Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

- Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

- Raceway/conduit systems;

- Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other (see Figure 920-2); or

- Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) HVAC/refrigeration **(06A)**:

(A) This specialty is not limited by voltage, phase, or amperage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

- Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or
Regardless of the number of stories above grade if the installation:

- Does not pass between stories;
- Is made in a previously occupied and wired space; and
- Is restricted to the HVAC/refrigeration system;

- Repair, replace, and maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

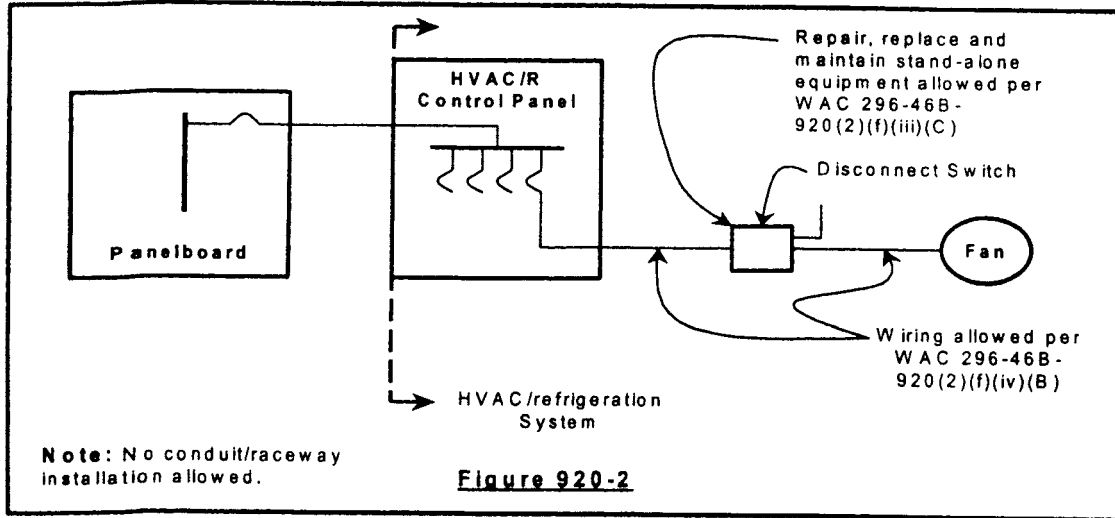
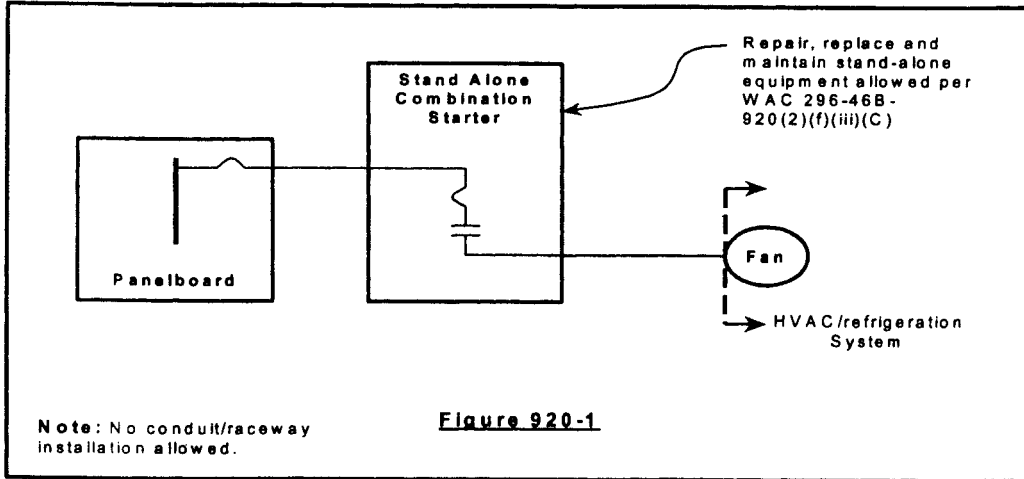
(vi) HVAC/refrigeration - restricted **(06B)**:

(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

- The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or
- Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).



(g) **Nonresidential maintenance (07):** Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumulating training experience toward qualification for the residential (02) specialty electrician examination.

This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of lamps, ballasts, sockets and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing (~~luminaires, water heating equipment, ranges, electric heaters, similar household type appliances~~) electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-900.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty

cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing (~~(luminaires, water heating equipment, ranges, electric heaters, similar household type appliances)~~) electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-900 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: (~~(Dish washers,)~~) Ovens(~~(, water heating equipment)~~), office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is

used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(C) Any plumbing work regulated under chapter 18.106 RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates, doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lock-out switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

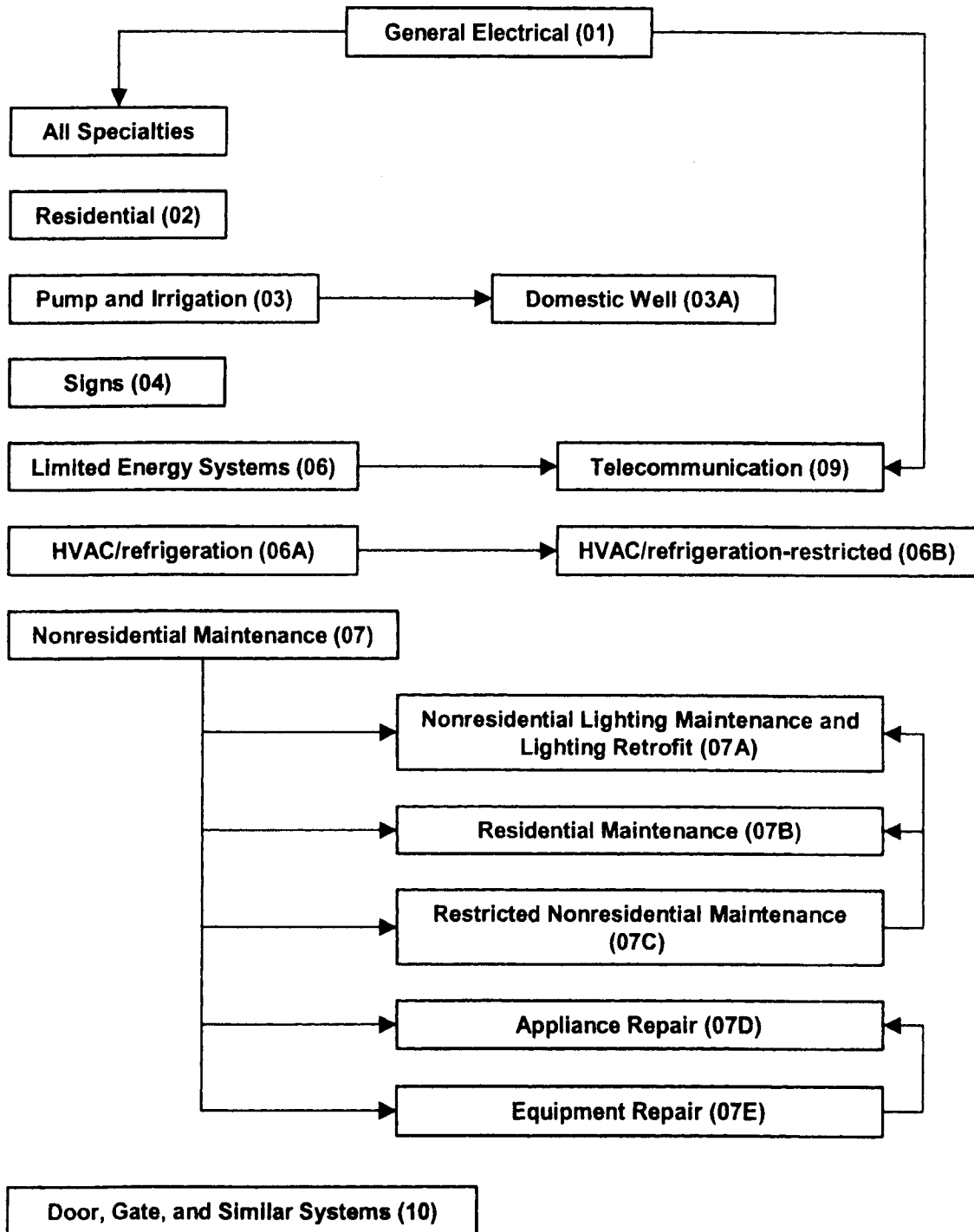
- There are no modifications to the characteristics of the branch circuit/feeder;
- The circuit/feeder does not exceed 600 volts, 20 amperes; and
- The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513,

514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the **(06)** limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

Table 920-1 Allowed Scope of Work Crossover



WSR 05-22-055
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed October 28, 2005, 12:38 p.m., effective November 28, 2005]

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

Purpose: Chapter 16-157 WAC, Organic food standards and certification, adopts the national organic program and provides certification for producers, processors and handlers wishing to obtain organic certification. The rule sets fees for obtaining certification and provides organic certification logos for those parties certified under the rule. Organic certification is also offered for retail food stores. The proposed amendments are necessary to improve the efficiency of the WSDA organic food program and enable it to provide better service to organic producers.

Citation of Existing Rules Affected by this Order: Amending WAC 16-157-220.

Statutory Authority for Adoption: Chapters 15.86 and 34.05 RCW.

Adopted under notice filed as WSR 05-18-089 on September 7, 2005.

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 1, Repealed 0.

Date Adopted: October 28, 2005.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

WAC 16-157-220 Producer fee schedule. Producers who wish to apply for the organic food certification program must apply to the department each year.

(1) The cost per application shall be based on the following fee schedule.

(a) Renewal applicants -

Application fees must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the producer may request a refund for the reduced fee. In addition, renewal applications postmarked after ((March)) February 1, must pay a late fee of seventy-five dollars. Renewal applicants that are adding additional

sites to their organic certification must pay a new site fee of fifty dollars for each additional site.

(b) New applicants -

Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the producer may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee. New applicants that are seeking organic certification for more than one site must pay a site fee of fifty dollars for each additional site. The fee shall accompany the application.

Table with columns SALES and ANNUAL FEE. Rows show sales ranges from \$0 to \$750,001 and corresponding annual fees from \$200 to \$3,000. Includes a final row for sales over \$7,000,000 with a fee of \$2,200 plus 0.11% of gross organic sales.

(2) Transitional acreage fee - In addition to the producer application fee, each applicant must pay a fee of ((five)) fifty dollars per ((acre)) site for the land for which they are requesting transitional certification.

WSR 05-22-060
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed October 31, 2005, 11:41 a.m., effective December 1, 2005]

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

Purpose: To establish a new standard of good practice for maintenance management. New section WAC 136-11-040, establishes maintenance management requirements; new section WAC 136-11-050, establishes an annual review by the County Road Administration Board; and new section WAC 136-11-060, states that the County Road Administration Board, by request, will provide to counties technical assistance related to defining, developing, operating, managing and utilizing maintenance management procedures.

Citation of Existing Rules Affected by this Order: Amending chapter 136-11 WAC.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 05-17-015 on August 4, 2005.

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: October 27, 2005.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-11-010 Purpose and authority. The laws of the state of Washington (~~(specify)~~) provide in RCW 36.80.030 that the county engineer shall have supervision, under the direction of the county legislative authority, of maintaining all county roads of the county. The purpose of maintenance management is to recognize that (~~(the majority of)~~) many road maintenance activities can be planned, scheduled and accomplished in a predetermined manner (~~(which will result in improved economies of operation, public safety and welfare, and preservation of investment of county roads: Provided, however, That maintenance management shall not be mandatory and shall not be considered in the issuance of certificates of good practice))~~). RCW 36.78.121 directs the county road administration board, or its successor entity, to establish a standard of good practice for maintenance of transportation system assets.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-11-020 Goal. This chapter is intended to (~~(encourage each county engineer to apply)~~) establish basic management principles (~~(to)~~) for road maintenance activities

and to set forth specific goals and objectives relative to the results to be achieved.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-11-030 Objectives. (~~(For the guidance and information of the county engineer developing a maintenance management program the following objectives merit serious consideration:~~

(1) ~~To provide, annually, opportunities for key personnel to receive initial training or refresher training in the principles of maintenance management.~~

(2) ~~To develop countywide maintenance standards or levels of service for each major maintenance activity.~~

(3) ~~To develop standards of performance for individuals and work crews setting forth both the quality and quantity of results anticipated.~~

(4) ~~To prepare an annual maintenance program for adoption coincident with the annual budget and construction program which is to identify resource requirements in terms of staff resources, equipment and materials, and the costs of each.~~

(5) ~~To schedule, on an annual basis, major maintenance activities based on available budgeted maintenance funds so as to achieve an optimum balance of resources in the available time.~~

(6) ~~To develop, and annually update, a long range equipment replacement program encompassing all major road department equipment so as to meet the equipment demands of the maintenance program.~~

(7) ~~To establish an information reporting system capable of compiling data needed to allow comparison of actual performance with established performance standards and budgetary constraints.~~

(8) ~~To discuss, at least biennially, with appropriate supervisory personnel the data regarding utilization of staff resources, equipment and materials so as to assure the lowest attainable unit cost for each maintenance activity.~~

(9) ~~To provide adequate information to all maintenance personnel regarding goals and objectives of the county's maintenance management program.~~

(10) ~~To explore and evaluate new techniques, products, equipment and ideas which show promise of significantly improving performance or decreasing cost in any segment of the maintenance management effort.)~~ (1) To preserve the investment made in roads, bridges, and roadway appurtenances.

(2) To create stronger accountability to ensure that cost-effective maintenance and preservation is provided for transportation facilities.

NEW SECTION

WAC 136-11-040 Maintenance management requirements. (1) An inventory of significant maintenance features (physical assets), as determined by the county, shall be maintained.

(2) Maintenance management is based upon work activities. Work activity guidelines shall be defined, by each county, for the significant activities representing the mainte-

nance work to be performed. Definitions shall include an activity code, title, description, work unit and inventory unit.

(3) An annual work program and budget shall be prepared. The activity-based work program and budget shall summarize the kinds and amounts of work planned and the costs of the planned work.

(4) The resources needed to accomplish the annual work program shall be documented.

(5) Work scheduling procedures shall be documented.

(6) Work accomplishment and expenditure shall be monitored.

NEW SECTION

WAC 136-11-050 Annual review. On an annual basis, beginning in calendar year 2008, the county road administration board shall review compliance with the requirements of WAC 136-11-040 and report the results to the transportation commission or its successor entity.

NEW SECTION

WAC 136-11-060 County road administration board assistance. To assist each county to meet its requirements, the county road administration board shall provide maintenance management support and training. The county road administration board will also provide to counties, upon request, technical assistance related to defining, developing, operating, managing and utilizing maintenance management procedures.

**WSR 05-22-061
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2003-05—Filed October 31, 2005,
12:54 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: The permanent rule deletes most of the specific requirements for detailed and complex calculations. For insurers who wish to avail themselves of this option, it offers an alternative, simpler way of showing that their rates are not excessive, inadequate, or unfairly discriminatory.

Citation of Existing Rules Affected by this Order: Amending WAC 284-24-065.

Statutory Authority for Adoption: RCW 48.02.060, 48.19.020, 48.19.080.

Adopted under notice filed as WSR 05-18-092 on September 7, 2005.

Changes Other than Editing from Proposed to Adopted Version:

- The words "corresponding to the proposed rate level" are inserted in subsections (4), (5), and (6).
- In subsection (4) and (6), "four percent" is changed to "five percent."
- In subsection (6), the words "and expected operating ratio" are deleted.

- A sentence has been added to subsection (6) to help clarify this subsection.

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 1, Repealed 0.

Date Adopted: October 31, 2005.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-065 Demonstration that rates satisfy the requirements of RCW 48.19.020. (1) When an insurer or rating organization files rates with the commissioner, it must demonstrate that the proposed rates satisfy the requirements of chapter 48.19 RCW. RCW 48.19.020 requires that premium rates for insurance shall not be excessive, inadequate, or unfairly discriminatory. A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. Such costs include claims, claim settlement expenses, operational and administrative expenses, and the cost of capital. ~~((When an insurer or rating organization files rates with the commissioner, it must demonstrate how it has accounted for each of these costs, so that the commissioner can determine whether the proposed rates satisfy the requirements of RCW 48.19.020.~~

~~(2) An insurer filing rates must demonstrate that it has accounted for the cost of capital by showing that its expected after-tax return on equity is consistent with its expected cost of capital. A rating organization filing rates must demonstrate that it has accounted for the cost of capital by showing that its members' or subscribers' expected after-tax return on equity is consistent with their expected cost of capital. An insurer or rating organization may establish the expected cost of capital by citing:~~

~~(a) Data pertaining to historical after-tax returns on equity for the property-casualty insurance industry as a whole; or~~

~~(b) Data pertaining to historical after-tax returns on equity for insurers writing coverages involving a similar level of risk; or~~

~~(c) Data pertaining to historical after-tax returns on equity for other industries involving a similar level of risk; or~~

(d) In the case of a stock insurer, data pertaining to the after-tax return on equity necessary to attract and retain investors; or

(e) In the case of a mutual or reciprocal insurer, data pertaining to the after-tax return on equity necessary to maintain policyholders' surplus adequate to support the insurer's business.

(3) For the purposes of this section, equity shall customarily be computed under generally accepted accounting principles. However, at the rate filer's option, insurers' statutory surplus as regards policyholders may be used instead. The equity assigned to the writing of a particular coverage in this state shall be determined by making a reasonable allocation of total equity by coverage and by state. Allocation of equity by coverage may involve a recognition of the differences in the level of risk by coverage.

(4) The expected after-tax return shall include:

(a) Expected underwriting profit or loss; and

(b) Expected investment income, including, but not limited to, investment income on assets corresponding to unearned premium reserves, loss and loss adjustment expense reserves, and statutory surplus as regards policyholders; and

(c) Other expected income, at the filer's option; and

(d) Expected federal income taxes arising from (a), (b), and (c) of this subsection, including, but not limited to, taxes due to the revenue offset, reserve discounting, and alternative minimum tax provisions of the Tax Reform Act of 1986.

(5) Due to the variability of expected realized and unrealized capital gains and taxes thereon, the commissioner will not require that these items be included in the expected after-tax return for ratemaking purposes.

(6) Expected after-tax return on equity shall be determined as the annualized rate of return arising from policies to be written in the period during which the filing is expected to be in effect. The calculations involved should follow from the methods used in preparing the filing.

(7) In lieu of allocating its equity as prescribed by subsection (3) of this section, an insurer may establish a target operating ratio applicable to all coverages.)

(2) For the purposes of this section, "operating ratio" ((is)) means the sum of after-tax underwriting profit (or loss) and after-tax investment income on assets corresponding to unearned premium reserves and loss and loss adjustment expense reserves, divided by premium. ((The insurer must show that its target operating ratio corresponds to an expected after-tax return on equity that is consistent with its cost of capital, in accordance with subsection (2) of this section. Although investment income on assets corresponding to policyholders' surplus is not included in the calculation of an operating ratio, this component of investment income must be considered in establishing the target operating ratio, because it must be included in the expected after-tax return on equity, in accordance with subsection (4) of this section.

(8)) (3) For liability insurance, if the increased limits factors include risk loads, the proportion of the expected premium (net of expenses) arising from the risk loads for all policy limits shall be included in the expected underwriting profit or loss.

((9) So that the commissioner may more easily determine whether rates satisfy the requirements of RCW 48.19.020:

(a) The use of the word "indicated" in a rate filing to describe a rate or rate change shall be limited to situations in which:

(i) The insurer or rating organization making the filing has taken into account all of the factors listed in RCW 48.19.030 (3)(a) through (f); and

(ii) The rate or rate change labeled "indicated" corresponds to an expected after-tax return on equity which is supported as required by subsection (2) of this section.

(b) A rate filing must contain an explanation of any material difference between an indicated rate or rate change and a proposed rate or rate change.

(10) Filings of supplementary rating information, as defined by WAC 284-24-062 (2)(f), are exempt from the requirements of this section. However, if package modification factors are not supported by data showing the relationship between package and monoline loss experience and expenses, the requirements of this section apply to filings of package modification factors.) (4) Rates are not considered excessive if the expected operating ratio corresponding to the proposed rate level is less than or equal to five percent.

(5) Rates are not considered inadequate if the expected operating ratio corresponding to the proposed rate level is greater than or equal to zero.

(6) When an insurer or rating organization files rates for which the expected operating ratio corresponding to the proposed rate level is less than zero or greater than five percent, it must demonstrate that the proposed rates are consistent with the principles stated in subsection (1) of this section. In other words, the insurer or rating organization must show how it has accounted for all expected costs, including claims, claim settlement expenses, operational and administrative expenses, and the cost of capital.

WSR 05-22-075

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 31, 2005, 4:35 p.m., effective December 1, 2005]

Effective Date of Rule: December 1, 2005.

Purpose: The department is amending WAC 388-406-0015 Can I get Basic Food right away?, in order to remove language inconsistent with federal requirements under 7 C.F.R. 273.2; clarify language pertaining to the requirements of expedited issuance, postponed verifications and ongoing issuance; and incorporate information necessary to support the department's implementation of transitional food assistance as required under RCW 74.08A.010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: RCW 74.08A.010.

Adopted under notice filed as WSR 05-18-067 on September 6, 2005.

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 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 1, Repealed 0.

Date Adopted: October 18, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-22-061, filed 11/3/03, effective 12/4/03)

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 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 ~~((utilities))~~ 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) ~~((To determine the amount of utilities we use to decide if you can get expedited services, we allow the utility allowance your AU is eligible for under WAC 388-450-0195.~~

~~((4))~~ If you are eligible for expedited service and are not required to have an office interview under WAC 388-452-0005, you can~~((:~~

~~((a) Have a telephone interview or a home visit; and~~

~~((b) Still get benefits within five days))~~ have a telephone interview and still get benefits within five days.

~~((5))~~ (4) If you are applying for Basic Food, "day one" of your five-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 ~~((decide))~~ determine you are eligible for the service during your interview~~((:~~

~~((iii) Did not ask for expedited service on the application and we decide you are eligible for the service during your interview.~~

~~((6) If you get expedited service, we give you benefits for one or two months depending on when you applied. If we need additional information to decide if you are eligible for continued benefits and you applied:~~

~~((a) On or before the fifteenth of the month, you have up to thirty days from the date of application to give us the information; or~~

~~((b) On or after the sixteenth of the month, you have until the end of the second month to give us the information)).~~

(5) If you get expedited service, we only require verification of your identity to provide your first benefit issuance within five 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.

~~((7))~~ (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 ~~((prove))~~ determine ongoing eligibility for your last expedited service benefit period; or

(b) Were certified under normal processing standards after your last expedited certification.

~~((8))~~ (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 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.

~~((9) If you reapply after your certification period ends your five-day expedited service period is the same as a new application.))~~

(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.

WSR 05-22-076
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Management Operations)

[Filed October 31, 2005, 4:37 p.m., effective December 1, 2005]

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

Purpose: Amending WAC 388-02-0025 Where is the office of administrative hearings located?, the amended rule updates addresses and phone numbers for the headquarters, Spokane and Vancouver, Washington, addresses for the Office of Administrative Hearings. The amendments will help DSHS clients locate the Office of Administrative Hearings offices and help clients submit timely requests for fair hearings.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0025.

Statutory Authority for Adoption: RCW 34.05.020.

Other Authority: Chapter 34.05 RCW, Parts IV and V.

Adopted under notice filed as WSR 05-17-141 on August 19, 2005.

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 1, 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 1, Repealed 0.

Date Adopted: October 25, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0025 Where is the office of administrative hearings located? (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
(~~919 Lakeridge Way SW~~)
2420 Bristol Court SW, 1st Floor
P.O. Box 42488
Olympia WA 98504-2488
(360) 664-8717
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
2420 Bristol Court SW, 3rd Floor
PO Box 42489
Olympia, WA 98504-2489
(360) 753-2531
1-800-583-8271
fax: (360) 586-6563

Seattle

Office of Administrative Hearings
1904 3rd Ave., Suite 722
Seattle, WA 98101-1100
(206) 464-6322
1-800-583-8270
fax: (206) 587-5136

Everett

Office of Administrative Hearings
2722 Colby, Suite 610
Everett, WA 98201-3571
(425) 339-1921
1-800-583-8261
fax: (425) 339-3907

Vancouver

Office of Administrative Hearings
(~~800 Franklin Street, 1st Floor~~)
5300 MacArthur Blvd, Suite 100
Vancouver, WA (~~98660~~) 98661
(360) 690-7189
1-800-243-3451
fax: (360) 696-6255

Spokane

Office of Administrative Hearings
Old City Hall Building, 5th Floor
221 N. Wall Street, Suite 540
Spokane, WA 99201(~~0826~~)
(509) 456-3975
1-800-366-0955
fax: (509) 456-~~(3975)~~3997

Yakima

Office of Administrative Hearings
32 N 3rd Street, Suite 320
Yakima, WA 98901-2730
(509) 575-2147
1-800-843-3491
fax (509) 454-7281

(3) You should contact the Olympia field office, under(;) subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: www.oah.wa.gov

WSR 05-22-077
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 31, 2005, 4:38 p.m., effective December 1, 2005]

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

Purpose: The department is amending WAC 388-478-0015 Need standards for cash assistance, in order to revise basic need standards for cash assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Adopted under notice filed as WSR 05-19-058 on September 16, 2005.

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 1, 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 1, Repealed 0.

Date Adopted: October 26, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-01-074, filed 12/9/04, effective 1/9/05)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Table with 2 columns: Assistance Unit Size and Need Standard. Rows include 1 through 9 and 10 or more, with values like \$ ((1,021)) 989, ((1,293)) 1,251, etc.

(2) For assistance units with shelter provided at no cost:

Table with 2 columns: Assistance Unit Size and Need Standard. Rows include 1 through 9 and 10 or more, with values like \$ ((530)) 528, ((674)) 668, etc.

WSR 05-22-078
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 31, 2005, 4:40 p.m., effective December 1, 2005]

Effective Date of Rule: December 1, 2005.

Purpose: The department is revising the rules to comply with a United States Internal Revenue Service (IRS) directive regarding third party payment rules. With these changes the state will meet requirements in IRS Code 26 USC 3504 regarding reporting status and requirements in IRS Code 26 USC 3401 (d)(1) regarding meeting third party payer status for our consumers who receive in-home care.

The department will now pay the exempt provider directly on behalf of the consumer, as currently occurs with licensed/certified providers. Changing how we pay exempt providers impacts changes to consumer responsibilities and also creates exempt provider responsibilities and overpayments.

Some revisions are related to clarifying and correcting errors from the last revision such as web site links.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-290-0255; and amending WAC 388-290-0020, 388-290-0030, 388-290-0032, 388-290-0035, 388-290-0130, 388-290-0135, 388-290-0140, 388-290-0155, 388-290-0240, 388-290-0260, 388-290-0271, and 388-290-0273.

Statutory Authority for Adoption: RCW 74.04.050, 74.12.340, and 74.13.085.

Adopted under notice filed as WSR 05-17-193 on August 24, 2005.

Changes Other than Editing from Proposed to Adopted Version: The department made editorial changes only.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 9, Repealed 1; 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 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 2, Amended 12, Repealed 1.

Date Adopted: October 24, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0020 Are there special circumstances that might affect my WCCC eligibility? (1) You might be eligible for WCCC if you are:

(a) An employee of the same child care center where your children receive care and you do not provide direct care to your own children during the time WCCC is requested;

(b) In ~~((sanction or Child SafetyNet status for temporary assistance for needy families (TANF), while you are in))~~ an activity needed to remove ~~((the))~~ a WorkFirst sanction or Child SafetyNet status ~~((, or for employment))~~;

(c) A parent in a two-parent family and one parent is not able ~~((and))~~ or available to provide care for your children while the other is working, looking for work, or preparing for work;

(i) "Able" means physically and mentally capable of caring for a child in a responsible manner. If you claim one parent is unable to care for the children, you must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:

(A) Reason the parent is unable to care for the children;

(B) Expected duration and severity of the condition that keeps them from caring for the children; and

(C) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing they are cooperating with treatment and are still unable to care for the children.

(ii) "Available" means free to provide care when not participating in an approved work activity under WAC 388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055 during the time child care is needed.

(d) A married consumer described under WAC 388-290-0005 (1)(d) through (i). Only you or your spouse must be participating in activities under WAC 388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055.

(2) You might be eligible for WCCC if your children are legally residing in the country, are living in Washington state ~~((residents))~~, and are:

(a) Less than age thirteen; or

(b) Less than age nineteen, and:

(i) Have a verified special need, according to WAC 388-290-0220; or

(ii) Are under court supervision.

(3) Any of your children who receive care at the same place where you work (other than (1)(a) of this subsection) are not eligible for WCCC payments but can be included in your household if they meet WAC 388-290-0015. This includes if you work:

(a) In a family home child care in any capacity and your children are receiving care at the same home during your hours of employment; or

(b) In your home or another location and your children receive care at the same location during your hours of employment.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0030 What ~~((responsibilities))~~ must I do ~~((I have))~~ when I apply for or receive WCCC benefits? When you apply for or receive WCCC benefits you must:

(1) Give us correct and current information so we can determine your eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 388-290-0125 ~~((and make your own child care arrangements))~~;

(3) Pay, or make ~~((arrangements))~~ a plan to have someone pay, your WCCC copayment directly to your child care provider;

(4) Leave your children with your provider ~~((for))~~ while you are in WCCC approved activities ~~((or arrange to pay the provider yourself, as the provider requires, for care while you are engaged in unapproved activities))~~. If you are not in an approved activity and you want to use the provider, you must make a plan to pay the provider yourself if the provider wants payment.

(5) ~~((Keep attendance records when you choose in-home/relative child care. Records must be:~~

~~((a) Accurate;~~

~~((b) Provided when requested; and~~

~~((c) Kept for one year after care has been provided.~~

~~((6) Pay your in-home/relative provider the entire amount we send you for in-home/relative care listed on the remittance advice you receive with the warrant;~~

~~((7) Require the in-home/relative provider to sign a receipt when you pay the provider the amount we send you and your copayment. You must keep the receipts for one year for us to review on request;~~

~~((8))~~ If you use an in-home/relative provider, make sure care is being provided in the right home per WAC 388-290-0130.

(6) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. You become ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remain ineligible until you meet quality assurance requirements or thirty days from the determination of noncooperation.

~~((9))~~ (7) Cooperate with the fraud early detection (FRED) investigator. If you refuse to cooperate (provide the information requested) with the investigator, it could affect your benefits.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0032 What are the consequences if I do not report changes within the specified ~~((timelines))~~ time frames? If you fail to report any changes as required in WAC 388-290-0031 within the stated time frames, we may establish an overpayment per WAC 388-290-0271 or you might have to pay more than your normal share of child care costs, such as:

- (1) Paying a higher copayment;
- (2) Paying for extra hours of care when your activity requires more than ten hours a day of care;
- (3) ~~((Receiving an overpayment for care billed as a result of using care when you were not eligible for WCCC;~~
- (4)) Receiving an overpayment for the number of days your child was absent ~~((above))~~ including the absences the licensed/certified or DSHS seasonal contracted day care provider is allowed to bill (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DSHS 22-877). An overpayment for absent days can occur when care is used when you are not eligible for WCCC and can be up to five days a month;
- ~~((5) Billing in-home/relative care when you are not eligible for WCCC.))~~

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0035 What responsibilities does the WCCC program staff have? The WCCC program staff are responsible to:

- (1) Determine your eligibility within thirty days from the date you applied (application date as described in WAC 388-290-0100(2)).
- (2) Allow you to choose your provider as long as they meet the requirements in WAC 388-290-0125;
- (3) Review your chosen in-home/relative provider's background information.
- (4) Authorize payments only to child care providers who allow you to see your children whenever they are in care;
- (5) Only authorize payment when no adult in your WCCC family is "able ~~((and))~~ or available" to care for your children (under WAC 388-290-0020).
- (6) Inform you of:
 - (a) Your rights and responsibilities under the WCCC program at the time of application and reapplication;
 - (b) The types of child care providers we can pay;
 - (c) The community resources that can help you select child care when needed; and
 - (d) Any change in your copayment during the authorization period except under WAC 388-290-0120(5).
- (7) Respond to you within ten days if you report a change of circumstance that affects your:
 - (a) WCCC eligibility;
 - (b) Copayment; or
 - (c) Providers.
- (8) Provide prompt child care payments to your child care provider.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0130 What in-home/relative providers can I choose under the WCCC program? (1) To be ~~((authorized))~~ eligible as an in-home/relative provider ~~((under the WCCC program, your in-home/relative provider))~~ the person must:

- (a) Be an adult who is a U.S. citizen or legally residing in the United States;
- (b) Meet the requirements in WAC 388-290-0135; and
- (c) Be one of the following adults ~~((relatives))~~ providing care in the home of either the child or the ~~((relative))~~ adult:
 - (i) ~~((An adult))~~ A sibling living outside the child's home;
 - (ii) An extended tribal family member ~~((under))~~ according to chapter 74.15 RCW; or
 - (iii) A grandparent, aunt, uncle, or great-grandparent, great-aunt or great-uncle.
- (2) An ~~((in-home, nonrelative provider))~~ adult not listed in (1)(c)(i), (ii), or (iii) of this section must:
 - (a) Meet the requirements in subsection (1)(a) and (b) of this section; and
 - (b) ~~((Be an adult friend or neighbor and))~~ Provide care in the child's home.
 - (3) If you use an in-home/relative provider you can:
 - (a) Have no more than two in-home/relative providers authorized for payment during your eligibility period at the same time (not including back-up providers);
 - (b) Have one back up provider (licensed or an in-home/relative provider);
 - ~~((Change to a different in-home/relative provider during your eligibility period.~~
 - ~~((An in-home/relative provider can care for up to a maximum of six children during any one time period.~~
 - ~~((An in-home/relative provider is not an eligible provider (under WAC 388-290-0095 and 388-290-0100) any time prior to the date we receive the results of all applicable criminal background checks under WAC 388-290-0143(1) and 388-290-0150. Providers other than in-home/relative that you can use are described in WAC 388-290-0125.~~
 - ~~((The in-home/relative provider is not eligible for payment if they are:~~
 - (a) The child's biological, adoptive or step-parent;
 - (b) The child's nonneedy or needy relative or relative's spouse or partner;
 - (c) The child's legal guardian or the guardian's spouse or partner;
 - (d) Another adult acting in loco parentis or that adult's spouse or partner; or
 - (e) Anyone living in the same residence with the child)).

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0135 When I choose an in-home/relative provider, what information must I ~~((submit to receive WCCC benefits))~~ give the department? When you choose in-home/relative child care, you must ~~((submit to))~~ complete certain forms and give us the following ~~((and complete certain forms))~~:

(1) The in-home/relative child care provider's legal name, address and telephone number;

(2) A copy of the provider's valid Social Security card;

(3) A copy of the provider's photo identification;

(4) A completed background check authorization; and

(5) A form supplied by us (~~that is~~), completed and signed by (~~the consumer~~) you and the provider in which both of you attest to the following:

(a) The provider is:

(i) Of suitable character and competence;

(ii) Of sufficient physical and mental health to meet the needs of the children in care. If we request it, you must provide written evidence that the in-home child care provider of your choice is of sufficient physical and mental health to be a safe child care provider;

(iii) Able to work with the children without using corporal punishment or psychological abuse;

(iv) Able to accept and follow instructions;

(v) Able to maintain personal cleanliness; (~~and~~)

(vi) Prompt and regular in job attendance

(vii) Informed about basic health practices, prevention and control of infectious disease, immunizations; and

(viii) Able to provide constant care, supervision and activities based on the child's developmental needs.

(b) The children are current on the immunization schedule as described in the National Immunization Guidelines, developed by the American Academy of Pediatrics and the Advisory Committee on Immunization Practices;

(c) The home where care is provided is safe for the care of the children(;

~~(d) The in-home/relative child care provider is informed about basic health practices, prevention and control of infectious disease, immunizations, and home and physical premises safety relevant to the care of the children; and~~

~~(e) You and the provider state you have instructed the in-home/relative provider that they are continuously responsible to provide:~~

~~(i) Constant care and supervision of the children throughout the arranged time of care in accordance with the needs of the children (constant care and supervision includes remaining awake while the children sleep); and~~

~~(ii) Activities for the children that are consistent with their developmental stages)).~~

NEW SECTION

WAC 388-290-0138 What responsibilities does my eligible in-home/relative provider have? Your in-home/relative provider must:

(1) Report within ten days changes in their legal name, address or telephone number;

(2) Report within twenty-four hours pending charges or convictions they have;

(3) Report within twenty-four hours pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home;

(4) Bill WCCC only for care he/she provided;

(5) Not bill WCCC for more than six children at one time for the same hours of care; and

(6) Keep correct attendance records. Records must:

(a) Show both days and times the care was provided;

(b) Be kept for five years; and

(c) Be given to us, within fourteen consecutive calendar days, if we ask for them.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0140 ~~When ((does the WCCC program not pay for the cost of in-home/relative child care)) is my in-home/relative provider not eligible for WCCC payment?~~ We do not pay for the cost of in-home/relative care if:

(1) Your provider does not meet the requirements in WAC 388-290-0130 (~~(or)~~), 388-290-0135, and 388-290-0138;

(2) ~~((You fail to submit a completed criminal background check form or copies of the provider's Social Security card, photo identification, and current address to us;~~

~~(3))~~ Your in-home/relative provider has been convicted of, or has charges pending for crimes posted on the DSHS secretary's ~~((list of disqualifying convictions))~~ crime and action list for background checks for ESA. You can find the complete list at ~~((http://www.dshs.wa.gov/esa/deeel/))~~ http://www1.dshs.wa.gov/esa/dccel/policy.shtml;

~~((4))~~ (3) We do not have background check results according to WAC 388-290-0143; (~~(or)~~)

(4) The provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's nonneedy or needy relative or relative's spouse or live-in partner;

(c) The child's legal guardian or the guardian's spouse or live-in partner; or

(d) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(5) We do not have the results of all applicable criminal background checks under WAC 388-290-0143(1) and 388-290-0150. An in-home/relative provider is not an eligible provider (per WAC 388-290-0095 and 388-290-0100) prior to receiving these background results. Providers other than in-home/relative providers you can use are described in WAC 388-290-0125; or

~~((5))~~ (6) We determine your provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. We will use criteria, such as the following, when reviewing information about incidents/issues/reports/findings:

(a) Recency;

(b) Seriousness;

(c) Type;

(d) Frequency; and

(e) Relationship to the direct care of a child including health, mental health, learning, and safety.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0155 What happens after the WCCC program receives the background information? After we receive the background information we:

(1) Compare the background information with convictions posted on the DSHS secretary's (~~(list of disqualifying convictions)~~) crime and action list for background checks for economic services administration (ESA). You can find the complete list at (~~(http://www.dshs.wa.gov/esa/decel/)~~) http://www1.dshs.wa.gov/esa/dccel/policy.shtml.

(2) Review the background information using the following rules:

(a) We give the same weight to a pending charge for a crime as a conviction;

(b) If the conviction has been renamed, we give the same weight as the previous named conviction. For example, larceny is now called theft;

(c) We give convictions whose titles are preceded with the word "attempted" the same weight as those titles without the word "attempted"; and

(d) We do not consider the crime a conviction for the purposes of WCCC when:

(i) It has been pardoned; or

(ii) A court of law acts to expunge, dismiss, or vacate the conviction record.

(3) Notify you whether or not we are able to approve the provider for WCCC.

(4) Allow you, the consumer, to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet.

(5) Deny or stop payment when the background information disqualifies the individual being checked.

(6) Assist you in finding other child care arrangements.

AMENDATORY SECTION (Amending WSR 02-12-069, filed 5/31/02, effective 7/1/02)

WAC 388-290-0240 What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid? (1) When you employ an in-home/relative provider, the maximum we pay for child care is the lesser of the following:

(a) Two dollars and six cents per hour for the child who needs the greatest number of hours of care and one dollar and three cents per hour for the care of each additional child in the family; or

(b) The provider's usual hourly rate for that care.

(2) We may pay above the maximum hourly rate for children who have special needs under WAC 388-290-0235.

(3) (~~(When care is provided by an in-home/relative provider, we pay benefits directly to you, defined as the consumer in WAC 388-290-0005)~~) We make the WCCC payment directly to your eligible provider.

(4) (~~(On all payments we make toward the cost of in-home/relative child care, when appropriate we pay the employer's share, on behalf of the client, of)~~) When appropriate, we pay your (the employer's) share of the following:

(a) Social Security and Medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA) when applicable.

(5) (~~(On all payments we make toward the cost of in-home/relative child care we withhold Medicare taxes and Social Security taxes (FICA) up to the wage base limit.~~)

(6)) If an in-home/relative child care provider receives less than the wage base limit per family in a calendar year, we refund all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0260 (~~(Do I have the right to ask for a hearing about my WCCC benefits)~~) Who has a right to ask for a hearing and how do (4) they ask for one? (1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.

(2) Licensed or certified child care providers or in-home/relative providers can request hearings under chapter 388-02 WAC and RCW 43.20B.675 only for WCCC overpayments.

(3) To request a hearing you (~~(or)~~), the licensed (~~(or)~~)/certified provider, or in-home/relative provider:

(a) Contacts the office which sent them the notice; or

(b) Writes to the Office of Administrative Hearings, PO Box 42489, Olympia WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers (per RCW 43.20B.675).

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0271 When might I (~~(be assessed)~~) get an overpayment? (~~(We establish)~~) You get WCCC overpayments (~~(, regardless of)~~) whether you are a current or past WCCC consumer, when we make payment for WCCC benefits and:

(1) You are no longer eligible or you are eligible for a smaller amount of care, such as using care for an unapproved activity or for children not in your WCCC household;

(2) You fail to report information to us that results in an error in our determination of:

(a) Your eligibility;

(b) The amount of care authorized; or

(c) The amount of your copayment.

(3) Your provider (~~(does not meet the requirements in WAC 388-290-0130)~~) is not an eligible provider per WAC 388-290-0140;

(4) (~~(You use DSHS WCCC subsidized payment to pay a person who has not been determined an eligible provider by WCCC;~~)

(5) ~~You do not have attendance records and payment receipts to support the amount you billed us for in-home/relative care;~~

(6) ~~You cannot provide verification that you have paid your provider the DSHS WCCC subsidized payment.)~~ Your child is not eligible per WAC 388-290-0015 or 388-290-0020.

payee to pay my in-home/
relative provider?

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0273 When would my licensed or certified provider (~~be assessed~~) or DSHS contracted Seasonal Day Camp get an overpayment? (1) We establish WCCC overpayments for your licensed or certified child care provider(~~s~~) and DSHS contracted seasonal day camps, when your provider:

(a) (~~The provider receives~~) Billed and received payment for WCCC services not provided;

(b) (~~The provider~~) Does not have attendance records that comply with licensing requirements (refer to WAC 388-295-7030, (~~388-155-460~~) 388-296-0520, and 388-151-460 for attendance record requirements). Only attendance records meeting WAC requirements will be accepted for attendance verification;

(c) (~~We pay the provider~~) Billed and received payment for more than they are eligible to bill;

(d) (~~The provider~~) Billed and received payment (~~from us~~) and the provider is not eligible based on WAC 388-290-0125; or

(e) (~~The provider~~) Is caring for a child outside their licensed allowable age range without a waiver.

(2) The (~~worker~~) WCCC program staff may request documentation from (~~the~~) your provider when preparing to establish an overpayment. (~~The~~) Your provider has fourteen consecutive calendar days to supply any requested documentation.

NEW SECTION

WAC 388-290-0274 When would my in-home/relative provider get an overpayment? (1) We establish WCCC overpayments for your in-home/relative provider when your provider:

(a) Billed and received payment for WCCC services not provided;

(b) Does not have attendance records that comply with attendance records based on WAC 388-290-0138. Only attendance records meeting WAC requirements will be accepted for attendance verification;

(c) Billed and received payment for more than they are eligible to bill;

(2) The WCCC program staff may request documentation from your provider when preparing to establish an overpayment. Your provider has fourteen consecutive calendar days to supply any requested documentation.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-290-0255 When can the WCCC program establish a protective

WSR 05-22-092
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)

[Filed November 1, 2005, 10:01 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: The purpose of this rule making is to make clarification and technical changes to the Board of Boiler Rules substantive (chapter 296-104 WAC) based on actions and requests of the Board of Boiler Rules. The changes will make clarification and technical changes to the Board of Boiler Rules, which will make the rules easier to use.

The technical changes include:

- Incorporating new 2004 code editions;
- WAC 296-104-200 will include new ASME Section XII for construction and technical requirements;
- WAC 296-104-210 will include material requirements for technical review; and
- WAC 296-104-220 will include construction drawing and photos to technical requirements.

The adopted changes will:

- Clarify the rules so that they are easier to use and understand;
- Make changes to ensure consistency with statute;
- Eliminate rules that are unnecessary or that are no longer necessary; and
- Make several other necessary changes identified by the Board of Boiler Rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 296-104-018, 296-104-102, 296-104-200, 296-104-210, 296-104-220, 296-104-302, and 296-104-701.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Adopted under notice filed as WSR 05-16-095 on August 2, 2005.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made to the proposed wording:

- WAC 296-104-050 was removed from the proposed wording. The Board of Boiler Rules wants to continue to review applications before applicants can take the written examination.
- WAC 296-104-200(1) was amended to include Division 1, 2, and 3 to Section VIII and add Section XII to the list. It will now read "ASME Boiler and Pressure Vessel Code, 2004 edition, with addenda Sections I, III, IV, VIII Division 1, 2, 3, X, and XII."
- WAC 296-104-302(1) was amended to remove "greater than 400,000 BTU/hr and less than or equal to 12,500,000 BTU/hr." The requirements are covered in CSD-1 (CF) and the board thought it might create confusion by having duplicative requirements.

- WAC 296-104-701:
 - Subsection (2) was amended to remove "Failure to notify the state when new coverage is written or when coverage is canceled, per WAC 296-104-045" and the penalty amount. After further discussion, the board felt the language should be removed because it could take an insurance company up to six months to notify you when coverage has changed.
 - Subsection (4) was amended to update the reference to RCW 70.79.61 [70.79.361].

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 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, 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 8, Repealed 0.

Date Adopted: November 1, 2005.

Craig Hopkins, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 99-22-026, filed 10/26/99, effective 11/26/99)

WAC 296-104-018 Administration—How are rules interpreted and revised? Stakeholders may request clarifications and interpretations of these rules by contacting the chief inspector. Interpretations will be brought to the board if the inquirer is aggrieved by the interpretation of the chief inspector (RCW 70.79.360). The board will consider written requests for interpretations and revisions to these definitions, rules, and regulations. Inquiries shall be limited to requests for interpretation of the rules or to proposed revisions to the existing rules and shall be submitted to the department of labor and industries forty-five days prior to the board of boiler rules meeting date in the following format:

(1) Scope. Identify a single rule or closely related rules that are in dispute.

(2) Background. State the purpose of the inquiry, which should be either to obtain an interpretation or to propose a revision to existing rules. Provide concise information needed for the board's understanding of the inquiry, including references to the WAC section as well as other code and/or standards paragraphs.

(3) Inquiry structure. Provide statements in a condensed and precise question format and, where appropriate, compose in such a way that "yes" or "no" (perhaps with provisos) would be an acceptable reply.

(4) Proposed reply. State what it is believed the rule requires. If in the inquirer's opinion a revision to the defini-

tions, rules, and regulations is needed, recommended wording should be provided.

Inquiries shall be submitted by mail to:
Board of Boiler Rules
% Chief Inspector
Department of Labor & Industries
Boiler Section
P.O. Box 44410
Olympia, WA 98504-4410

or

Inquiries shall be submitted by delivery to:
Board of Boiler Rules
% Chief Inspector
Department of Labor & Industries
Boiler Section
7273 Linderson Way SW
Tumwater, WA 98501

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-102 Inspection—What are the standards for in-service inspection? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail.

(1) The standard for inspection of nonnuclear boilers, unfired pressure vessels, and safety devices is the National Board Inspection Code (NBIC), (~~(2001)~~) 2004 edition, with addenda. This code may be used on or after the date of issue and becomes mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2).

(2) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Appendix "C" of the National Board Inspection Code as referenced in subsection (1) of this section.

(3) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(4) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, eighth edition, with addenda. This code may be used on or after the date of issue.

(5) TAPPI TIP 0402-16, dated 2001 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, 2004 edition, with addenda Sections I, III, IV, VIII, Division 1, 2, 3, X, XII;

(2) ASME PVHO-1 2002-2003 Safety Standard for Pressure Vessels for Human Occupancy; and

(3) ASME CSD-1 2002 edition with addenda (as referenced in WAC ((~~296-104-300(3)~~) 296-104-302); and

(4) NFPA 85 Boiler and Combustion Systems Hazards Code 2004 edition (for use with boilers with fuel input ratings of 12, 500,000 BTU/hr) or greater; and

(5) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory on issue and that subsequent addenda become mandatory six months after the date of issue. For nuclear systems, components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 00-21-024, filed 10/10/00, effective 11/13/00)

WAC 296-104-210 Construction—What are the requirements for construction of boilers and unfired pressure vessels of special design? Boilers and unfired pressure vessels of special design require a special certificate granted by the board of boiler rules. At a minimum the following information shall be supplied to obtain board approval for special designs: Construction drawings, design calculations, material specifications, and a Washington state professional engineer's evaluation of the design. Upon board approval a Washington special number will be assigned by the chief inspector. The installation will be subject to the regular inspections required by WAC 296-104-100 and any additional conditions as required by the board.

AMENDATORY SECTION (Amending WSR 00-21-024, filed 10/10/00, effective 11/13/00)

WAC 296-104-220 Construction—What are the requirements to use nonstandard second hand boilers and unfired pressure vessels? Nonstandard second hand boilers and unfired pressure vessels constructed after January 1, 1952, cannot be used in this state without prior approval of the board of boiler rules. At a minimum the following information shall be supplied to obtain board approvals: ((~~Drawings, a~~) Construction drawings, photographs, operating and inspection history, design calculations, and a Washington state professional engineer's evaluation of the design and present condition. Upon board approval a Washington special number will be assigned by the chief inspector. The installation will be subject to the regular inspections required by WAC 296-104-100 and any additional conditions as required by the board.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-302 Installation—What control and limit devices are required on automatically fired boilers after December 1998? In addition to those requirements listed in WAC 296-104-301, the following are also required with regard to installations or refits of gas, oil, or combinations of gas or oil:

(1) All boilers ((~~excluding lined potable water heaters of all BTU input~~)) installed or refitted after December 1998, with fuel input ratings of less than 12,500,000 BTU/hr which are fired by gas, oil, or a combination of gas or oil shall comply with the fuel train requirements defined in ASME CSD-1 (CF), as adopted in WAC 296-104-200 where applicable.

(2) Verification of fuel train compliance will be per CSD-1. A CSD-1 report will be completed and signed by an authorized representative of the manufacturer and/or the installing contractor.

(3) The CSD-1 report must be made available to the authorized inspection agency or the inspector after which a certificate of operation may be issued. The report shall remain in the possession of the boiler owner.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-701 What are the civil penalties? (1) An owner, user, or operator of a boiler or pressure vessel that violates a provision of chapter 70.79 RCW, or of the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Operating under pressure a boiler or pressure vessel which the department has condemned, has issued a red tag or has suspended the inspection certificate:

First offense	\$150.00
Second offense	\$300.00
Each additional offense	\$500.00

Each day of such unlawful operation shall be deemed a separate offense.

Operating under pressure a boiler or pressure vessel without a valid inspection certificate:

First offense	\$ 50.00
Second offense	\$100.00
Each additional offense	\$200.00

Each day of such unlawful operation shall be deemed a separate offense.

Installation of a boiler or pressure vessel without meeting prior filing requirements of WAC 296-104-020:

First offense	\$100.00
Second offense	\$200.00
Each additional offense	\$500.00

Performing a repair to a boiler or pressure vessel, involving welding to a pressure retaining part, without meeting requirements of WAC 296-104-502:

First offense	\$150.00
Second offense	\$300.00
Each additional offense	\$500.00

Performing an alteration to a boiler or pressure vessel without meeting requirements of WAC 296-104-502:

First offense	\$150.00
Second offense	\$300.00
Each additional offense	\$500.00

Performing resetting, repair or restamping of safety valves, safety relief valves, or rupture discs, without meeting requirements of WAC 296-104-520:

First offense	\$150.00
Second offense	\$300.00
Each additional offense	\$500.00

Failure of owner to notify chief inspector in case of accident which serves to render a boiler or unfired pressure vessel inoperative, as required by WAC 296-104-025:

Each offense	\$100.00
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Failure to comply with a noncompliance report requirement:

Within 90 days	\$100.00
Within 91-180 days	\$250.00
Within 181-270 days	\$400.00
Within 271-360 days	\$500.00

(2) The inspection agency responsible for the inservice inspector of a boiler or unfired pressure vessel that violates a provision of chapter 296-104 WAC, or the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Failure to file a report of inspection per WAC 296-104-040:

Each offense	\$50.00
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Failure to apply a state serial number per WAC 296-104-140:

Each offense	\$50.00
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Failure to attach a "Red TAG" per WAC 296-104-110:

Each offense	\$50.00
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Each object (boiler or unfired pressure vessel) is considered a separate offense.

(3) The department shall by certified mail notify a person of its determination that the person has violated this section.

(4) Any person aggrieved by an order or act under the boiler and unfired pressure vessels law or under the rules and regulations may(~~(, within fifteen days after such order or act,)~~) appeal to the board of boiler rules. This appeal shall be

filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector per RCW 70.79.361.

(5) Each day that a violation occurs will be a separate offense. A violation will be a second or additional offense only if it occurs within one year from the first violation.

WSR 05-22-095

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 1, 2005, 2:04 p.m., effective December 2, 2005]

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

Purpose: WAC 458-20-228 (Rule 228) discusses the responsibility of taxpayers to timely pay their tax liabilities, and the acceptable methods of payment. The rule explains the statutory due dates for persons remitting excise tax returns, and the interest and penalties imposed by law when a taxpayer fails to timely pay the correct amount of tax, as well as other penalties which may be applied. The department is only authorized to waive interest or penalties under limited circumstances. The rule provides examples of circumstances that qualify for a waiver of interest or penalties, and explains how a taxpayer may request a waiver of the same.

Rule 228 has been amended to reflect provisions of chapter 13, Laws of 2003 1st sp.s. (EHB 2269). This legislation changed penalty provisions of RCW 82.32.090 and the due date for persons filing excise tax returns on a monthly basis. Two tables have [been] inserted and other format changes have been made to provide the information in a more useful manner and assist readers in finding information of interest.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-228 Returns, remittances, penalties, extensions, interest, stay of collection.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 05-17-001 on August 3, 2005.

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 1, 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 1, Repealed 0.

Date Adopted: November 1, 2005.

Janis P. Bianchi, Manager
 Interpretations and
 Technical Advice Unit
 by Roseanna Hodson

AMENDATORY SECTION (Amending WSR 01-05-022, filed 2/9/01, effective 3/12/01)

WAC 458-20-228 Returns, (~~remittances~~) payments, penalties, extensions, interest, stay of collection. (1) **Introduction.** This (~~rule~~) section discusses the responsibility of taxpayers to (~~timely~~) pay their tax (~~liabilities~~) by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to (~~correctly or timely pay a tax liability~~) pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayer(~~s~~) have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has (~~instituted~~) a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and (~~rules~~) sections discussing important tax issues and changes. It's all friendly, free, and easy to access.

(b) **I can avoid some penalties and interest if I file my returns electronically (by e-file)?** It's true! Many common reporting errors are preventable when taxpayers take advantage of the department's electronic filing (e-file) system. E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes online. The e-file system helps taxpayers by performing all the math calculations and checking for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** Persons who wish to use e-file should access the department's internet site (<http://dor.wa.gov>) and open the page for electronic filing, which has additional links to pages answering frequently asked questions, and explaining the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

(c) **Index of subjects addressed in this section:**

Topic—Description	See subsection
<u>Where can I get my questions answered, or learn more about what I owe and how to report it?</u> - By phone or on-line, the department provides a number of free and easy resources to help you find answers. <u>One of them is right for you.</u>	(1)(a) of this section. (see above)
<u>I can avoid some penalties and interest if I file my returns electronically (by e-file)?</u> - It's true! E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this section. (see above)
<u>Do I need to file a return?</u> - How do I get returns and file them? Can I file my returns electronically?	(2) of this section
<u>What methods of payment can I use?</u> - What can I use to pay my taxes? Some taxpayers are required to pay electronically.	(3) of this section
<u>When is my tax payment due?</u> - Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this section
<u>Penalties</u> - What types of penalty exist? How big are they? When do they apply?	(5) of this section
<u>Statutory restrictions on imposing penalties</u> - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this section
<u>Interest</u> - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this section
<u>Application of payment towards liability</u> - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this section
<u>Waiver or cancellation of penalties</u> - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this section
<u>Waiver or cancellation of interest</u> - Interest will only be waived in two limited situations. What are they?	(10) of this section
<u>Stay of collection</u> - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(11) of this section
<u>Extensions</u> - Can I get an extension of my due date? How long does an extension last?	(12) of this section

(2) ~~((Returns-))~~ **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.090(8).

(a) Returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be made upon forms, ~~((copies of forms))~~ through the electronic filing (e-file) system (see subsection (1)(b) of this section), or by other means, provided or accepted by the department. The department provides tax returns upon request or when a taxpayer opens an active tax reporting account. Tax returns are generally mailed to all registered taxpayers prior to the due date of the tax. However, it remains the responsibility of ~~((the))~~ taxpayers to timely request a return if one is not received, or to otherwise insure that their return is filed in a timely manner. E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers ~~((that are))~~ may not be required to register with the department and obtain a tax registration endorsement ~~((see subsection (2)(a)))~~. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department on a "Consumer Use Tax Return." Consumer use tax returns are available from the department at any of the local district offices ~~((, by fax, or through the internet))~~. A consumer may also call the department's toll free number 1-800-647-7706 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at <http://dor.wa.gov>, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply ~~((to delinquent))~~ if use tax ~~((liabilities, and))~~ is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment ~~((s))~~ can I use?** Payment may be made by cash, check, cashier's check, money order, and in certain cases by electronic funds transfers, or other electronic means approved by the department.

(a) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(b) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic funds transfers. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up the electronic funds transfer process. (See WAC 458-20-22802 on electronic funds transfers.)

(4) ~~((Due dates-))~~ **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the ~~((combined))~~ excise tax return must be made monthly and within ~~((twenty-five))~~ twenty days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 82.32.-080. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

Refer to WAC 458-20-22802 (Electronic funds transfer) for more information regarding the electronic funds transfer process, due dates, and requirements.

(c) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this section for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this ~~((rule))~~ section. ~~((Penalties apply as follows-))~~ (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this section for more information.)

The penalty types and rates addressed in this subsection are:

<u>Penalty Type—Description</u>	<u>Penalty Rate</u>	<u>See subsection</u>
<u>Late payment of a return - Five percent added when payment is not received by the due date, and increases if the tax due remains unpaid.</u>	<u>5/15/25%</u>	<u>(5)(a) of this section</u>
<u>Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.</u>	<u>5%</u>	<u>(5)(b) of this section</u>
<u>Assessment - Five percent added when a tax assessment is issued, and increases if the tax due remains unpaid.</u>	<u>5/15/25%</u>	<u>(5)(c) of this section</u>
<u>Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.</u>	<u>10%</u>	<u>(5)(d) of this section</u>
<u>Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.</u>	<u>10%</u>	<u>(5)(e) of this section</u>
<u>Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.</u>	<u>50%</u>	<u>(5)(f) of this section</u>
<u>Misuse of resale certificates - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate but should not have.</u>	<u>50%</u>	<u>(5)(g) of this section</u>
<u>Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.</u>	<u>10%</u>	<u>(5)(h) of this section</u>

<u>Penalty Type—Description</u>	<u>Penalty Rate</u>	<u>See subsection</u>
<u>Failure to obtain the contractor's unified business identifier (UBI) number - A flat two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.</u>	<u>\$250 max</u>	<u>(5)(i) of this section</u>

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a taxpayer's return (~~(to be filed by a taxpayer)~~) is not paid by the due date. A ~~((ten))~~ fifteen percent penalty is imposed if the tax due is not paid on or before the last day of the month following the due date, and a ~~((twenty))~~ twenty-five percent penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) Will I avoid the penalty if I file my return without the payment? The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued will include an assessment penalty starting at five percent, which will increase the longer tax remains unpaid. See RCW 82.32.100 and (c) of this subsection. If the tax return is accepted without payment and payment is not made by the due date, the late ~~((penalties))~~ payment of return penalty will apply.

~~((+))~~ (ii) What if my account is given an active non-reporting status, but I later have taxes I need to report and pay? WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do? You should fill out and

send in a Master Application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) Unregistered taxpayer. ((Except as noted below, the late payment of return penalty does not apply to those tax-reporting periods during which a person is unregistered if the person)) RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register((s)) prior to being contacted by the department. "Voluntarily register((s))" means to properly ((completing)) complete and ((submitting)) submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, ((the department will consider)) if a person properly ((completing)) completes and ((submitting)) submits a master application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

((The late payment of return penalty will apply, even if the person has voluntarily registered as explained above, if the person:

(A) Collected retail sales tax from customers and failed to remit it to the department; or

(B) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(C) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account has been closed.

((i)) Active nonreporting status taxpayer. The active nonreporting status allows persons, under certain conditions, to engage in business activities subject to the Revenue Act without having to file combined excise tax returns with the department. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions for active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if any tax due from unreported business activities while on active nonreporting status is not paid by the due dates used for taxpayers that are on an annual reporting basis. Refer to WAC 458-20-101 for more information regarding the active nonreporting status.

((b)) Late payment of an assessment. An additional penalty of ten percent of the tax due will be added to any taxes assessed by the department if payment of the taxes assessed is not received by the due date specified in the notice, or any extension of that due date.)) (c) **Assessment.** If the department issues an assessment for unpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of fifteen percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within thirty days of the original or extended due date, the penalty will further increase to a total of twenty-five percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

((e)) The initial five percent assessment penalty is included with an assessment when it is issued. The penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty (plus ten percent increments at thirty and sixty days from issuance) is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) Issuance of a warrant. If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ((five)) ten percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

((d)) (e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because

of the failure to follow the instructions. RCW 82.32.090~~((4))~~ (5).

(i) ~~((The))~~ **What is "disregard of specific written instructions"?** A taxpayer ~~((will be))~~ is considered to have ~~((disregarded))~~ received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

~~((e))~~ **(f) Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due ~~((shall))~~ will be added. RCW 82.32.090~~((5))~~ (6). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department ~~((of revenue))~~; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

~~((f))~~ **(g) Misuse of resale certificates.** Any buyer who uses a resale certificate to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of a resale certificate, refer to WAC 458-20-102 (Resale certificates).

~~((g))~~ **(h) Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

~~((h))~~ **(i) Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070 ~~((+b))~~ (2).

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The ~~((aggregate of the))~~ penalties imposed for the late payment of a return, ~~((the late payment of an))~~ unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through ~~((e))~~ **(d)** of this ~~((rule))~~ section) may be applied against the same tax ~~((, but may not exceed a total of thirty five percent of the tax due, or twenty dollars, whichever is greater. This thirty five percent penalty limitation))~~ concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090~~((6))~~ (7).

(b) The department may impose either the evasion penalty (subsection (5)~~((e))~~ **(f)** of this section) or the penalty for disregarding specific written instructions (subsection (5)~~((f))~~ **(e)** of this section), but may not impose both penalties on the same tax. RCW 82.32.090~~((7))~~ (8). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)~~((g))~~ **(g)** of this section) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest applies to taxes only. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency was incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described below in ~~((subsection (7)))~~(e) of this subsection. RCW 82.32.050.

(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described below in ~~((subsection (7)))~~(e) of this subsection, from the last day of the year in which the deficiency was incurred until the date of payment.

(c) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in ~~((subsection (7)))~~(e) of this subsection. RCW 82.32.050.

(d) **How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2000. The assessment includes periods from January 1, 1997, through September 30, 1999.

(i) For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).

(ii) For calendar year 1998 tax, interest begins February 1, 1999, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iii) For the 1999 tax period ending with September 30, 1999, interest begins November 1, 1999, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iv) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(e) **How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded

annually ~~((, for the months of January, April, July, and October of the immediately preceding calendar)).~~ The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(f) **How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer. RCW 82.32.080.

~~((a))~~ In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Termination, dissolution, or abandonment of corporate business—Personal liability of person in control of collected sales tax funds), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.-105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the assessment penalty or the penalty for misuse of a resale certificate. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the

control of the taxpayer specifically regarding the penalty for misuse of resale certificates found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the tax-

payer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See ~~((subsection (9))~~(a)(iii)(E) of this subsection.

(G) ~~((The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office for proper forms and the forms were not furnished in sufficient time to permit the completed return to be paid before its due date. In this circumstance, the taxpayer kept track of pending due dates and reasonably fulfilled its responsibility by timely requesting replacement returns from the department.))~~ The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are immediately available to download at no cost from the department's internet site, <http://dor.wa.gov>. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this section. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to unreceived paper returns. See subsection (1)(b) of this section.)

(ii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in ~~((subsection (9))~~(a)(ii)(G) ~~((, above))~~ of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a) ~~((, above))~~ (ii) and (b) of this section;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in ~~((subsection (9))~~(a)(ii)(F) ~~((, above))~~ of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) ~~((above))~~ of this section) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and ~~((subsection (9))~~(a) of this ~~((rule))~~ subsec-

tion) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.-105(2).

If a taxpayer has obtained a tax registration endorsement with the department and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see ~~((subsection (9)))~~(a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's ~~((January 1999))~~ September 2003 return has had the original due date of ~~((March 1st))~~ October 20th extended to ~~((April 30th))~~ November 20th. The return and payment are received after the ~~((April 30th))~~ November 20th extended due date. A penalty waiver is

requested. Since the delinquent return represented the month of ~~((January, 1999))~~ September 2003, the twenty-four months which will be reviewed begin on ~~((January 1, 1997))~~ September 1, 2001, and end with ~~((December 31, 1998))~~ August 31, 2003, (the twenty-four months prior to ~~((January, 1999))~~ September 2003). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(iv) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this section. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see ~~((subsection (11)))~~(a) of this ~~((rule))~~ subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see ~~((subsection (11)))~~(b) of this ~~((rule))~~ subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the

department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)(e)(~~above~~) of this section.

(12) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

WSR 05-22-096

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 1, 2005, 2:06 p.m., effective December 2, 2005]

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

Purpose: To provide the rate of interest that will be included when property taxes paid in 2006 are refunded in subsequent years. The rates in interest reflected in this rule are included when property taxes are refunded. The rates are shown in chronological order with reference to the year in which the property taxes were paid. The rule is being revised to provide the rate of interest for treasury bill auction year 2005, which is used as a basis for refunding property taxes paid in 2006 and refunded in a subsequent year.

Citation of Existing Rules Affected by this Order:
Amending WAC 458-18-220 Refunds—Rate of interest.

Statutory Authority for Adoption: RCW 84.69.100.

Adopted under notice filed as WSR 05-17-150 on August 22, 2005.

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 1, Repealed 0.

Date Adopted: November 1, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit
by Roseanna Hodson

AMENDATORY SECTION (Amending WSR 04-24-101, filed 12/1/04, effective 1/1/05)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%

Year tax paid	Auction Year	Rate
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
<u>2006</u>	<u>2005</u>	<u>3.33%</u>

**WSR 05-22-108
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed November 2, 2005, 8:50 a.m., effective December 3, 2005]

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

Purpose: To explain the criteria and process used to classify a position as "SERS eligible." WAC 415-110-690 is being repealed, and this rule is being adopted as a new section, so that it falls in the proper order in the chapter.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-110-690.

Statutory Authority for Adoption: RCW 41.50.050(5), 41.35.020.

Other Authority: RCW 41.35.010(2).

Adopted under notice filed as WSR 05-19-075 on September 19, 2005.

Changes Other than Editing from Proposed to Adopted Version: The text has not been changed since it was proposed for adoption, however, the rule is being adopted as a new section in order to change the WAC number from WAC 415-110-690 to WAC 415-110-115.

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 1, 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 1, Repealed 0.

Date Adopted: October 28, 2005.

Sandra J. Matheson
Director

NEW SECTION

WAC 415-110-115 How is a position determined eligible? (1) A position is eligible if it meets the criteria of an eligible position under RCW 41.35.010.

(2) Your employer will evaluate your position's eligibility for a particular year at the beginning of the year unless you are working as an on-call substitute.

(3) Your employer may reclassify a position's eligibility based upon its work history.

(a) If your employer declares a position to be ineligible at the beginning of a year, and by the end of the year it has actually required five or more months of seventy or more hours of compensated service, your employer will review the position's eligibility. If at the end of the first year:

(i) Your employer believes the position meets the requirements for an eligible position and declares the position as eligible, your employer will report your hours and compensation to the department effective prospectively from the date your employer makes the determination that the position is eligible; or

(ii) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define it as ineligible. However, if during the next year, the position actually requires five or more months of seventy or more hours of compensated service, your employer will declare the position as eligible. Once the position is reclassified as eligible, your employer will report your hours and compensation to the department retroactively from the first month of the first year that the position required seventy or more hours of compensated service.

(b) If the position has been classified as eligible, but does not require five or more months of seventy or more hours of compensated service during at least one year in any two-year period, your employer will reclassify it as ineligible.

(4) The department may reclassify a position's eligibility if the history of the position shows it has required five or more months of seventy or more hours of compensated service for a period of two consecutive years. Once the position is reclassified as eligible, your employer will report your hours and compensation to the department retroactively from the first month of the first year that the position required seventy or more hours of compensated service.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-110-690	How is my eligibility evaluated?
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**WSR 05-22-109
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed November 2, 2005, 8:51 a.m., effective December 3, 2005]

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

Purpose: To clarify that the department has the right to limit the number of times a deferred compensation plan (DCP) participant changes investment options and to impose other restrictions if necessary to protect the performance results of the DCP program. The department separated WAC 415-501-475 into two sections for clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 415-501-475.

Statutory Authority for Adoption: RCW 41.50.050(5), 41.50.780(10).

Adopted under notice filed as WSR 05-19-074 on September 19, 2005.

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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, 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 1, Repealed 0.

Date Adopted: October 28, 2005.

Sandra J. Matheson
Director

NEW SECTION

WAC 415-501-472 Who determines DCP's investment options? (1) The state investment board, in consultation with the employee retirement benefits board, makes certain investment options available to plan participants. The investment board may:

(a) Open, change, or close investment options according to its investment policy; or

(b) Change investment managers for any investment option.

(2) If the state investment board closes or substantially changes an investment option, the state investment board may transfer the funds invested in that option to another option that, in the board's judgment, most closely represents the investment characteristics of the option being closed or changed.

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-475 May I choose how I want my deferred compensation invested? (1) ~~((The state investment board, in consultation with the employee retirement benefits board, makes certain investment options available to plan participants. The investment board may:~~

~~(a) Open, change, or close investment options according to its investment policy; or~~

~~(b) Change investment managers for any investment option.~~

~~(2)) You must designate on your participation agreement the investment option(s) in which you wish to have your deferrals invested.~~

~~((3) Changes in investment options.~~

~~(a)) (2) In general, you may change the investment (options at any time) of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. ((You may change the investment of your accumulated deferrals; the investment of your future deferrals; or both.~~

~~(b)) However, if necessary to protect the performance results of the DCP program, the department has the right to:~~

~~(a) Limit the number of times you change investment options;~~

~~(b) Limit the frequency of the changes;~~

~~(c) Limit the manner of making changes; or~~

~~(d) Impose other restrictions.~~

~~In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.~~

~~(3) Beneficiaries receiving a distribution may change investment options ((through the methods established by the department.~~

~~(e) If the state investment board closes or substantially changes an investment option, the state investment board may transfer the funds invested in that option to another option that, in the board's judgment, most closely represents the investment characteristics of the option being closed or changed)) according to the provisions of subsection (2) of this section.~~

WSR 05-22-110

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed November 2, 2005, 8:52 a.m., effective December 3, 2005]

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

Purpose: To implement HB 1329 by allowing LEOFF Plan 1 retirees to select a flexible survivor option for their current spouse even if a property division obligation affects part of their retirement allowance. This rule has also been rewritten for clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 415-104-202.

Statutory Authority for Adoption: RCW 41.50.050(5), 41.26.164.

Adopted under notice filed as WSR 05-20-002 [05-19-076] on September 22 [19], 2005.

Changes Other than Editing from Proposed to Adopted Version: Subsection (6)(b) was changed to indicate that a "copy" of a certified marriage certificate (rather than the original) is required.

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 1, 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 1, Repealed 0.

Date Adopted: October 28, 2005.

Sandra J. Matheson
Director

AMENDATORY SECTION (Amending WSR 03-12-014, filed 5/27/03, effective 7/1/03)

WAC 415-104-202 Survivor benefit options—LEOFF Plan 1. (1) **To whom does this section apply?** This section ~~((only applies to members of the law enforcement officers' and fire fighters' retirement system who first became members of the system prior to October 1, 1977 (LEOFF Plan 1)))~~ applies to you if you are a retiree of LEOFF Plan 1.

(2) **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who ~~((does not otherwise qualify as an eligible surviving spouse))~~ is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

(3) **How will ~~((the retiree's benefit))~~ my monthly retirement allowance be affected by selecting a flexible survivor option?** ~~((The monthly benefit payment))~~ Your monthly retirement allowance will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

(4) **What are the flexible survivor option choices?**

(a) **Joint and whole allowance option.** ~~((When the retiree dies))~~ The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department ~~((pays the))~~ will pay your surviving spouse a monthly ~~((benefit))~~ allowance equal to the gross monthly retirement allowance ~~((then payable to the retiree))~~ you were receiving.

(b) **Joint and one-half allowance option.** ~~((When the retiree dies))~~ The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department ~~((pays the))~~ will pay your surviving spouse a monthly ~~((benefit))~~ allowance equal to one-half of the ~~((amount of the retiree's))~~ gross monthly retirement allowance ~~((then payable to the retiree))~~ you were receiving.

(c) **Joint and two-thirds allowance option.** ~~((When the retiree dies))~~ The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department ~~((pays the))~~ will pay your surviving spouse a monthly ~~((benefit))~~ allowance equal to two-thirds ~~((66.667%))~~ of the ~~((retiree's))~~ gross monthly retirement allowance ~~((then payable to the retiree))~~ you were receiving.

(5) ~~((How does one))~~ **Do I qualify to add a flexible survivor option?** ~~((A retiree may qualify to))~~ You may select a flexible survivor option if:

(a) ~~((The retiree does not have a spouse who qualifies as an eligible surviving spouse (see subsection (2) of this section))~~;

~~((b) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation; and))~~ Your current spouse is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161;

~~((b) Some portion of your monthly retirement allowance is payable to you, after any reduction pursuant to a property division obligation under RCW 41.50.670;~~

~~((c) ((The retiree has)) You have not previously selected a flexible survivor option; and~~

~~((d) You meet the deadline and application requirements in subsection (6) of this section.~~

(6) ~~((What steps must one take to))~~ **How do I add a flexible survivor option?** ~~((To add a flexible survivor option, the retiree must:~~

~~((a) Make the choice during the one year window, on or after the date of the first anniversary and before the second anniversary of the marriage;~~

~~((b) Provide the department with proof of the birth date of the spouse and a copy of a marriage certificate as proof of the marriage; and~~

~~((c) Properly and in a timely manner complete and file the correct forms with the department.))~~ You may select a flexible survivor option and name your current spouse as your survivor beneficiary, provided that:

~~((a) The selection is made:~~

~~((i) During a one-year window, on or after the date of the first anniversary and before the second anniversary of the marriage; or~~

~~((ii) No later than June 30, 2006, if you cannot comply with (a)(i) of this subsection because you were married prior to July 1, 2005;~~

~~((b) You provide a copy of your certified marriage certificate to the department;~~

~~((c) You provide proof, satisfactory to the department, of your current spouse's birth date; and~~

~~((d) You file the properly completed forms with the department in a timely manner.~~

(7) **May I remove the flexible survivor option in the future?** Your choice of a flexible survivor option is irrevocable with the following exceptions:

~~((a) Your spouse dies before you; or~~

~~((b) You and your spouse divorce.~~

~~See subsection (8) of this section.~~

(8) **What happens if ~~((the survivor))~~ my spouse dies before ~~((the retiree))~~ me, or if we divorce?** If ~~((the))~~ your spouse dies before ~~((the retiree))~~ you, or if you divorce, ~~((the retiree's))~~ your monthly retirement allowance will increase~~((s))~~, effective the first day of the following month~~((s to))~~. Your increased monthly allowance will be the amount ~~((that the retiree))~~ you would have received had ~~((the retiree))~~ you not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) ~~((the retiree))~~ you received prior to ~~((the))~~ your spouse's death.

~~((8))~~ (9) What happens to ~~((the))~~ my eligible surviving children's share if ~~((the retiree))~~ I select~~((s))~~ a flexible survivor option? There is *no* impact to the benefit provided under RCW 41.26.160 or 41.26.161 to surviving children if ~~((the retiree selects))~~ you select a flexible survivor option.

~~((9))~~ (10) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating retirement allowances.

Terms used in this section:

- (a) Child or children - RCW 41.26.030(7).
- (b) Eligible surviving child - RCW 41.26.160 and 41.26.161.
- (c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.
- (d) Surviving spouse - RCW 41.26.030(6).

