WSR 08-19-008
PERMANENT RULES
SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed September 4, 2008, 12:03 p.m., effective October 7, 2008]

Effective Date of Rule: October 7, 2008.

Purpose: Clarify and update definitions; clarify what exceptions exist from asbestos survey requirements; allow for notifications and notification amendments to be filed electronically; better ensure that asbestos-containing material, which has been disturbed or will likely be disturbed, be properly removed or repaired; and adjust the notification waiting period for certain categories.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article IX and Article X, Section 10.09.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Other Authority: Chapter 70.94 RCW.

Adopted under notice filed as WSR 08-15-017 on July 7, 2008.

A final cost-benefit analysis is available by contacting Matt Holmquist, 1101 West College, Suite 403, Spokane, WA 99201, phone (509) 477-4727, fax (509) 477-6828, e-mail mholmquist@spokanecleanair.org. This is a local agency rule and RCW 34.05.328 does not apply pursuant to RCW 70.94.141(1).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: September 4, 2008.

Matt Holmquist
Compliance Administrator

AMENDATORY SECTION

The following sections of Spokane Regional Clean Air Agency, Regulation I, Article IX are amended:

ARTICLE IX

ASBESTOS CONTROL STANDARDS

ADOPTED: September 5, 1991
REVISED: ((~~July 12, 2007~~)) September 4, 2008
EFFECTIVE: ((~~August 12, 2007~~)) October 7, 2008

SECTION 9.01 PURPOSE

The Board of Directors of the Spokane Regional Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos ((~~removal~~)) projects, renovation projects, and demolition projects in order to protect the public health.

SECTION 9.02 DEFINITIONS

A. AHERA Building Inspector means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E((~~, I.B.3~~))) and whose certification is current.

B. AHERA Project Designer means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E((~~, I.B.5.~~))) and whose certification is current.

C. Asbestos means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. Asbestos-Containing Material means any material containing more than one percent (1%) asbestos as determined using the method specified in ((~~EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy~~)) the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA. It includes any material presumed ((~~or assumed~~)) to be asbestos-containing.

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material, except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos-containing material that has been disturbed or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material

does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation. ((~~using the procedures and analysis in EPA regulations (40 CFR 763.85, 40 CFR 763.86 and 40 CFR 763.87), or an alternate asbestos survey method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos. In addition to requirements in 40 CFR 763.85, 40 CFR 763.86 & 40 CFR 763.87 asbestos surveys shall contain the approximate quantity and location of each material determined to contain asbestos and a schematic showing the locations where each bulk asbestos sample was taken. The condition and friability of asbestos-containing materials shall also be described in the asbestos survey. Any material presumed or assumed to be asbestos-containing material need not be sampled and tested for asbestos, but materials presumed to be asbestos-containing material shall be identified as such in the asbestos survey.~~))

H. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

I. Contiguous means properties adjoining one another or in close proximity (e.g., structures separated only by a public roadway) that have the same property owner.

J. Component means any equipment, pipe, structural member, or other item or material.

K. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

L. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. Pursuant to the EPA asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, it includes wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

M. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

N. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, ((~~disintegrated,~~)) pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes ((~~i.e.,~~)) asbestos-containing material that, when dry, can be: ((~~(a) c~~))

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; ((~~(b) disintegrated or p~~))

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or ((~~(c) r~~))

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper, and cement asbestos products.

O. Leak-Tight Container means a dust-tight and liquid tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

P. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, ((~~disintegrated,~~)) pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

Q. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material ((~~not asphalt coated asbestos felting or similar built-up roofing~~));

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

R. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g., utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g., duplexes and condo-

miniums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g., a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises ((~~performed pursuant to~~)) (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M).

S. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, ((~~or~~)) demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting (((~~signing) an NOI~~)) a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

T. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

U. Renovation means altering a structure or component in any way, other than demolition.

V. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-twos, foundations, equipment, and other parts and miscellaneous components. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

W. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

X. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g., as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993).

Y. Thermal System Insulation means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

Z. Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AA. Wallboard System means joint compound and tape specifically applied to cover nail holes, ((~~cracks~~)) joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. Wallboard systems where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

BB. Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

CC. Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the ((~~Authority~~)) Agency.

((~~DD. Work Schedule Fax Program means a program whereby the property owner or owner's agent provides prior notice by facsimile to the Authority of the specific location and date of the asbestos project or demolition on a form approved by the Authority.~~))

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

SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

((~~Except as provided below, an AHERA building inspector shall perform an asbestos survey as defined in Section 9.02.G of this Regulation prior to renovation or demolition.~~

~~A. Requirements for Renovations.~~

~~Except as provided for in Section 9.03.A.1., Prior to performing any renovation activity the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. The property owner or the owner's agent shall obtain an asbestos survey of any suspect asbestos-containing materials. The asbestos survey shall be performed by an AHERA (Asbestos Hazard Emergency Response Act) building inspector.~~

~~1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.~~

~~Asbestos surveys associated with the renovation of an owner-occupied, single-family residence by the owner-occupant, need not be performed by an AHERA building inspector and need not be an asbestos survey as defined in Section 9.02.G of this Regulation. An owner occupant's assessment for the presence of asbestos prior to renovation of an owner-occupied, single-family residence will suffice. A written asbestos survey is not required.~~

~~2. Asbestos Survey Posting.~~

~~Except as provided for in Section 9.03.A.1, of this Regulation, a summary of the results of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.~~

~~3. Asbestos Survey Retention.~~

~~The property owner or owner's agent and the AHERA building inspector that performed the survey, when applicable, shall retain a complete copy of the asbestos survey for at least 2 years and make it available to the Authority upon request.~~

~~4. Determination of the Presence of Asbestos Containing Material.~~

~~a. Except as provided for in Section 9.03.A.1., only an AHERA building inspector may determine, by performing an asbestos survey as defined in Section 9.02.G, that a suspect material does not contain asbestos.~~

~~b. It is not required that an AHERA building inspector evaluate any material presumed to be asbestos containing.~~

~~B. Requirements for Demolition.~~

~~It shall be unlawful for any person to cause or allow any demolition, except as provided by RCW 52.12.150(6) unless prior to demolition, the property owner or the owner's agent~~

~~obtains an asbestos survey, performed by an AHERA building inspector.~~

~~1. Asbestos Survey Posting.~~

~~Except as provided for in Section 9.03.A.1. of this Regulation, a summary of the results of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.~~

~~2. Asbestos Survey Retention.~~

~~The property owner or owner's agent and the AHERA building inspector that performed the survey when applicable shall retain a complete copy of the asbestos survey for at least 2 years and make it available to the Authority upon request.~~

~~3. Determination of the Presence of Asbestos-Containing Material.~~

~~a. Except as provided by RCW 52.12.150(6), only an AHERA building inspector may determine by performing an asbestos survey that a suspect material does not contain asbestos.~~

~~b. It is not required that an AHERA building inspector evaluate any material presumed to be asbestos containing.~~))

A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section 9.03.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).

C. Asbestos Survey Report.

Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

a. Date that the inspection was performed;

b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;

c. Site address(es)/location(s) where the inspection was performed;

d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;

f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify all suspect-asbestos containing materials and their locations, except where limitations of the asbestos survey identified in Section 9.03.C.1.f (above) prevented such identification;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other description);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

i. Laboratory name, address and NVLAP certification number;

ii. Bulk sample numbers;

iii. Bulk sample descriptions;

iv. Bulk sample results showing asbestos content; and

v. Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material (e.g., schematic and/or other description); and

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet).

((~~C. Alternate Asbestos Survey Method.~~

~~An alternate asbestos survey method shall be submitted to the Control Officer for approval prior to sampling, at a minimum, on occasions when conventional sampling methods required in Section 9.02.G of this Regulation can not or will not be exclusively performed. For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically involves random sampling according to a grid pattern, but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.~~))

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. If an AHERA Building Inspector determines there are

no suspect asbestos-containing materials in the work area, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

E. Asbestos Survey Retention.

The property owner or owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and make it available to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. All other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 can not be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1" depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. However, pursuant to Section 9.04.A.6 of this Regulation, the project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work shall cease until it is determined pursuant to Section 9.03.B and C of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

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

SECTION 9.04 NOTIFICATION REQUIREMENTS

A. General Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency ((~~Authority on approved forms by the property owner or owner's agent~~)), in accordance with the ((~~advance~~)) notification waiting period requirements ((~~contained~~)) in Article X, Section 10.09 of this Regulation. The notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website, submitted at the Agency's place of business in person or via U.S. mail, or for those contractors using the Agency's prepayment account, notifications may be submitted via facsimile. Prepayment accounts will no longer be offered and notifications submitted via facsimile will no longer be accepted once the Agency begins accepting notifications via its website.

1. When the Notification Waiting Period Begins

The ((~~advance~~)) notification waiting period shall begin on the workday a complete notification is received by the ((~~Authority~~)) Agency and shall end after the ((~~advance~~)) notification waiting period in Section 10.09 has passed (e.g., The ((~~advance~~)) notification waiting period for a notification submitted after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the ((~~Authority~~)) Agency. A 10-day notification period means work on an asbestos project or demolition can begin on day 11.).

2. Asbestos Project Duration

The duration of an asbestos project shall be commensurate with the amount of work involved.

((~~3. Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project.~~

~~4. Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.~~

~~5. Notification is not required for renovations involving owner occupied, single family residences. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.~~

~~6. Notification is required for all demolitions involving structures with a projected roof area greater than 120 square~~

~~feet, even if no asbestos-containing material is present. All other demolition requirements remain in effect.~~

~~7. A copy of the notification, all amendments to the notification, the asbestos survey, and any Order of Approval for an alternate means of compliance shall be made available for inspection at all times at the asbestos project or demolition site.~~

~~8~~))3. Multiple Asbestos Projects or Demolitions.

Notification for multiple asbestos projects or demolitions may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to contiguous properties having the same owner.

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the site address for each structure. ((~~A work plan is submitted that includes:~~))

d. The notification includes the amount and type of asbestos-containing material in each structure.

((~~1) a map of the structures involved in the project;~~

~~2) the site address for each structure;~~

~~3) the amount and type of asbestos-containing material in each structure;~~

~~4) the schedule for performing asbestos project and demolition work (for projects where a detailed work schedule cannot be provided, the property owner or owner's agent shall participate in the Authority's work schedule fax program and will continue to participate in the program throughout the duration of the project);~~

~~5) a copy of the asbestos survey for all structures that do not contain asbestos containing material; and~~

~~6) any other information requested by the Authority.~~

~~9. The property owner or owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the ((Authority)) Agency upon request.~~

~~10. Fee for Work Done Without Notification.~~

~~Where any work on an asbestos project or demolition, for which notification is required, is commenced or performed prior to making notification, except as provided for in Section 9.04.C, the Control Officer may conduct a compliance investigation and assess a fee. In such case, a compliance investigation fee, as established in Section 10.09(e) of this Regulation, shall be paid by the applicant in addition to the fees required in Section 10.09(a) of this Regulation. Payment of fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.~~

~~11~~))4. Notification Expiration.

Notifications are valid for no more than ((~~twelve months~~)) 365 days from the earliest original notification start date. A new notification shall be submitted to the ((~~Authority~~)) Agency for work to be performed beginning or continuing more than ((~~twelve months~~)) 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(((~~a~~))) of this Regulation.

5. Record Keeping.

a. A copy or printout of the notification, all amendments to the notification, and the complete asbestos survey shall be made available for inspection at all times at the asbestos project or demolition site.

b. The property owner or owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.

6. Notification Exceptions.

a. Asbestos Project Thresholds.

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing.

Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window-glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

c. Owner-Occupied, Single-Family Residences.

Notification is not required for renovations involving owner-occupied, single-family residences. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

d. Underground Storage Tanks.

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area ≤ 120 Square Feet.

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification period and project fee, by written authorization, for disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other requirements remain in effect.

h. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

i. There was a sudden, unexpected event that resulted in a public health or safety hazard;

ii. The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

iii. Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

iv. The project must proceed to avoid imposing an unreasonable financial burden.

B. Amendments.

1. Mandatory Amendments.

Amendments must be submitted by the person or party that originally submitted the notification or, if applicable, submitted the most recent notification amendment on file with the Agency, unless that person or party explicitly names another person or party that is authorized to file an amendment to the original notification or most recent amendment filed with the Agency. An amendment shall be submitted to the ((~~Authority~~)) Agency for any of the following changes in notification, must be submitted in accordance with the advance notification requirements in Section 10.09 of this Regulation (e.g., In order to change the asbestos project start date or place a project "on hold", an amendment must be submitted prior to the asbestos project start date listed on the original notification or, if applicable, prior to the start date submitted on the most recent notification amendment on file with the Agency.), and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(((~~a~~))) of this Regulation:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification.((~~;~~))

b. Job Size.

Increases in the job size category which increase the fee or changes the advance notification period.((~~;~~)) For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.

c. Type of Asbestos.

Changes in the type of asbestos-containing material that will be removed.((~~;~~))

d. Start Date.

Changes in the asbestos project start date or demolition start date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new start date has not been confirmed) or canceling a notification altogether.((~~;~~))

e. Completion Date.

Changes in the asbestos project or demolition completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed).((~~;~~))

((~~f. Work Schedule.~~

~~Changes in the asbestos project work schedule, including days and hours of work (Asbestos contractors or property owners participating in the Authority's work schedule fax program, as defined in this Regulation, are not required to submit amendments for work schedule changes such as days of the week and hours of the day occurring between the asbestos project start and completion date); or~~

~~g. An amendment must be submitted to the Authority for any other change in a notification (e.g., changing a demolition contractor).~~))

2. Opportunity for Amendment.

a. Last Asbestos Removal Completion Date on Record.

In no case shall an amendment be accepted ((~~and approved~~)) by the ((~~Authority~~)) Agency if it is filed after the last completion date on record. In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the ((~~Authority~~)) Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(((~~a~~))) of Article X of this Regulation.

b. Canceled Notification.

Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation).

c. Project Sites.

Amendments may not be used to add or change project site addresses listed on a previously submitted notification.

((~~C. Emergencies.~~

~~1. Advance Notice.~~

~~The Control Officer may waive the advance notification period , if the property owner or owner's agent submits a written request, demonstrating to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:~~

~~a. There was a sudden, unexpected event that resulted in a public health or safety hazard;~~

~~b. The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;~~

~~c. Asbestos-containing materials were encountered that were not identified during the asbestos survey; or~~

~~d. The project must proceed to avoid imposing an unreasonable financial burden.~~

~~2. When Advance Notice is Not Possible~~

~~Advance notification shall not be required to commence an asbestos project or demolition which would normally require advance notification pursuant to Section 9.04 and 10.09 of this Regulation, if all of the following criteria are met:~~

~~a. A notification shall be filed with the Authority not later than the first working day after the asbestos project or demolition is commenced and shall be accompanied by a written request from the property owner or owner's agent, demonstrating to the Control Officer that an asbestos project or demolition was conducted without advance notification because of life endangerment or other serious consequences.~~

~~b. For purposes of compliance with Section 9.04 and 10.09, the Control Officer shall determine whether the asbes-~~

~~tos project or demolition, commenced before approval by the Authority, meets the requirements of this subsection.~~))

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

SECTION 9.05 ASBESTOS REMOVAL REQUIREMENTS ((~~PRIOR TO RENOVATION OR DEMOLITION~~))

A. Removal of Asbestos ((~~Prior to Renovation or Demolition~~)).

1. Except as provided in Sections 9.08.B-C ((~~9.05.B, 9.07.B (Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition). and 9.08.C.,~~)) of this Regulation, it shall be unlawful for any person to cause or allow any renovation, ((~~or~~)) demolition, or other action or inaction that may:

a. ((~~d~~))Disturb asbestos-containing material without first removing all asbestos-containing material in accordance with the requirements of this Regulation; or

b. ((~~d~~))Damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this Regulation.

2. Except as provided in Sections ((~~9.07.B and~~)) 9.08.A-C of this Regulation, it shall be unlawful for any person to create or allow a condition, involving an existing structure, that will likely result in the disturbance of asbestos-containing material (e.g., not removing all asbestos-containing material in a structure scheduled for demolition; ((~~or partially~~)) not completely removing asbestos-containing material identified for removal by the last asbestos removal completion date on record; ((~~and~~)) leaving ((~~remaining~~)) asbestos-containing material in a state that makes it more susceptible to being disturbed; asbestos-containing material that is peeling, delaminating, crumbling, blistering, or other similar condition; etc.).

3. Asbestos-containing material need not be removed from a component if((~~, prior to renovation or demolition,~~)) the component is removed for reuse, stored for reuse, or transported for reuse without disturbing or damaging the asbestos-containing material.

4. Suspect asbestos-containing material that has been disturbed must be removed as soon as possible and disposed of in accordance with this Regulation unless an asbestos survey, performed in accordance with Section 9.03 of this Regulation, demonstrates that suspect asbestos-containing materials are not asbestos-containing materials.

((~~B. Exception for Hazardous Conditions.~~

~~Asbestos-containing material need not be removed prior to a demolition, if the property owner or owner's agent demonstrates to the Control Officer that it is not accessible (e.g., asbestos survey cannot be performed or asbestos cannot be removed prior to demolition) because of hazardous conditions such as: structures or buildings that are structurally unsound or in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner or owner's agent must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition and disposal of the asbestos-containing waste material. The Exception for Hazardous Conditions plan (i.e., hazardous conditions determination and procedures) shall be submitted to the Authority for approval with a complete notification pursuant to Section 9.04 of this Regulation.~~

~~1. At a minimum, all of the following procedures shall be incorporated into the Exception for Hazardous Conditions plan and followed by the owner or owner's agent unless equally effective work practices and procedures are submitted to, and approved by, the Authority:~~

~~a. Presume that the structure contains friable and nonfriable asbestos-containing material and treat all demolition debris as asbestos-containing waste material;~~

~~b. Follow the procedures for asbestos projects in Section 9.06 of this Regulation;~~

~~c Remove and dispose of a minimum of six inches of soil beneath and six feet of soil around the demolition debris pile as asbestos-containing waste material or submit a sampling plan for approval, for demonstrating that soil has not been contaminated from the asbestos project; and~~

~~d Make air monitoring data available for the Authority to review, upon request, for 2 years from the date the Control Officer approves the plan.~~))

SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS

A. Training Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Asbestos ((~~Removal~~)) Project Work Practices.

Except as provided in Sections 9.08.A-C ((~~9.07.A (Method of Removal for Nonfriable Asbestos-Containing Roofing Materials) and Section 9.08 (Alternate means of Compliance)~~)) of this Regulation, it shall be unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or ((~~temporarily~~)) off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material ((~~surfaces~~)) exposed during removal shall be ((~~wetted~~)) immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

((~~4~~)) b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. ((~~They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers.~~)) Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal shall be ((~~wetted~~)) immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

((~~5~~)) c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing material~~s~~ are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

((~~6~~)) 4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

((~~7~~)) b. All asbestos-containing waste material resulting from an asbestos project shall be ((~~kept wet and shall be~~)) sealed in leak-tight containers ((~~while still wet,~~)) as soon as possible after removal, but no later than the end of each work shift.

((~~8~~)) c. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

((~~9~~)) d. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

((~~10~~)) e. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

((~~11~~)) f. ((~~The a~~)) Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material.

((~~12~~)) 6. Visible Emissions

No visible emissions shall result from an asbestos project.

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

SECTION 9.07 PROCEDURES FOR NONFRIABLE ASBESTOS-CONTAINING ROOFING MATERIAL

A. Method of Removal for Nonfriable Asbestos-Containing Roofing Material.

All of the following asbestos removal methods shall be employed for nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation:

1. The nonfriable asbestos-containing roofing material shall be removed using methods, such as spud bar and knife, which do not render the material friable. Removal methods such as sanding, grinding, abrading, or sawing shall not be employed unless the material that is disturbed is handled ((~~as friable asbestos-containing material~~)) in accordance with Section 9.06.B of this Regulation.

2. After being removed, ((~~N~~)) nonfriable asbestos-containing roofing material shall be transferred to a disposal container as soon as possible after removal.((~~, but no later than the~~)) In no case shall the transfer occur later than the end of each work shift.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

4. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

((~~B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.~~

~~Nonfriable asbestos-containing roofing material may be left in place during demolition, except for demolition by burning, if all of the following are met:~~

~~1. A signed and dated written determination is submitted to SRCAA with the notification for demolition, and includes all of the following:~~

~~a. the person making the determination is an AHERA Project Designer;~~

~~b. a summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;~~

~~c. a summary of the work practices and engineering controls that will be used;~~

~~d. a determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and~~

~~e. any other information requested by the Authority.~~

~~2. The proposal is approved by the Authority.~~

~~3. The owner or owner's agent complies with any conditions of approval.~~))

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

SECTION 9.08 ALTERNATE MEANS OF COMPLIANCE

((~~The plan for using an alternate means of compliance as provided below shall be submitted to the Authority for Approval with a complete notification pursuant to Section 9.04 of this Regulation.~~

~~A. Friable Asbestos-Containing Material Removal Alternative.~~

~~An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 9.06.B of this Regulation in controlling asbestos emissions.~~

~~The property owner or the owner's agent shall document through air monitoring, both upwind and downwind or at the exhaust from the controlled area, that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fiber/cc, 8 hour average.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.~~

~~B. Nonfriable Asbestos-Containing Material Removal Alternative.~~

~~An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if a Competent Person or AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the proposed work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 9.06.B of this Regulation in controlling asbestos emissions.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.~~

~~C. Leaving Nonfriable Asbestos-Containing Material in Place During Demolition (Other than Nonfriable Asbestos-Containing Roofing Material per Section 9.07.B of this Regulation).~~

~~Nonfriable asbestos-containing material may be left in place during a demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type and condition of asbestos-containing materials involved, the proposed work practices, and the engineering controls, and demonstrates to the Control Officer that the asbestos-containing material will remain nonfriable during all demolition activities and the subsequent disposal of the debris.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.~~))

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Demolition.

Where standard asbestos project work practices in Section 9.06.B can not be utilized to remove asbestos-containing material (financial considerations aside) prior to demolition, when demolition has already occurred, or a similar situation exists (typically leaving a pile/area of debris, rubble, ash, and/or soil), an alternate asbestos removal method may be employed provided it complies with all of the following:

1. Qualifications of Person Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer who is also a Certified Industrial Hygienist or a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices can not be utilized;

b. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;

c. Site address(es)/location(s) where the inspection was performed;

d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be as effective as the work practices in Section 9.06.B; and

i. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). Unless alternate procedures are specified in the AWP by an AHERA Project Designer who is also a Certified Industrial Hygienist or a Licensed Professional Engineer, the AWP shall include all of the following requirements in Section 9.08.A.4.a-f of this Regulation:

a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris shall be handled in a wet condition.

i. Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

ii. Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

c. Asbestos-Containing Waste Materials.

i. All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

ii. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

iii. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

iv. Leak-tight containers shall be kept leak-tight.

v. The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

i. The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a Licensed Professional Engineer) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

ii. The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a Licensed Professional Engineer) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

i. A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

ii. The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

iii. The competent person shall stop work if AWP procedures are not be followed and shall ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

i. The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream shall be free of asbestos-containing material.

ii. A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and make it available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of

these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation may be left in place during demolition, except for demolition by burning, if all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

b. A summary of the work practices and engineering controls that will be used;

c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material (Other than Nonfriable Roofing) in Place During Demolition).

Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. At a minimum, the owner and owner's agent must comply with all of the following:

1. Qualifications of Person Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer who is also a Certified Industrial Hygienist or a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an Alternative Work Plan (AWP) that ensures the planned control methods will be protective of public health.

2. Determination of a Hazardous Condition.

An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.

3. AWP Contents.

The AWP must contain all of the following information:

a. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;

b. Site address(es)/location(s) where the inspection was performed;

c. A copy of the hazardous conditions determination from a government official or licensed structural engineer;

d. If an asbestos survey was performed, incorporate it by reference;

e. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

f. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be protective of public health; and

g. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

4. AWP Procedures.

The requirements of Section 9.08.A.3-7 of this Regulation shall be complied with.

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

SECTION 9.09 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

A. Disposal Within 10 Days of Removal.

Except as provided in Section 9.09.C((-)) (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

a. The name, address, and telephone number of the waste generator.

b. The approximate quantity in cubic meters or cubic yards.

c. The name and telephone number of the disposal site operator.

d. The name and physical site location of the disposal site.

e. The date transported.

f. The name, address, and telephone number of the transporter.

g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least ((~~2 years~~)) 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the ((~~Authority~~)) Agency upon request.

C. Temporary Storage Site.

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the ((~~Authority~~)) Agency.

2. The application must be accompanied by a ((~~$55~~)) non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.

7. ((~~Effective January 1, 2008, Temporary Storage of asbestos-containing waste material approvals~~)) Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for ((~~the~~)) one calendar year ((~~in which they are issued~~)) unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

SECTION 9.10 COMPLIANCE WITH OTHER RULES

A. Other Requirements.

1. Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the ((~~Authority's~~)) Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

2. The ((~~Authority~~)) Agency implements and enforces the requirements of 40 CFR Part 61 Subpart M (except for asbestos on roadways, asbestos demolition or renovation activities subject to 40 CFR 61.145).

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

AMENDATORY SECTION

SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule. ((follows:

~~Project~~	~~Size or Type~~	~~Notification Period~~	~~Project Fee~~
~~Owner-Occupied,Single-Family Residence Asbestos Project (excluding demolition)~~	~~Notification Not Required~~	~~None~~	~~None~~
~~Owner-Occupied,Single-Family Residence Demolition~~	~~All~~	~~Prior Notice~~	~~Per the Fee Schedule~~
~~All Other Demolitionswith no asbestos project~~	~~All~~	~~10 Days~~	~~Per the Fee Schedule~~
~~Asbestos Project includes demolition fee*~~	~~10-259 linear ft 48-159 square ft~~	~~3 Days~~	~~Per the Fee Schedule~~
~~Asbestos Project includes demolition fee~~	~~260-999 linear ft 160-4,999 square ft~~	~~10 Days~~	~~Per the Fee Schedule~~
~~Asbestos Project includes demolition fee~~	~~≥1,000 linear ft ≥5,000 square ft~~	~~10 Days~~	~~Per the Fee Schedule~~

~~Project~~	~~Size or Type~~	~~Notification Period~~	~~Project Fee~~
~~Amendment***~~	~~9.04.B~~	~~Prior Notice~~	~~Per the Fee Schedule~~
~~Emergency~~	~~9.04.C~~	~~Prior Notice**~~	~~Additional fee equal to project fee~~
~~Exception for Hazardous Conditions~~	~~9.05.B~~	~~Concurrent with Project~~	~~Regular Project fee~~
~~Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition~~	~~9.07.B~~	~~Concurrent with Project~~	~~Per the Fee Schedule~~
~~Alternate Means of Compliance friable asbestos removal alternative, nonfriable asbestos removal alternative, and leaving nonfriable asbestos in place during demolition (except roofing)~~	~~9.08.A, B, and C~~	~~10 Days~~	~~((Additional fee equal to project fee))~~ ~~Per the Fee Schedule~~

~~*~~ ~~Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.~~

~~**~~ ~~Except in the case where advance notice is not required pursuant to Section 9.04.C.2.~~

~~***~~ ~~For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.~~))

Owner-occupied, single-family residence	Waiting Period
≥ 0 ln ft and/or ≥ 0 sq ft asbestos	Notification Not Required
All Demolition	3 Days

Not owner-occupied, single-family residence	Waiting Period
≤ 10 ln ft and/or ≤ 48 sq ft asbestos	Notification Not Required
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
≥ 1,000 ln ft and/or ≥ 5,000 sq ft asbestos	10 Days
All Demolition	10 Days

Additional categories	Waiting Period	Reference
Emergency	Prior Notice	Section 9.04.A.6.h
Amendment	Prior Notice	Section 9.04.B
Alternate Asbestos Project Work Practices	10 days	Section 9.08.A
Demolition with Nonfriable Asbestos Roofing	10 days	Section 9.08.B
Exception for Hazardous Conditions	10 days	Section 9.08.C

((~~1. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.~~

~~B. The Control Officer may waive part or all of the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.~~

~~C. Where a compliance investigation is conducted pursuant to Section 9.04 of this Regulation, the compliance investigation fee shall be equal to $50 per hour of compliance investigation.~~

~~D. The asbestos project fee in Section 10.09.a is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection is an asbestos survey, as defined in Section 9.02.G, performed by an AHERA Building Inspector, as defined in Section 9.02.A.~~

~~E. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.~~))

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.

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

WSR 08-20-007
PERMANENT RULES
GAMBLING COMMISSION

[Order 630—Filed September 18, 2008, 11:39 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: This rules package adds back definitions relating to licensee activity reporting and the requirement that out of state licenses have a resident agent in Washington state. It also corrects the activity reporting period for commercial amusement game licensees.

Citation of Existing Rules Affected by this Order: Amending WAC 230-13-169.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-15-066 on July 14, 2008, and published August 6, 2008.

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 7, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, 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 7, Amended 1, Repealed 0.

Date Adopted: September 18, 2008.

Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-03-052 Resident agent to be appointed by out-of-state applicants and licensees. (1) All applicants and licensees that do not have a business office or licensed premises within Washington state must appoint a resident agent for receiving and accepting service of process and other communications from us.

(2) The resident agent must be:

(a) A natural person who is a resident living in Washington state; and

(b) At least eighteen years old.

(3) The resident agent's name, business address, and home address must be filed with us.

NEW SECTION

WAC 230-06-150 Defining "gross gambling receipts." (1) "Gross gambling receipts" means the amount due to any operator of a gambling activity for:

(a) Purchasing chances to play a punch board or pull-tab series; and

(b) Purchasing chances to enter a raffle; and

(c) Fees or purchase of cards to participate in bingo games; and

(d) Fees to participate in an amusement game, including rent or lease payments paid to licensees or franchisers for allowing operation of an amusement game on their premises; and

(e) "Net win" from a house-banked card game; and

(f) Tournament entry fees; and

(g) Administrative fees from player-supported jackpots; and

(h) Fees to participate in a nonhouse-banked card game (for example, time, rake, or per hand fee).

(2) The amount must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

NEW SECTION

WAC 230-06-155 Defining "gross sales." (1) "Gross sales" means the amount received for all nongambling goods and services sold or occurring on the premises.

(2) The amount must be stated in U.S. currency minus any sales taxes or discounts.

(3) Income received from sales made on behalf of others or in partnership with third parties, commission income, or income splitting schemes, must be recorded at the net amount realized.

NEW SECTION

WAC 230-06-160 Defining "net gambling receipts." "Net gambling receipts" means all gross gambling receipts from any gambling activity minus:

(1) The value for cash prizes; and

(2) The actual cost of any merchandise prizes that were awarded.

NEW SECTION

WAC 230-06-165 Defining "net gambling income." (1) "Net gambling income" means net gambling receipts minus all other expenses related to the operation of a licensed activity paid out during the same reporting period.

(2) Expenses must be reported on the accrual basis if the records are normally maintained on that basis.

NEW SECTION

WAC 230-06-170 Defining "net win." "Net win" means gross wagers received from gambling activities or fund-raising events minus the:

(1) Amount paid to players for winning wagers; and

(2) Accrual of prizes for progressive jackpot contests; and

(3) Repayment of amounts used to seed guaranteed progressive jackpot prizes.

NEW SECTION

WAC 230-06-175 Defining "cost." (1) "Cost" means the amount paid or owed by the purchaser, for any gambling or nongambling product or service, at the time of the transaction and documented on the sales receipt/transfer document.

(2) "Cost" does not include:

(a) Sales taxes paid by the purchaser; or

(b) Any markup or value added by the purchaser.

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-13-169 Annual activity reports for commercial amusement game licensees. Commercial amusement game licensees must submit an annual activity report to ((~~the commission. The activity reports must be~~)) us in the format we require and must:

(1) Cover the ((~~periods:~~

~~(a) January 1 through June 30; and~~

~~(b) July 1 through December 31~~)) license year of one calendar year or less; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the commercial amusement game licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) ((~~Be filed even if they do not renew their license. They must file a report for the period between the previous report filed and the expiration date of the license~~)) Submit a report for any period of time their license was valid, even if they had no activity or did not renew their license; and

(5) Complete the report according to the instructions furnished with the report.

WSR 08-20-008
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 18, 2008, 11:44 a.m., effective October 19, 2008]

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

Purpose: Chapter 392-344 WAC, change the submittal and timeline requirements for the submittal of value engineering, constructability review and building commissioning reports.

Citation of Existing Rules Affected by this Order: Amending chapter 392-344 WAC.

Statutory Authority for Adoption: RCW 28A.525.020 Duties of superintendent of public instruction.

Adopted under notice filed as WSR 08-15-108 on July 18, 2008.

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 0, Repealed 0.

Date Adopted: September 18, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-085 Construction and other documents—Submittal. (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 WAC have been complied with prior to the opening of bids of any project to be financed with state moneys, the school district shall have on file with the superintendent of public instruction the following:

(a) One copy of the construction documents forwarded by others;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) ((~~One copy of the value engineering and constructability review reports as accepted by the school district board of directors.~~)) School district board acceptance of a value engineering report and its implementation.

The report((~~s~~)) shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering ((~~or constructability review~~)) methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed Building Condition Evaluation Forms (BCEF) as required by WAC 392-343-535 for every school facility in the district.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC ((~~392-344-030~~)) 392-344-025 which will result in an increase in state support, a new application must be submitted to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-110 Bids—Data and document requirements. School districts shall demonstrate that they have complied with RCW 28A.335.190 and 43.19.1906 and shall not enter into contract(s) for construction until the following certified copies have been submitted and approved by the superintendent of public instruction:

(1) Each advertisement for bid;

(2) Tabulated statement of all bids received;

(3) Recommendation of the board of directors for award of contract(s) on the basis of bids received, including all accepted alternates;

(4) Alternate bids;

(5) Names and addresses of all bidders;

(6) Certified statement of costs for special inspections and testing;

(7) Certified statement of amount of local and/or other disbursable funds available specifically for the project, exclusive of state funds, with the source of funds identified, including identity and amount of nonhigh school district funds when applicable;

(8) School district board acceptance of a constructability review and implementation.

If the recommended contractor is not the low bidder, the school district shall give reasons pursuant to statutory provisions set forth in RCW 43.19.1911.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-160 Acceptance of project by school district. ((~~Based upon board acceptance of a building commissioning report when required and an inspection of the project and the certificate(s) of completion signed by the architect/engineer, the school district board of directors shall accept the project as complete or reject the project as incomplete. Until the superintendent of public instruction receives a school district board resolution officially accepting the project as complete and a copy of the commissioning report with board acceptance, no~~)) The board of directors for a school district shall accept a project as complete or reject a project as incomplete after a review of the building commissioning final report, an inspection of the project, and receipt of certificate(s) of completion signed by the architect/engineer. A school district board resolution accepting the projects as complete must be submitted to OSPI before release of retainage shall be made in accordance with WAC 392-344-165.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-165 Documents required for release of retainage by school district. Release of retainage on contracts shall be subject to receipt by the superintendent of public instruction of the following documents:

(1) These documents shall be required no later than thirty days after official acceptance:

(a) Properly executed state invoice voucher as per the requirements of WAC 392-344-145;

(b) Architect/engineer certificate(s) of completion;

(c) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;

(d) School district board of directors' resolution accepting the building commissioning report.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

WSR 08-20-010
PERMANENT RULES
CRIMINAL JUSTICE TRAINING COMMISSION

[Filed September 18, 2008, 11:44 a.m., effective October 19, 2008]

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

Purpose: To change WAC 139-05-210 for clarification and to set standards for officers to attend the equivalency academy who are not mandated to attend. To limit those officers who can attend the equivalency academy who have had a break in law enforcement service to between two years and five years. A break in service as a law enforcement officer in excess of five years will require more training that [than] the two week equivalency academy.

Statutory Authority for Adoption: RCW 43.101.080 and [43.101].085.

Adopted under notice filed as WSR 08-12-007 on May 27, 2008.

Date Adopted: September 10, 2008.

Cheryl A. Price
Public Records Officer

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-210 Basic law enforcement certificate of equivalency. (1) A certificate of completion of equivalent basic law enforcement training is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (6) of this section and successful completion of all knowledge and skills requirements within the equivalency academy. ((~~A certificate of completion of equivalent basic law enforcement training is recognized in the same manner as the certificate of completion of the basic law enforcement academy.~~))

(2) Participation in the equivalency process is limited to:

(a) Fully commissioned ((~~law enforcement~~)) peace officers of a city, county, or political subdivision of the state of Washington, who otherwise are eligible to attend the basic law enforcement academy ((~~and~~)); or

(b) Fully commissioned peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission; or

(c) Persons who have not attained commissioned peace officer status but have successfully completed a basic law enforcement academy recognized as a full equivalent to the Washington state basic law enforcement academy by the commission and within twelve months of the date of completion been made a conditional offer of employment as a fully commissioned peace officer in Washington state; or

(d) Persons whose Washington peace officer certification has lapsed because of a break in service as a fully commissioned peace officer for more than twenty-four months but less than sixty months and who are required to attend the equivalency.

(3) Applicants who are ((~~approved~~)) required to participate in the equivalency academy for the purpose of becoming a certified peace officer must attend the first available session of the equivalency academy following such applicant's date of hire((~~. Applicants are not required to attend a session of the equivalency academy conducted within the initial sixty days of employment~~)) unless the equivalency academy occurs within the first sixty days of the peace officer's initial date of employment in which case the peace officer must attend the next available academy as a condition of certification as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis.

It is the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner, and as necessary, to ensure that the participation provided by this section is ((~~effected~~)) affected.

(4) In those instances where an applicant has attended more than one basic training program, eligibility for participation in the equivalency process will be based upon successful completion of the most recent of such programs attended.

(5) The decision to request an officer's participation in the equivalency process discretionary with the head of the officer's employing agency, who must advise the commission of that decision by appropriate notation upon the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information.

(6) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) ((~~A copy~~)) Proof of the applicant's current and valid driver's license;

(b) ((~~A copy~~)) Proof of the applicant's current and valid basic first-aid card;

(c) A statement of the applicant's health and physical condition by an examining physician;

(d) A record of the applicant's firearms qualification;

(e) A liability release agreement by the applicant; and

(f) A criminal records check regarding such applicant.

(7) If comparable emergency vehicle operations training has not been completed previously, the applicant will be required to complete the commission's current emergency vehicle operation course, as scheduled by the commission.

(8) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will:

(a) Issue a certificate of completion of equivalent basic law enforcement training; or

(b) Issue a certificate of completion of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the commission may require; or

(c) Require completion of the commission's basic law enforcement academy.

WSR 08-20-013
PERMANENT RULES
POLLUTION LIABILITY INSURANCE AGENCY

[Filed September 18, 2008, 3:02 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: The purpose of the changes is to clarify the tanks that are eligible for the insurance program as mandated by chapter 70.149 RCW (not "abandoned" or "decommissioned"). The changes will also establish clear timeframes for registering for the program and for filing insurance claims with the agency. These changes will clarify for our insured and potential insured the eligibility and coverage requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 374-70-010 through 374-70-090.

Statutory Authority for Adoption: RCW 70.149.040.

Adopted under notice filed as WSR 08-10-112 on May 7, 2005.

Changes Other than Editing from Proposed to Adopted Version: Retained the $1500 property damage restoration coverage for third party claimants. Retained the definition of "property damage restoration."

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 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 0, Repealed 0.

Date Adopted: September 2, 2008.

Lynn Gooding
Director

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96)

WAC 374-70-010 Purpose and authority. (1) The purpose of this chapter is to address a solution to the threat posed to human health and the environment by accidental releases of heating oil from ((~~active~~)) heating oil tanks. It is in the best interest of all citizens for heating oil tanks to be operated safely, and for accidental releases or spills to be dealt with expeditiously in order to ensure that the environment, particularly ground water, is protected. It is also in the best interest of individual heating oil tank owners to protect them from the unexpected liability and potential financial hardship associated with an accidental release from a heating oil tank.

(2) The pollution liability insurance agency is directed by chapter 70.149 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of ((~~active~~)) heating oil tanks.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a heating oil tank ((~~system~~)) that has been ((~~abandoned or decommissioned and is no longer active and in use~~)) left unused and that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from ((~~an active~~)) a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(3) ((~~"Active" heating oil tank means a heating oil tank that:~~

~~(a) Is in use at the time of registration for the heating oil pollution liability insurance program;~~

~~(b) Has been in continuous use for a period of eighteen months prior to registration; and~~

~~(c) Has been continuously in use between registration and submission of a notice of claim.~~

~~(4)~~)) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter 70.148 RCW. For purposes of chapter 70.149 RCW, agency shall also mean staff or employees of the pollution liability insurance agency.

(((~~(5)~~))) (4) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(((~~(6)~~))) (5) "Claim" means a demand made by a named insured, or the insured's representative, for payment of the benefits provided under the heating oil pollution liability insurance program.

(((~~(7)~~))) (6)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Removal, replacement or repair of heating oil tanks or other receptacles, except reimbursement of new tank replacement costs in accordance with RCW 70.149.120;

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles; or

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(8) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(9) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(10) "Heating oil tank" means ((~~an active~~)) a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(11) "Heating oil tank service provider" is an independent contractor responsible for corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to registered owners of heating oil tanks under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

(13) "MTCA" means the Model Toxics Control Act (chapter 70.105D RCW).

(14) "Named insured" means the individual insureds who are heating oil tank owners registered for coverage under the heating oil pollution liability insurance program.

(15) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in an accidental release from ((~~an active~~)) a heating oil tank.

(16) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

(17) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(18) "Per occurrence, per site, per year" means one accidental release per site, per year.

(19) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter 70.148 RCW. For purposes of chapter 70.149 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

(20) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account established under chapter 70.148 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter 70.148 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

(21) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(22) "Property damage restoration" means the restoration of property to a similar condition to that of the property prior to the accidental release. Restoration includes the replacement of sod, plants or concrete driveway or walkway, or the ((~~cleaning or~~)) replacement of ((~~carpet~~)) flooring in the case of a basement tank.

(23) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(24) "Third-party claimant" means a person alleged to have suffered property damage requiring corrective action or bodily injury as a direct result of a leak or spill from the heating oil tank of a named insured.

(25) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage requiring corrective action or bodily injury that results from a leak or spill from ((~~an active~~)) a heating oil tank.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter 70.149 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of ((~~active~~)) heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter 70.148 RCW and the heating oil pollution liability insurance program established by chapter 70.149 RCW.

(2) The location of the principal office and the mailing address of the agency is:

Pollution Liability Insurance Agency
State of Washington
1015 10th Avenue, S.E.
P.O. Box 40930
Olympia, WA 98504-0930

(3) The principal administrative and appointing officer of the agency is the director. The director may designate other employees of the agency to act in his or her behalf in the director's absence or with respect to those matters in which so doing would enhance the efficiency of the agency's operations.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to registered owners of heating oil tanks.

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96)

WAC 374-70-040 Insurance program. The director, as the heating oil pollution liability insurance program administrator, is responsible for obtaining pollution liability insurance coverage on behalf of the named insureds: All registered owners of ((~~active~~)) heating oil tanks as defined in this chapter. The pollution liability insurance policy will provide sixty thousand dollars coverage, including reinsurance, per occurrence and shall be in excess of other valid insurance and warranties. The policy will be reinsured through the pollution liability insurance agency trust account.

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96)

WAC 374-70-050 Eligibility. Owners and operators of ((~~active~~)) heating oil tanks in the state of Washington are eligible for coverage under the heating oil pollution liability insurance program.

(1) Participation in the heating oil pollution liability insurance program is optional for heating oil tank owners. If a heating oil tank owner wishes to participate in the heating oil pollution liability insurance program, the heating oil tank owner must register the ((~~active~~)) heating oil tank by submitting to PLIA a completed registration form to be provided by PLIA. ((~~Heating oil tank owners choosing to participate in the heating oil pollution liability insurance program established by this chapter must comply with the following criteria:~~

~~(a) The owner must submit proof, by one or more of the following methods, that the heating oil tank is active at the time of registration with the agency (PLIA) and that the heating oil tank has remained active eighteen months prior to registration:~~

~~(i) The owner must submit to PLIA a statement from a heating oil supplier attesting to deliveries of heating oil to the heating oil tank for eighteen months prior to registration; and/or~~

~~(ii) The owner must submit to PLIA a copy of invoices, or canceled checks, for receipt of heating oil at the heating oil tank reflecting purchases or deliveries for eighteen months prior to registration;~~

~~(b)~~)) (2) Abandoned or decommissioned heating oil tanks ((~~systems~~)) are not eligible for coverage under the heating oil pollution liability insurance program((~~;~~

~~(c) At the discretion of the director, the following circumstances dictate individual consideration for eligibility for coverage under the heating oil pollution liability insurance program:~~

~~(i) If a heating oil tank has been recently installed (new construction) or reactivated (conversion to oil heat); or~~

~~(ii) If a heating oil tank has not been active for eighteen months prior to registration due to unusual or extenuating circumstances;~~

~~(d)~~)), except as described in WAC 374-70-080(4) and 374-70-090(4).

(3) Registration in the heating oil pollution liability insurance program must be in the name of the current owner of the property where the registered heating oil tank is located. In the event of a property transfer, ((~~heating oil pollution liability insurance coverage of a registered heating oil tank ceases. The new owner must submit a new registration form if the owner wishes to participate in the heating oil pollution liability insurance program. If the new owner does not submit a new registration form, the active heating oil tank will not be covered under the heating oil pollution liability insurance program; and~~

~~(e)~~)) the new property owner must submit a new registration form within one hundred eighty calendar days of the property transfer in order to avoid a lapse in coverage from the prior registered owner. The date of the property transfer will be considered the first day of the one hundred eighty calendar days. If the new owner does not register within one hundred eighty calendar days, the registration will be considered a new registration and coverage will start on the date the registration was received. Property transfers include, but are not limited to, sales, gifting, and inheritances. If a claim for coverage under WAC 374-70-080 or 374-70-090 is submitted within one hundred eighty calendar days after the property is transferred, and before the new owner has submitted a new registration, the new owner will be deemed to be the named insured for the purposes of this chapter.

(4) PLIA reserves the right to perform an independent investigation to verify the eligibility of a heating oil tank. All investigative costs will be the responsibility of PLIA.

((~~(2)~~)) (5) Accidental releases occurring prior to heating oil tank registration are not eligible for coverage under the heating oil pollution liability insurance program.

((~~(3)~~)) (6) Owners and operators of ((~~active~~)) heating oil tanks, or sites containing ((~~active~~)) heating oil tanks where an accidental release has been identified or where the owner or operator knows of an accidental release prior to heating oil tank registration are eligible for coverage under the heating oil pollution liability insurance program ((~~subject to the following conditions:~~

~~(a) The owner or operator must have a plan for proceeding with corrective action; and~~

~~(b)~~)); however, if the owner or operator files a claim with PLIA, the owner or operator has the burden of proving, to the satisfaction of the director, that the claim is not related to an accidental release occurring prior to the heating oil tank registration.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form. Corrective action for an accidental release occurring prior to the effective date of coverage will not be covered under the program.

(2) The heating oil pollution liability insurance program provides coverage for corrective action costs up to sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties.

(3) **Corrective action costs covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurs after the registration of ((~~an active~~)) a heating oil tank;

(b) Actions necessary to determine the extent and severity of an accidental release;

(c) Costs, not to exceed sixty thousand dollars per occurrence, per site, per year;

(d) Costs in excess of other valid insurance or warranties;

(e) ((~~First-party~~)) Third-party property damage restoration, including landscaping, limited to one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year;

(f) ((~~Third-party property damage restoration, including landscaping, limited to one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year;~~

~~(g)~~)) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and proper disposal of nonrepairable heating oil tank or tanks; ((~~and~~

~~(h)~~)) (g) Required soil and water sampling and testing to determine if corrective action standards have been met; and

(h) Reimbursement of new tank replacement costs in accordance with RCW 70.149.120.

(4) **Corrective action costs not covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurred prior to the registration of ((~~an active~~)) a heating oil tank;

(b) Costs covered by other valid insurance or warranties;

(c) Costs in excess of sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties;

(d) Cleanup of contamination from other sources;

(e) Removal, repair or replacement of the heating oil tank, lines, or furnace, except reimbursement of new tank replacement costs in accordance with RCW 70.149.120;

(f) Emergency heat restoration procedures;

(g) Cleanup of a site beyond the MTCA cleanup levels;

(h) Corrective action associated with an abandoned or decommissioned heating oil tank or site; and

(i) ((~~First-party property damage restoration, including landscaping, in excess of one thousand five hundred dollars per occurrence, per site, per year;~~

~~(j)~~)) Third-party property damage restoration, including landscaping, in excess of one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year; and

(((~~(k)~~)) (j) Defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(i) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(ii) A third party for bodily injury or property damage caused by an accidental release.

(5) If a claim exceeds sixty thousand dollars in total damages, coverage within the sixty thousand dollar policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).

(6) A claim will be accepted for coverage only after an investigation has confirmed the existence of an accidental release which is eligible for coverage under these rules.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-070 Parties involved with an accidental release and corrective action. Among the potential parties involved when an accidental release is suspected from a heating oil tank or line are the heating oil tank owner or operator, adjacent property owners, heating oil supplier, PLIA, third-party administrator, department of ecology, and heating oil tank service providers.

(1) Heating oil tank owner or operator. All liabilities caused by an accidental release originating from a heating oil tank are the sole responsibility of the heating oil tank owner. The pollution liability insurance agency and/or the state of Washington accepts no liability, nor portion of the liability, from the heating oil tank owner. The heating oil tank operator may submit forms to PLIA on behalf of the owner, however, no corrective action may be performed without the specific written consent of the heating oil tank owner. The heating oil tank owner or operator is responsible for notifying the heating oil supplier in the case of a suspected accidental release and investigating the source and extent of the suspected accidental release. The heating oil tank owner is responsible ((~~for notification of homeowner's insurer and determination of whether~~)) to provide documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer. If corrective action is implemented, the heating oil tank owner is responsible for selecting a service provider approved by the insurer and approving the completed corrective action.

(2) Adjacent property owners. If an accidental release migrates off-site, or is suspected to have migrated, the adjacent property owner may be involved in the corrective action. In this situation, the heating oil tank owner or operator shall notify PLIA of the occurrence and provide the adjacent property owner's name, address and telephone number.

(3) Heating oil supplier. Some heating oil suppliers provide customer services which may be a resource to evaluate a suspected accidental release to the environment. If after investigating a heating system malfunction, a heating oil supplier determines that an accidental release may have occurred, the heating oil supplier should inform the owner or operator of the accidental release.

(4) PLIA acts as the designated representative of the insurer for purposes of the heating oil pollution liability insurance program. PLIA provides informal advice and assistance to heating oil tank owners and operators, registers heating oil tanks for insurance coverage, provides listings of service providers approved by the insurer, manages claims for the insurer and provides certification that a claim is closed.

(5) Third-party administrator. PLIA may appoint a third-party administrator to assist in monitoring, investigation and corrective action.

(6) Department of ecology. The department of ecology administers statewide laws and rules detailing MTCA cleanup standards for both soil and ground water. To be eligible for coverage under the heating oil pollution liability insurance program, corrective action must satisfy MTCA and pertinent local government requirements.

(7) Heating oil tank service provider. A heating oil tank service provider is an independent contractor who contracts with an owner or operator to perform corrective action, including submitting reports to PLIA on behalf of the owner or operator.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-080 Claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. To receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from an accidental release from ((~~an active~~)) a heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter 70.149 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists ((~~within ten days of~~)) as soon as practicable after discovery that an accidental release may have occurred;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank becomes abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim, and will provide the heating oil tank owner or operator with a list of insurer approved heating oil tank service providers;

(((~~5~~))) (6) The heating oil tank operator may submit reports and forms on behalf of the heating oil tank owner; however, no corrective action will be initiated or performed without the specific written consent of the heating oil tank owner;

(((~~6~~))) (7) The heating oil tank owner is responsible for investigation to determine the source and extent of a suspected accidental release. The heating oil tank owner is also responsible for ((~~notification of the homeowner's insurer and determination of whether~~)) providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

(((~~7~~))) (8) If the claim is determined by PLIA to be valid, PLIA will so notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

(((~~8~~))) (9) The heating oil tank service provider will notify PLIA of selection by the heating oil tank owner or operator. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

(((~~9~~))) (10) The heating oil tank service provider will submit for approval to the heating oil tank owner or operator and to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(((~~10~~))) (11) Upon receipt of approval by the heating oil tank owner or operator and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

(((~~11~~))) (12) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the heating oil tank owner or operator and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the heating oil tank owner and/or heating oil tank service provider;

(((~~12~~))) (13) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

(((~~13~~))) (14) Upon completion of all corrective action, the heating oil tank owner or operator must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(((~~14~~))) (15) Upon completion of corrective action and approval by the heating oil tank owner or operator, the heating oil tank service provider must submit to PLIA a complete claim report;

(((~~15~~))) (16) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(((~~16~~))) (17) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating

oil pollution liability insurance program. Payment will commence with sufficient revenue;

(((~~17~~))) (18) PLIA will maintain all records associated with a claim for a period of ten years; and

(((~~18~~))) (19) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-090 Third-party claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from a leak or spill from ((~~an active~~)) a heating oil tank which has been registered with PLIA prior to the leak or spill;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70.149 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist ((~~within fifteen days of~~)) as soon as practicable after discovery that damage may have occurred from a leak or spill from a named insured's ((~~active~~)) heating oil tank;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank is abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

(((~~5~~))) (6) If an accidental release from a named insured's heating oil tank has been confirmed, PLIA, as designated representative of the insurer will initiate an investigation to determine the extent and source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

(((~~6~~))) (7) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select a heating oil tank service provider, approved by the insurer, to perform corrective action;

(((~~7~~))) (8) The heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

(((~~8~~))) (9) The heating oil tank service provider will submit for approval to the third-party claimant and to PLIA a scope of work proposal for corrective action;

(((~~9~~))) (10) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

(((~~10~~))) (11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and the insurer must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

(((~~11~~))) (12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

(((~~12~~))) (13) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(((~~13~~))) (14) Upon completion of corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment;

(((~~14~~))) (15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and

local statutes, the director will certify that the claim has been closed;

(((~~(15)~~))) (16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

(((~~(16)~~))) (17) PLIA will maintain all records associated with a claim for a period of ten years; and

(((~~(17)~~))) (18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

WSR 08-20-014
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed September 18, 2008, 4:10 p.m., effective October 19, 2008]

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

Purpose: This is a CORRECTED FILING to fix a textual error in the CR-103 filed as WSR 08-19-099. The department inadvertently proposed corrections to WAC 388-505-0220 under two different actions simultaneously. We proposed cross reference corrections under a CR-105 filed as WSR 08-13-044 which was made permanent by a CR-103 filed as WSR 08-19-099. At the same time we proposed an amendment to WAC 388-505-0220 (3)(d) change "ninety" days to "one hundred eighty" days under a CR-102 filed as WSR 08-11-087 which was made permanent by a CR-103 filed as WSR 08-14-105. This CR-103 filing corrects the CR-103 filed as WSR 08-19-099 to accurately reflect both changes.

Citation of Existing Rules Affected by this Order: Amending WAC 388-505-0220.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Other Authority: RCW 74.04.050, 74.08.090.

Adopted under notice filed as WSR 08-13-044 on June 12, 2008.

Changes Other than Editing from Proposed to Adopted Version: No changes were made other than correcting the text to include both proposed rule changes (see Purpose section above).

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: September 18, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-105, filed 6/30/08, effective 8/1/08)

WAC 388-505-0220 Family medical eligibility. (1) A person is eligible for categorically needy (CN) medical assistance when they are:

(a) Receiving temporary assistance for needy families (TANF) cash benefits;

(b) Receiving Tribal TANF;

(c) Receiving cash diversion assistance, except SFA relatable families, described in ((~~chapter 388-222~~)) WAC 388-400-0010(2);

(d) Eligible for TANF cash benefits but choose not to receive; or

(e) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.

(2) An adult cannot receive a family Medicaid program unless the household includes a child who is eligible for:

(a) Family Medicaid;

(b) SSI; or

(c) Children's Medicaid.

(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:

(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;

(c) Is an unmarried minor parent who is not in a department-approved living situation;

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed one hundred eighty days;

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;

(f) Was convicted of a drug related felony;

(g) Was convicted of receiving benefits unlawfully;

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;

(i) Has gross earnings exceeding the TANF gross income level; or

(j) Is not cooperating with WorkFirst requirements.

(4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person

meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

(5) Except for a client described in WAC ((~~388-505-0210 (4)(c)(i) and (ii)~~)) 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

WSR 08-20-024
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 19, 2008, 3:33 p.m., effective October 20, 2008]

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

Purpose: Establishes the guidelines for verifying participation in senior driver accident prevention courses offered in an alternative method of delivery.

Statutory Authority for Adoption: RCW 46.01.110 and 46.19.460.

Adopted under notice filed as WSR 08-11-054 [08-16-096] on August 4 [5], 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: September 19, 2008.

Becky Loomis
Assistant Director

Chapter 308-106 WAC
MANDATORY INSURANCE

NEW SECTION

WAC 308-106-050 Verifying participation in senior driver accident prevention course offered in an alternative method of delivery. (1) An older insured driver is eligible for insurance premium reduction upon completion of a Senior Driver Accident Prevention course, as provided by RCW 48.19.460.

(2) This premium reduction is allowed for courses given in a classroom setting and courses given by an alternative delivery method, including but not limited to, internet, video, or other technology based methods.

(3) Courses provided by an alternative method of delivery must be approved by the department of licensing.

(4) Providers of Senior Driver Accident Prevention Courses given by an alternative delivery method will include a process to determine that participants seeking certification for the course have completed the course. The process could include, but is not limited to:

(a) Timers that limit how fast the course can be viewed;

(b) Quizzes to determine if the participant understands the course content; or

(c) Asking the participant to provide information at the beginning of the course, and then asking questions during the course to verify that information. The information requested will not be of a nature that would compromise the participant's identity or security. These questions will be used to ensure that the participant who is taking the course is actually the person receiving the course material.

(5) Providers of Senior Driver Accident Prevention Courses given by an alternative delivery method will maintain records of participants who complete the course and are issued certificates. These records will be made available to the department of licensing upon written request.

WSR 08-20-025
PERMANENT RULES
GAMBLING COMMISSION

[Order 631—Filed September 19, 2008, 4:39 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: The Recreational Gaming Association's (RGA) request to increase house-banked card game wager limits from $200 to $500 was discussed at the May, July, August and September 2008 commission meetings. At the September meeting, the commission amended the RGA's request and increased the wager limit of a:

- Single wager or bonus wager for an odds-based payout from $200 to $300.
- Bonus wager for progressive jackpots from $1 to $300 or to limits imposed by a manufacturer's game rules, whichever is less.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-140.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-11-062 on May 16, 2008, and published June 4, 2008.

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 1, 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 18, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-140 Wagering limits for house-banked card games. (1) A single wager or a bonus wager for an odds-based pay out must not exceed ((~~two~~)) three hundred dollars.

(2) A player may make a single wager for each decision before the dealer deals or reveals additional cards. For Blackjack, the player may place an additional wager for doubling down or splitting pairs.

(3) Bonus wagers for progressive jackpots must not exceed ((~~one dollar~~)) manufacturer's rules or limits listed in subsection (1) of this section.

WSR 08-20-032
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed September 22, 2008, 4:05 p.m., effective October 23, 2008]

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

Purpose: The rule ensures consistent policies for calculating the interim and final hold harmless grant payment amounts to hospitals qualifying for certified public expenditure (CPE) payments; clarifies that WAC 388-550-4690 does not apply to psychiatric CPE inpatient hospital admissions; clarifies how the department performs utilization reviews for CPE inpatient hospital admissions prior to August 1, 2007, and on and after August 1, 2007; updates and clarifies requirements for completing the medicaid cost report schedules; lists the required documentation the hospitals must provide with the medicaid cost report schedules; and incorporates into rule that CPE hospitals are at risk for recoupment of the federal payments exceeding costs unless covered by the hold harmless provision.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-4670, 388-550-4690, and 388-550-5410.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Adopted under notice filed as WSR 08-15-128 on July 22, 2008.

A final cost-benefit analysis is available by contacting Lillian Erola, P.O. Box 45500, Olympia, WA 98504-5500, phone (360) 725-1877, fax (360) 753-9152, e-mail erolal@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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 0, Amended 3, Repealed 0.

Date Adopted: September 22, 2008.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-4670 CPE payment program—"Hold harmless" provision. To meet legislative requirements, the department includes a "hold harmless" provision for hospital providers eligible for the certified public expenditure (CPE) payment program. Under the ((~~hold harmless~~)) provision and subject to legislative directives and appropriations, hospitals eligible for payments under the CPE payment program will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect as described in this section. All hospital submissions pertaining to the CPE payment program, including but not limited to cost report schedules, are subject to audit at any time by the department or its designee.

(1) The department:

(a) Uses historical cost and payment data trended forward to calculate prospective hold harmless grant payment amounts for the current state fiscal year (SFY); and

(b) Reconciles these hold harmless grant payment amounts when the actual claims data is available for the current fiscal year.

(2) For each state fiscal year, the department calculates what the hospital would have been paid under the methodologies otherwise in effect for the state fiscal year (SFY) as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005; or

(ii) For SFYs 2008 and beyond, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted((~~; and~~)).

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

((~~(2)~~)) (3) For each SFY, the department determines total state and federal payments made under the program ((~~during the fiscal year~~)), including ((~~the allowable federal portion of inpatient claims and disproportionate share hospital (DSH)~~

~~payments, and the state and federal shares of any supplemental upper payment limit payments~~)):

(a) Inpatient claim payments;

(b) Disproportionate share hospital (DSH) payments; and

(c) Supplemental upper payment limit payments made for SFY 2006 and 2007, as applicable.

(((~~(3)~~))) (4) The amount determined in subsection (((~~(2)~~))) (3) of this section is subtracted from the amount calculated in subsection (((~~(1)~~))) (2) of this section to determine the gross state grant amount necessary to hold the hospital harmless. ((~~Prepaid hold harmless grants prepaid for the same SFY referred to in subsection (2) of this section are deducted from the gross hold harmless amount to determine the net amount due to or from the hospital~~)) If the resulting number is positive, the hospital is entitled to a grant in that amount, subject to legislative directives and appropriations.

(a) The department calculates an interim hold harmless grant amount approximately ten months after the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation. Prospective grant payments made under subsection (1) of this section are deducted from the calculated interim hold harmless grant amount to determine the net grant payment amount due to or due from the hospital.

(b) The department calculates the final hold harmless grant amount at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject to utilization review and audit prior to the final calculation of the hold harmless amount. Interim grant payments determined under (a) of this subsection are deducted from this final calculation to determine the net final hold harmless amount due to or due from the hospital.

AMENDATORY SECTION (Amending WSR 06-11-100, filed 5/17/06, effective 6/17/06)

WAC 388-550-4690 Authorization requirements and utilization review for hospitals eligible for CPE payments. This section does not apply to psychiatric certified public expenditure (CPE) inpatient hospital admissions. See WAC 388-550-2600.

(1) ((~~Certified public expenditure (CPE)~~)) CPE inpatient hospital claims submitted to the department must meet all authorization and program requirements in WAC and current department-published issuances.

(2) The department performs utilization reviews of inpatient hospital:

(a) Admissions in accordance with the requirements of 42 CFR 456, subparts A through C; and

(b) Claims for compliance with medical necessity, appropriate level of care and the department's (or a department designee's) established length of stay (LOS) standards.

(3) ((~~CPE inpatient hospital claims that would have been paid by the diagnosis related group (DRG) payment method prior to July 1, 2005:~~

~~(a) Are not targeted for retrospective utilization review based on the department's professional activity study (PAS) length of stay (LOS) criteria;~~

~~(b) Are subject to the department's medical necessity retrospective utilization review process (see WAC 388-550-1700); and~~

~~(c) That involve a client's seven day readmission (see WAC 388-550-1050) are subject to a department retrospective utilization review described in WAC 388-550-3000(5)(c).~~

~~(4) CPE inpatient hospital claims that would have been paid by the ratio of costs-to-charges (RCC) payment method prior to July 1, 2005 and exceed the professional activity study (PAS) average LOS, will continue to be targeted for retrospective utilization review based on the department's PAS LOS criteria. See WAC 388-550-4300(3).~~

~~(5)~~)) For CPE inpatient admissions prior to August 1, 2007, the department performs utilization reviews:

(a) Using the professional activity study (PAS) length of stay (LOS) standard in WAC 388-550-4300 on claims that qualified for ratio of costs-to-charges (RCC) payment prior to July 1, 2005.

(b) On seven-day readmissions according to the diagnosis related group (DRG) payment method described in WAC 388-550-3000 (5)(f) for claims that qualified for DRG payment prior to July 1, 2005.

(4) For claims identified in this subsection (((~~(4) of this section~~))), the department may request a copy of the client's hospital medical records and itemized billing statements. The department sends written notification to the hospital detailing the department's findings. Any day of a client's hospital stay that exceeds the ((~~PAS~~)) LOS standard:

(a) Is paid under ((~~the RCC~~)) a nonDRG payment method if the department determines it to be medically necessary for the client at the acute level of care;

(b) Is paid as an administrative day (see WAC 388-550-1050 and 388-550-4500(8)) if the department determines it to be medically necessary for the client at the subacute level of care; and

(c) Is not eligible for payment if the department determines it was not medically necessary.

(((~~(6) Inpatient hospital claims that would not have been paid under a prior payment methodology are not eligible for payment under the CPE payment program~~)) (5) For CPE inpatient admissions on and after August 1, 2007, CPE hospital claims are subject to the same utilization review rules as nonCPE hospital claims.

(a) LOS reviews may be performed under WAC 388-550-4300.

(b) All claims are subject to the department's medical necessity review under WAC 388-550-1700(2).

(c) For inpatient hospital claims that involve a client's seven-day readmission, see WAC 388-550-3000 (5)(f).

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-5410 CPE Medicaid cost report ((~~schedules~~)) and settlements. (1) For patients discharged on or after July 1, 2005, a certified public expenditure (CPE)

hospital must annually submit to the department federally required Medicaid cost report schedules, using schedules approved by the centers for Medicare and Medicaid services (CMS), that apportion inpatient and outpatient costs to Medicaid clients and uninsured patients for the service year, as follows:

(a) Title XIX fee-for-service claims;

(b) Medicaid managed care organization (MCO) plan claims;

(c) Uninsured patients (((~~individuals who are not covered under any health care insurance plan for the hospital service provided~~))). The cost report schedules for uninsured patients must not include services that Medicaid would not have covered had the patients been Medicaid eligible (see WAC 388-550-1400 and 388-550-1500); and

(d) State-administered program patients. State-administered program patients are reported separately and are not to be included on the uninsured patient cost report schedule. The department will provide provider statistics and reimbursements (PS&R) reports for the state-administered program claims.

(2) ((~~The department requires each CPE hospital to submit Medicaid cost report schedules to the department for services provided to patients discharged on or after July 1, 2005.~~

~~(3)~~)) A CPE hospital must:

(a) Use the information on individualized PS&R reports provided by the department when completing the Medicaid cost report schedules. The department provides the hospital with the PS&R reports at least thirty calendar days prior to the appropriate deadline.

(i) For state fiscal year (SFY) 2006, the deadline for all CPE hospitals to submit the federally required Medicaid cost report schedules is June 30, 2007.

(ii) For hospitals with a December 31 year end, partial year Medicaid cost report schedules for the period July 1, 2005 through December 31, 2005 must be submitted to the department by August 31, 2007.

(iii) For SFY 2007 and thereafter, each CPE hospital is required to submit the Medicaid cost report schedules to the department within thirty calendar days after the Medicare cost report is due to its Medicare fiscal intermediary or Medicare administrative contractor, whichever is applicable.

(b) Complete the cost report schedules for uninsured patients and Medicaid clients enrolled in an MCO plan ((~~and the uninsured patients~~)) using the hospital provider's records.

(c) Comply with the department's instructions regarding how to complete the required Medicaid cost report schedules.

(3) The Medicaid cost report schedules must be completed using the Medicare cost report for the same reporting year.

(a) The ratios of costs-to-charges and per diem costs from the "as filed" Medicare cost report are used to allocate the Medicaid and uninsured costs on the "as filed" Medicaid cost report schedules, unless expressly allowed for Medicaid.

(b) After the Medicare cost report is finalized by the Medicare fiscal intermediary or Medicare administrative contractor (whichever is applicable), final Medicaid cost report schedules must be submitted to the department incorporating the adjustments to the Medicare cost report, unless expressly allowed for Medicaid. CPE hospitals must submit finalized Medicare cost reports with the notice of amount of program reimbursement (NPR) within thirty calendar days of receipt. The department will then provide the hospitals with updated PS&R reports for Medicaid and state program claims processed by the department for the Medicaid cost report period. The hospitals will update the data for uninsured patients and Medicaid clients enrolled in an MCO plan.

(4) The Medicaid cost report schedules and supporting documentation are subject to audit by the department or its designee to verify that claimed costs qualify under federal and state rules governing the CPE payment program. The documentation required includes, but is not limited to:

(a) The revenue codes assigned to specific cost centers on the Medicaid cost report schedules.

(b) The inpatient charges by revenue codes for uninsured patients and Medicaid clients enrolled in an MCO plan.

(c) The outpatient charges by revenue codes for uninsured patients and Medicaid clients enrolled in an MCO plan.

(d) All payments received for the inpatient and outpatient charges in (b) and (c) of this subsection including, but not limited to, payments for third party liability, uninsured patients, and Medicaid clients enrolled in an MCO plan.

(5) The department:

(a) Performs cost settlements for both the "as filed" and "final" Medicaid cost report schedules for all CPE hospitals;

(b) Reports to CMS as an adjustment any difference between the payments of federal funds made to the CPE hospitals and the federal share of the certified public expenditures; and

(c) Recoups from the CPE hospitals the federal payments that exceed the hospitals' costs, unless the hold harmless provision in WAC 388-550-4670 is applicable.

WSR 08-20-033

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 22, 2008, 4:06 p.m., effective October 23, 2008]

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

Purpose: These rules are necessary to amend the procedures for administering the home and community based services waivers. They incorporate changes reflected in the waivers approved by the federal Centers for Medicare and Medicaid Services under Section 1915(c) of the Social Security Act. They also clarify the existing rules. By amending these rules, the department is able to claim additional federal Title XIX funds.

Citation of Existing Rules Affected by this Order:

WAC SUMMARY and SBEIS/CBA WORKSHEET June 2008		
Washington Administrative Code	**Effect of Rule**	**Impact Small Business?**
388-845-0001 Definitions - Amended "CAP Waiver" - Removed "Gainful employment" - Added "Integrated settings" - Added "Living wage" - Added	 This definition is obsolete. Adds the definition of "gainful employment." Adds the definition of "integrated settings." Adds the definition of "living wage."	 No No No No
388-845-0045 - Amended	Clarifies that needs refer to the identified health and welfare needs.	No
388-845-0205 - Amended	Increases the maximum allowable amount for employment/day program services.	No
388-845-0210 - Amended	Increases the maximum allowable amount for employment/day program services and that this amount may be exceeded by exception to rule.	No
388-845-0600 - Amended	Rewords the definition of community access services for clarity.	No
388-845-0605 - Amended	Rewords who can be providers of community access services for clarity.	No
388-845-0610 - Amended	Clarifies that community access is a service.	No
388-845-0750 - Amended	Clarifies that community transition services may be available when moving from an institutional setting or from a provider operated setting to a community setting in which you live in your own home or apartment and are responsible for your living expenses.	No
388-845-0760 - Amended	Clarifies that community transitional services may not be used for rent.	No
388-845-1200 - Amended	Clarifies the definition of person-to-person services.	No
388-845-1205 - Amended	Grammatical change only.	No
388-845-1210 - Amended	Clarifies the limitations of person-to-person services.	No
388-845-1305 - Amended	Clarifies that providers of personal care services must be contracted with ADSA rather than DDD.	No
388-845-1310 - Amended	Clarifies that homecare agencies must be contracted with ADSA rather than DDD and eliminates an erroneous cross-reference.	No
388-845-1400 - Amended	Expands the definition of prevocational services.	No
388-845-1410 - Amended	Expands the limitations of prevocational services to require prior approval, that these services are time-limited and when a review of these services may be required.	No
388-845-1600 - Amended	Clarifies the definition of respite care.	No
388-845-1620 - Amended	Expands the limitations on respite care regarding parent providers.	No
388-845-1650 - Amended	Changes the term deviation to deviancy and expands the definition for clarity.	No
388-845-1655 - Amended	Changes the term deviation to deviancy.	No
388-845-1660 - Amended	Changes the term deviation to deviancy.	No
388-845-2100 - Amended	Revises and expands the definition of supported employment services.	No
388-845-2105 - Amended	Rewords the grammar for clarity.	No

Washington Administrative Code	Effect of Rule	Impact Small Business?
388-845-2110 - Amended	Clarifies the limitations on supported employment services.	No
388-845-2210 - Amended	Adds a limitation of sixty miles per month for transportation services provided by a personal care provider.	Yes

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 08-15-008 on July 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-845-1310 has been changed to delete the cross reference to chapter 388-71 WAC.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 25, 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 25, 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 25, Repealed 0.

Date Adopted: September 22, 2008.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-21 issue of the Register.

WSR 08-20-034
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 23, 2008, 8:27 a.m., effective October 24, 2008]

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

Purpose: Rule making is required to implement SHB 2817, relating to motor vehicles, vessels and mobile homes contaminated with methamphetamines.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-530 Vehicle brands and comments.

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: RCW 88.02.070.

Adopted under notice filed as WSR 08-15-123 on July 22, 2008.

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 2, Repealed 0.

Date Adopted: September 23, 2008.

Mykel D. Gable
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 05-07-152, filed 3/23/05, effective 5/15/05)

WAC 308-56A-530 Vehicles brands and comments. (1) **What is a brand?** For the purposes of this section a brand is a notation on the certificate of ownership or vehicle registration certificate that records a special circumstance or condition involving a vehicle.

(2) **What brands are assigned to vehicles by the department?** Brands used by the department include, but are not limited to:

(a) Former exempt, as defined in RCW 46.16.020;

(b) Former for hire, as defined in RCW 46.72.010;

(c) Former taxicab, as described in RCW 46.72.010;

(d) Rebuilt as required in RCW 46.12.075, when a vehicle reported destroyed under RCW 46.12.070 or 46.80.090 and WAC 308-56A-460 meets the definition of salvage vehicle in RCW 46.12.005;

(e) Street rod as defined in RCW 46.04.571;

(f) Nonconformity uncorrected or safety defect uncorrected as defined in RCW 19.118.021 (13) and (18);

(g) Nonconformity corrected or safety defect corrected as defined in RCW 19.118.021 (13) and (18);

(h) Returned to manufacturer;

(i) Odometer - Not actual;

(j) Odometer - Exceeds mechanical limits;

(k) Repaired - Wrecker/insurance bill of sale;

(l) Contaminated - Vehicles described in chapter 64.44 RCW;

(m) Decontaminated - Vehicles described in chapter 64.44 RCW.

(3) **What brands are carried forward from the other states/jurisdictions by the department?**

(a) Brands for states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS) program (known as "Standard Brands,") are maintained in the brands list by NMVTIS and include, but are not limited to:

(i) Rebuilt;
(ii) Junk;
(iii) Destroyed;
(iv) Salvage - Damaged;
(v) Salvage - Retention;
(vi) Salvage - Stolen;
(vii) Salvage - Other;
(viii) Flood damage;
(ix) Hail damage;
(x) Saltwater damage;
(xi) Totaled.

(b) Brands from states/jurisdictions not participating in NMVTIS that do not appear on the brands list maintained by NMVTIS (known as "unique brands") will be carried forward on Washington certificates of ownership and registration certificates exactly (or abbreviated if too long) as they appear on the foreign title.

More than one brand may appear on the vehicle registration or certificate of ownership.

(4) **Will a brand be applied to destroyed vehicles that have been sold on an out-of-state wrecker or insurance bill of sale, then repaired, and inspected?** Yes. Vehicles not reported to DOL as destroyed and then sold using an insurance or wrecker bill of sale in lieu of a certificate of ownership/title, then brought into Washington from another jurisdiction that is not subject to reporting under RCW 46.12.070 repaired, and inspected will be branded. The brand will appear as "repaired-wrecker/insurance bill of sale."

The jurisdiction code will be identified as "WA."

(5) **Why is a brand used?** A brand is used in the circumstances above for consumer protection. The brand is used to inform any subsequent owners of the current or former condition or use of the vehicle.

(6) **Will the department remove a brand?** Brands stay on vehicle records indefinitely. The department will only remove a brand if the brand was applied to a Washington certificate of ownership in error; or

(a) If a former rental brand was applied prior to the effective date of this rule, it will remain on the certificate of ownership and/or vehicle registration unless applied in error.

(b) If a nonstandard brand was applied prior to the effective date of this rule, it will remain on the certificate of ownership and/or vehicle registration unless applied in error.

(7) **Where are brands located on the documents?** Brands are located in the brands section of the certificate of ownership and vehicle registration. Brands will display beginning with Washington issued brands, followed by unique brands, then standard brands. If applicable, "WA REBUILT" will show as a banner across the certificate of ownership.

(8) **What is a comment?** For the purposes of this section a comment is an indication on the certificate of ownership, vehicle title/registration application or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type.

(9) **What comments could the department print on certificates of ownership?**

(a) Comments relating to the ownership that include: Bonded, leased, JTWROS.

(b) Comments relating to tax liability that include: Use tax waived - gift, value code, value year.

(c) Comments relating to the type of title transaction, which include duplicate, and reprint.

(d) Miscellaneous comments that include: Not eligible for road use.

(10) **What comments could the department print on vehicle registration certificates?** Comments printed on vehicle registration certificates may include, but are not limited to:

(a) "CVSEF PAID" or "commercial vehicle safety enforcement fee paid";

(b) "Because scale weight exceeds gross weight, D.O.T. permit also required";

(c) "Commercial vehicle safety enforcement fee not paid";

(d) "Display tab on back license plate" only - front plate is still required;

(e) "*Check vehicle data base record for actual expiration date";

(f) "Replica";

(g) "Proof of FHVUT verified";

(h) "No title issued" or "no title issued - ownership in doubt";

(i) "Excise exempt NRM";

(j) "Excise exempt native American";

(k) "Excise exempt van pool";

(l) "Excise exempt rideshare";

(m) "Registration only";

(n) "Prorated gross weight to be more than 16,000";

(o) "Additional owners on record";

(p) "Not eligible for road use";

(q) "Perm plt";

(r) "Use tax waived: Gift";

(s) "Permanent fleet vehicle";

(t) "*Perm";

(u) "Color";

(v) Comments relating to the ownership; bonded, leased, JTWROS, registration only;

(w) Tax liability DAV, native American, NRM, value code/year, use tax option, rideshare, POW, tax code 95, double transfer;

(x) Title transaction type duplicate, reprint, NTI, dual registration, corrected title data, corrected registration;

(y) Miscellaneous gift, ride, previous plate VIN flag, farm vehicle restrictions, Federal Drug Program (Title 49 CFR Part 382) vehicle color, odometer code, RETURN TO MFG, not eligible for road use (NEFRU).

(11) **What comments would the department carry forward from other jurisdictions?** The department does not carry forward comments assigned by other jurisdictions.

(12) **Why are comments used?** Comments are used for consumer protection, to inform any subsequent owners and vehicle licensing personnel of the current tax liability, type of

ownership, or title transaction type or other pertinent information.

(13) **Will the department remove a comment?** The department will remove a comment if:

(a) The comment was applied in error; or

(b) The comment no longer applies.

NEW SECTION

WAC 308-93-076 Vessel brands and comments. (1) **What is a brand?** For the purposes of this section, a brand is a notation on the certificate of ownership or vessel registration certificate that records a special circumstance or condition involving a vessel.

(2) **What brands are assigned to vessels by the department?** Brands used by the department include, but are not limited to:

(a) Contaminated described in chapter 64.44 RCW.

(b) Decontaminated described in chapter 64.44 RCW.

(3) **Why is a brand used?** A brand is used for consumer protection. The brand is used to inform any subsequent owners of the current or former condition or use of the vessel.

(4) **Will the department remove a brand?** Brands stay on vessel records indefinitely. The department will only remove a brand if the brand was applied to a Washington certificate of title in error.

(5) **What is a comment?** For the purposes of this section, a comment is a notation on the certificate of title, or vessel registration certificate that relates to tax liability, type of ownership, title transaction type.

(6) **What comments could the department print on certificates of title?**

(a) Comments relating to the ownership that include: Bonded, leased, JTWROS.

(b) Comments relating to tax liability that include: Use tax waived - gift, value code, value year.

(c) Comments relating to the type of title transaction, which include duplicate and reprint.

(d) Miscellaneous comments.

(7) **What comments could the department print on vessel registration certificates?** Comments printed on vessel registration certificates may include, but are not limited to:

(a) "Registration only";

(b) "Additional owners on record";

(c) "Use tax waived: Gift";

(d) Title transaction type duplicate, reprint, NTI, dual registration, corrected title data, corrected registration.

(8) **Why are comments used?** Comments are used for consumer protection to inform any subsequent owners and vessel licensing personnel of the current tax liability, type of ownership, or title transaction type or other pertinent information.

(9) **Will the department remove a comment?** The department will remove a comment if:

(a) The comment was applied in error; or

(b) The comment no longer applies.

WSR 08-20-035
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 23, 2008, 8:29 a.m., effective October 24, 2008]

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

Purpose: Rule making is required to change the requirement of providing a list of those using the ride share program to using an affidavit that the vehicle is being used as a ride-sharing vehicle.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-175 Ride-sharing vehicles.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 08-15-118 on July 21, 2008.

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 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: September 23, 2008.

Mykel D. Gable
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 04-18-023, filed 8/24/04, effective 9/24/04)

WAC 308-96A-175 Ride-sharing vehicles. (1) **When may the department issue a ride share special license plate?** Ride share special license plates may be issued when:

The ((~~owner of a~~)) passenger motor vehicle is primarily used as a commute ride-sharing motor vehicle defined in RCW 46.74.010(1). The vehicle owner may be issued special ride-share license plates by satisfying the provisions of RCW 46.16.023. Any person desiring the special ride-share license plates must make application on a form approved by the department and pay all fees required by chapter 46.12 RCW and the special ride-share license plate fee required by RCW 46.16.023. The owner must then provide:

(a) For privately owned vehicles, a ((~~list of the riders registered to use the ride-sharing vehicle, including the names, addresses and signatures of the riders and driver. For five and six passenger vehicles being used in a commute trip reduction program, the list must be a copy of the certification of registration in a commute trip reduction program either with a public transportation agency or a major employer~~)) statement that the vehicle is being used as a ride-sharing vehicle; or

(b) For motor vehicles operated by public transportation agencies or by major employers defined in RCW 70.94.524 in commute trip reduction programs, a written statement that the motor vehicle is used as a commuter ride-sharing motor vehicle.

(c) A written statement that the motor vehicle is used for commuter ride-sharing if the passenger motor vehicle is owned, rented or leased by a government agency.

(2) **Can the ride-share license plate be transferred to another motor vehicle?** To transfer license plates to another motor vehicle, the owner must:

(a) Make application to and receive approval by the department for the replacement passenger motor vehicle; and

(b) Pay applicable fees stated in RCW 46.16.316.

(3) **What happens when I remove or transfer special ride-share plates from my vehicle?** When you remove or transfer special ride-share license plates from one motor vehicle to another, you must:

(a) Purchase replacement license plates if the motor vehicle will be operated on public highways; and

(b) Pay applicable ((~~RTA excise~~)) tax for the remaining license registration period for the vehicle((~~, if the registered owner resides in the RTA taxing district~~)).

(c) If use/sales tax was exempted but the vehicle was used less than thirty-six consecutive months as a ride-share motor vehicle, use tax is due and payable to the department of revenue.

(4) **What happens when the ride-share motor vehicle is sold or transferred to another person?**

(a) When a ride-share motor vehicle is sold or transferred to another person who will continue to use the passenger motor vehicle as a commuter ride-share vehicle, the new owner must:

(i) Apply for a certificate of ownership under chapter 46.12 RCW;

(ii) Apply for commuter ride-share exemption; and

(iii) Pay all required fees and taxes including the special license plate fee.

(b) Upon application for registration renewal, the owners of nongovernment ride-share plated vehicles must:

(i) ((~~Recertify~~)) Provide a statement that the motor vehicle is used as a commuter ride-share motor vehicle to continue to be exempt from chapters 82.08, 82.12, and 82.44 RCW; and

(ii) Submit a completed ((~~recertification form,~~)) statement approved by the department((~~, including names, addresses, and signatures of current passengers and drivers~~)) that the motor vehicle qualifies as a commuter ride-sharing motor vehicle. If the registered owner fails to file a completed recertification form, the department will cancel the special ride-share license plates and the registered owner will need to purchase replacement plates and pay applicable fees and taxes to complete registration renewal.

(5) **Will I ever have to replace my ride-share vehicle license plate?** Yes, the ride-share vehicle license plates are subject to the seven-year vehicle license plate replacement schedule.

WSR 08-20-036
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 23, 2008, 10:13 a.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: The reason for the rule change is that ESSB 6437 passed in the 2008 legislative session and requires implementation of procedures for regulating bail bond and recovery agents. EHB 3381.PL also passed in the 2008 legislative session and authorizes the program to raise fees to administer the changes made in chapter 18.185 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 308-19-030, 308-19-100, 308-19-101, 308-19-102, 308-19-130, 308-19-140, 308-19-300, 308-19-305, 308-19-310, and 308-19-450; and new sections WAC 308-19-302 and 309-19-330.

Statutory Authority for Adoption: Chapter 18.185 RCW.

Adopted under notice filed as WSR 08-15-084 on July 16, 2008.

Changes Other than Editing from Proposed to Adopted Version: There is one minor change made to WAC 308-19-302. The number of hours for bail bond agent continued education reduced from eight hours to four hours. The change is a request from the industry.

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 1, Amended 11, 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 1, Amended 12, 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 12, Repealed 0.

Date Adopted: September 23, 2008.

Ralph Osgood
Assistant Director

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-030 Definitions. (1) Words and terms used in these rules shall have the same meaning as each has under chapter 18.185 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning. Also see RCW 18.185.010 for other definitions.

(2) "Principal partner" means the partner who is the qualified agent of a bail bond agency and who exercises operational control over the agency.

(3) "Bail bond" means the contract between the defendant, the surety and/or the court to insure the appearance of

the accused before the court(s) at such time as the court may direct. These bonds may require annual renewal.

(4) "Property bond agent" means a surety that posts security in the form of personal or real estate for compensation to assure the appearance of a defendant.

(5) "Surety" as it relates to bail bonds, means the depositor/owner of cash if a cash bail bond, the property owner(s) if a property bond, the insurance company if a corporate surety bond, that guarantees performance of the bail bond contract for compensation.

(6) "Principal/defendant" means the accused, for whom a bail bond may be obtained.

(7) "Exonerate" means the discharging of the bail bond by the court.

(8) "Indemnitor" means the person placing security with an agency/agent, to secure the agency against loss for the release of a defendant(s) on a bail bond.

(9) "Clients" means defendants and indemnitors.

(10) "Affidavit" means a written statement made under oath as provided in RCW 10.19.160.

(11) "Indemnity agreement" means the contract signed by the indemnitor that states the obligations the indemnitor(s) is/are assuming.

(12) "Collateral receipt" means an accurate description of the security given to an indemnitor by the receiving agency's agent, in its fiduciary capacity, listing all collateral given as security for a bail bond and held by the agency/agent until the bail bond is exonerated by the court or a forfeiture occurs. The receipt shall name the owner of the collateral, the defendant, and the bond number, and specify the terms for redemption of the collateral including any fees charged for storage.

(13) "Surrender form" means the form used to return to custody a defendant for violation of bond conditions, and the indemnitor's withdrawal from a bail bond with an affidavit in accordance with RCW 10.19.160, or a letter of forfeiture from a court in accordance to the bail contract.

(14) "Letter of forfeiture" means a notice in varied forms, sent to a bail bond agency/branch office, advising the agency/branch office that a defendant who has secured a bail bond with that agency has failed to appear on a given date in a given court in accordance with RCW 10.19.090. The court has made a demand for the surrender of the defendant, or payment of the face amount of the bond by a given date.

(15) "Letter of demand" means any form of notice to the indemnitor/defendant that the collateral placed in trust has come under jeopardy because of a failure to appear or violation of bail.

(16) "Corporate surety bail bonds" means a bail bond contract that is guaranteed by a domestic, foreign or alien insurance company which has been qualified to transact surety insurance business in Washington state by the insurance commissioner.

(17) "Build-up fund" (also known as "BUF fund" or "escrow fund" or "trust fund") means that percentage of money obtained from collected premiums paid by the agent to the corporate surety company for the purpose of indemnifying the corporate surety from loss caused by the agent.

(18) "Endorsement" means that a bail bond agent or bail bond qualified agent licensee has met all licensing requirements for a bail bond recovery agent license and is authorized to perform the duties of both a bail bond agent and a bail bond recovery agent. Such licenses shall be issued by the department and will clearly state the dual purpose of the license.

(19) "Forced entry" means physical entry into a dwelling without the occupant's knowledge or consent for the purpose of apprehending a defendant subject to a bond.

(20) "Credentialed trainer" means an individual who has been certified by a state or national association to provide training to industry members based upon formal training and industry knowledge.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-100 Applying for a bail bond agent license. After the applicant meets the requirements of RCW 18.185.020 he/she shall:

(1) Complete an application for a license on a form provided by the department of licensing.

(2) Inform the department if he/she has an insurance surety license and with what company he/she is affiliated.

(3) Pay a fee or fees as listed in WAC 308-19-130.

(4) Pass a written exam administered by the department or submit proof of twelve hours of prelicense training as provided in Part D, WAC 308-19-300. The training must have occurred within the previous six months or less.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-101 Applying for a bail bond recovery agent license or endorsement to a bail bond agent license. ((~~An applicant for a bail bond recovery agent license endorsement must first meet the requirements stated in the bail bond agents law,~~)) After the applicant meets the requirements of RCW 18.185.020 (1), (2) and (3), and ((~~be~~)) is in good standing with the department((~~. The following materials must be submitted by all applicants for a bail bond recovery agent license or endorsement~~)) he or she shall:

(1) ((~~A bail bond recovery agent license or endorsement application completed in full;~~)) Complete an application for a license or an endorsement on a form provided by the department;

(2) ((~~Proof that the applicant directly submitted the~~)) Submit a completed fingerprint card ((~~and fees to the Washington state patrol~~));

(3) ((~~A copy of~~)) Attest on the application form to having earned a high school diploma or GED or submit proof of three years experience in the bail industry;

(4) Submit a copy of a current and valid concealed pistol license.

(5) If applicant is retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, submit proof to the department describing length of service, duties and date of retirement or separation or;

((~~if applicant is not retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, the applicant must~~)) submit a certificate or transcript showing

the applicant has completed ((~~a course consisting of not less than four hours of study which includes the following:~~

~~(a) Civil and criminal law:~~

~~(I) State statutes relating to bail regulations;~~

~~(ii) Constitutional law;~~

~~(iii) Procedures for exoneration and surrendering defendants into custody;~~

~~(iv) Civil liability;~~

~~(v) Civil rights of persons who are detained in custody. The knowledge in law may be accomplished through self-study. Self-study applicants must submit a written statement attesting to their knowledge in the subjects as stated in this section.~~

~~(b) Procedures for field operations, including, but not limited to:~~

~~(i) Use of force and degrees of force;~~

~~(ii) Safety techniques;~~

~~(iii) Entering and searching buildings;~~

~~(iv) Custody and transportation of prisoners including persons who are mentally ill or under the influence of alcohol or drugs;~~

~~(v) Defensive tactics;~~

~~(vi) Power of arrest;~~

~~(vii) Contracts;~~

~~(viii) Powers of a bail bond recovery agent;~~

~~(c) The basic principles of identifying and locating defendants. Public records and confidentially; surveillance.~~

~~(5) Proof of firearm training shall be submitted by applicants who intend to carry a firearm while engaging in the business of a bail bond recovery agent, or while traveling to or from such business. Such proof may be established by submission of a firearm certification issued by the criminal justice training commission.~~

~~(6) Proof of training certification in the following tools: Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units.~~

~~(7) Return completed applications to:~~

~~Department of Licensing~~
~~Bail Bond Program~~
~~P.O. Box 9048~~
~~Olympia, WA 98507-9048~~

~~(8)~~)) thirty-two hours of field operations classes as stated in WAC 308-19-305;

(6) Pay a fee or fees as listed in WAC 308-19-130((~~.~~

~~(9) After the department receives the completed application and fees, a notification regarding examination dates and times will be mailed to the address of the applicant by the department.~~));

(7) Pass a written exam administered by the department.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-102 Submitting fingerprint cards ((~~to the Washington state patrol~~)) for a criminal history background check. Every applicant for a bail bond recovery agent license or endorsement shall have a fingerprint criminal history background check conducted.

(((~~(1) The department shall provide fingerprint cards to all applicants.~~

~~(2)~~)) Applicants shall be fingerprinted by a law enforcement agency on a fingerprint card provided by the department and pay any fees required by the law enforcement agency providing the fingerprinting service.

(((~~(3) Applicants shall submit the completed fingerprint card to the Washington state patrol with the appropriate fees charged under WAC 446-20-600, Fees. Checks or money orders made payable to the Washington state patrol, identification and criminal history section, shall be mailed with the fingerprint card to P.O. Box 42633, Olympia, Washington 98504-2633.~~

~~(4) Results of the background checks will be sent directly to the department.~~

~~(5) If the fingerprint card is rejected by Washington state patrol or the Federal Bureau of Investigation, the applicant will be notified by the department that the applicant must be reprinted and resubmit the fingerprint card to the Washington state patrol with the rejected cards and the attached reject slip.~~))

AMENDATORY SECTION (Amending WSR 06-21-082, filed 10/17/06, effective 11/17/06)

WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees. The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

Title of Fee	**Fee**
Bail bond agency/branch office:	
Application	$1,200.00
License renewal	((~~1,000.00~~)) 1,150.00
Late renewal with penalty	1,200.00
Bail bond agent:	
Original license	500.00
License renewal	((~~500.00~~)) 575.00
Late renewal with penalty	600.00
Change of qualified agent	250.00
Original endorsement to the bail bond agent license	100.00
Endorsement renewal	100.00
Endorsement renewal with penalty	150.00
Bail bond recovery agent license:	
Original license	((~~400.00~~)) 450.00 (includes background check fees)
License renewal	((~~400.00~~)) 475.00
Late renewal with penalty	500.00

Title of Fee	Fee
Examinations:	
Reexamination fee	25.00

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-140 Renewal and expiration of licenses and endorsements. (1) Licenses and endorsements issued to bail bond agents, bail bond agencies, branch offices, or bail bond recovery agents expire one year from the date of issue.

(2) Licenses and endorsements must be renewed each year on or before the date of expiration and a renewal fee as prescribed by the director in WAC 308-19-130 must be paid.

(3) If the application for a license or endorsement renewal is not received by the director on or before the renewal date, a penalty fee as prescribed by the director in WAC 308-19-130 shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

(4) A license or endorsement shall be canceled if an application for a renewal of that license or endorsement is not received by the director within one year from the date of expiration. A person may obtain a new license or endorsement by satisfying the procedures and qualifications for licensing, including the successful completion of any current examination and education requirements.

(5) No bail bond agent, or bail bond agency shall engage in the sale or issuance of bail bonds if their license has expired. No bail bond recovery agent shall perform the duties of a bail bond recovery agent if his/her license has expired.

(6) When the director receives verification that a bail bond ((~~agency~~)) agent or recovery agent license has expired or has been revoked or suspended, the director shall advise correction centers.

(7) By renewing the bail bond agent, bail bond recovery agent, or bail bond qualified agent license with the department, the licensee is making declaration that they have met the requirements for annual continued education.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-300 Prelicense training and examination requirements for bail bond agents, bail bond agency, and qualified bail bond agent license applicants. (1) ((~~The training and examination requirements for bail bond agent license applicants under RCW 18.185.060, shall include, at a minimum:~~

~~(a) Four hours of training in the following subjects:~~

~~(i) Bail bond licensing laws;~~

~~(ii) Court procedures relating to bail bonds;~~

~~(iii) Criminal procedure, Title 10 RCW;~~

~~(iv) Contracts and bail bond agreements;~~

~~(v) Preparation of promissory notes, mortgages, deeds of trust, assignments and other documents affecting property;~~

~~(vi) Care and storage of personal property;~~

~~(vii) Forfeiture of collateral, judgements and collection;~~

~~(viii) Washington Insurance Code, Title 48 RCW;~~

~~(ix) Laws relating to notary publies, chapter 42.44 RCW;~~

~~(x) Contact with clients, courts and law enforcement;~~

~~(xi) Sexual harassment.~~

~~(b) A licensed qualified agent shall certify on each bail bond agent's license application that the training required in this section has been completed.~~

~~(2)~~)) Beginning November 1, 2008, all bail bond agents and qualified agent applicants must provide proof of twelve hours of training or take a written state exam and achieve a passing score of at least eighty-five percent.

(a) The prelicense training must consist of eight hours of instruction provided by a credentialed trainer or other department approved source in the topic requirements listed below in subsection (3) of this section;

(b) The prelicense training must also consist of four hours of self study or formal training in the laws and rules relating to bail bonds.

(2) Proof of the eight hours of prelicense instruction provided by a credentialed trainer or other department approved source must be submitted with the bail bond agent or qualified agent application form provided by the department.

(3) The prelicense bail bond agent training topic requirements include:

(a) The basics of bail bonds;

(b) Responsibilities of a bail bond agent;

(c) Understanding power of attorney;

(d) Court jurisdiction;

(e) Articulated offense;

(f) Understanding the liability in surety bonds;

(g) Role in criminal justice;

(h) The rights of the clients;

(i) Ethics pertaining to how to treat your clients;

(j) Sexual harassment between agents and clients;

(k) Transporting clients;

(l) Phone service in jails;

(m) How to be in compliance with jail requirements;

(n) Collect call companies;

(o) Harassment and no contact orders of the client;

(p) Collateral;

(q) General recordkeeping;

(r) Contracts;

(s) Basic requirements of bail bond recovery agents;

(t) Understanding of the privacy laws;

(u) The basics of notaries;

(v) Basic understanding of the trust account; and

(w) Application of the Consumer Protection Act.

(4) Approved sources for bail bond agent prelicense training include:

(a) National or local industry associations;

(b) Certified bail agent on-line education courses;

(c) Credentialed licensed bail bond agents; and

(d) Other sources determined by the department.

(5) The examination requirement for ((~~bail bond agency or~~)) qualified bail bond agent license applicants under RCW 18.185.030 (1)(a), shall also include, as a minimum:

(a) All of the subjects as listed in subsection (((~~(1)(a)~~))) (3) of this section; and

(b) At a minimum, the following subjects:

(i) Recordkeeping and filing;

(ii) Business licensing, taxation and related reporting and recordkeeping requirements.

(iii) Personnel management;

(iv) Laws relating to employment;

(v) The Americans with Disabilities Act;

(((~~(3) The examination for bail bond agency or qualified bail bond agent license applicants shall consist of a minimum of fifty questions covering the subjects listed above in subsection (2)(a) and (b) of this section.~~)) (6) A score of eighty-five percent must be achieved in order to pass the examination. Applicants who fail to achieve an eighty-five percent score will be required to wait a minimum of ((~~fourteen~~)) seven days before reexamination.

(((~~(4) The director will certify training and examination programs for bail bond qualified agents and bail bond agents license applications.~~

~~(5) Every bail bond agent shall present to the director a letter stating training they have received while working as a trainee for an agency, including the name of the principal instructor before the director issues the person a bail bond license. This letter shall be signed by the qualified agent and shall also include a statement that the qualified agent is aware that they are taking responsibility for the agent.~~))

NEW SECTION

WAC 308-19-302 Continuing education for bail bond agents. (1) Beginning July 1, 2009, all bail bond agents and qualified agents must provide proof of four hours of continued education before their license can be renewed. Proof must be submitted on a form provided by the department.

(2) Continued education must be in the following topic areas:

(a) How to work with the courts systems;

(b) Refresher course relating to relative laws;

(c) Ethics;

(d) Transporting defendants between other states; and

(e) Other topics applicable to the profession.

(3) Approved continued education providers include:

(a) National or local industry associations;

(b) Certified bail agent on-line education courses; and

(c) Other sources determined by the department.

(4) Continued education hours cannot be carried forward to the following year.

(a) A licensee may not repeat a course for credit during the same renewal period.

(b) Continued education courses must be taken within the same year of the renewal period.

(c) Licensees acting as a credentialed trainer of an approved continued education course will receive the same credit for the course they teach as the licensees attending receive.

(5) By renewing the bail bond agent or bail bond qualified agent license with the department, the licensee is making declaration that they have met the requirements for annual continued education.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-305 Minimum prelicense training requirements and exceptions for bail bond recovery agents. (1) Applicants for a license or an endorsement as a bail bond recovery agent must complete not less than ((~~four~~)) thirty-two hours of ((~~a course of self-study, training and/or certification~~)) prelicense training in field operations and self-study in the following subjects, except as otherwise provided in this section.

(a) Prelicense training in civil or criminal law can be achieved through public or private instruction or self-study and must include the following training topics:

(i) State statutes relating to bail regulations;

(ii) Constitutional law;

(iii) Procedures for surrendering defendants into custody;

(iv) Procedures for exoneration;

(v) Civil liability;

(vi) Civil rights of persons who are detained in custody;

(vii) Basic principles of identifying and locating defendants to include public records and confidentially, and surveillance;

(viii) Contracts;

(ix) Powers of a bail bond recovery agent;

(b) Prelicense training in procedures for field operations can be achieved through public or private instruction and must include the following training and certifications:

(i) Training in use of force and degrees of force, including verbal, Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units((~~.~~));

(ii) ((~~Certification in the following defensive tools, Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units within twelve months of applying for a license or endorsement;~~

~~(iii)~~)) Safety techniques;

(((~~(iv)~~))) (iii) Entering and searching buildings;

(((~~(v)~~))) (iv) The custody and transportation of prisoners including persons who are violent, emotionally disturbed or under the influence of alcohol, or drugs;

(((~~(vi)~~))) (v) Defensive tactics;

(((~~(vii)~~))) (vi) Application of restraints/handcuffing procedures;

(((~~(viii)~~))) (vii) All applicants shall obtain ((~~firearm~~)) gun safety training from an approved trainer, or applicants intending to carry a firearm as a bail bond recovery agent shall obtain and keep current firearm certification from the criminal justice training commission;

(viii) Certification in the following defensive tools: Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units within twelve months of applying for a license or endorsement.

(2) In place of completing the prelicense training in procedures for field operations established in subsection (1) of this section required under RCW 18.185.260, an applicant may submit proof to the department that he/she has completed a course of training required by a municipal, state or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace officer within the past six years.

(((~~(3) Applicants may submit proof of previously meeting prelicense training requirements in procedures for field oper-~~

~~ations in subsection (1) of this section between May 1, 2005, and July 1, 2005. The purpose of this rule is to allow applicants advance notice whether or not the applicant will be required to take additional training before the license requirements are in effect on January 1, 2006. The proof must be submitted in writing and include: The applicant's name, address and telephone number, the name, address, and telephone number of the training facility attended, a copy of the training curriculum which the applicant received training in, including the number of hours devoted to each topic, and documentation of certification of training accomplishments related to the training requirements set forth in subsection (1) of this section. The department will issue written notification to the applicant, stating acceptance of the prelicense training received, or a written notification and explanation for the department's denial of the prelicense training received.~~

~~(4) The training the applicant receives should prepare the applicant to achieve a passing score on the written examination administered under chapter 18.185 RCW.~~))

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-310 Prelicense examination requirements for bail bond recovery agents. Each applicant for a bail bond recovery agent license or endorsement shall pass an examination demonstrating their knowledge and proficiency in all of the training requirements set forth in WAC 308-19-305. ((~~The examination shall consist of fifty questions. Applicants shall correctly answer thirty five examination questions to pass the examination.~~)) Applicants who fail to achieve a passing score of eighty-five percent will be required to wait a minimum of seven days before reexamination and pay the required reexamination fee.

NEW SECTION

WAC 308-19-330 Continued education and recertification for bail recovery agents. (1) Beginning July 1, 2009, bail recovery agents must attest to having participated in at least eight hours of annual training in applicable fields of study relating to the operations of bail recovery to be eligible for renewing their license. Bail recovery agents must keep a record of the annual training and make the record available to the department for three years.

(2) If a bail recovery agent carries a firearm, or other weapons, it is their obligation to be recertified annually. The hours for firearm, or other weapons, recertification cannot be counted towards annual training hours.

(3) By renewing the bail bond recovery agent license with the department, the licensee is making declaration that they have met the requirements for annual continued education.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-450 Planned forced entry and forced entry reporting—Procedure requirements. When the apprehension of a fugitive defendant meets the definition of RCW 18.185.010(12) Planned forced entry, the bail bond recovery agent shall follow the procedure requirements in RCW 18.185.300.

(1) In addition to the minimum notification requirements of RCW 18.185.300, the notification to law enforcement must provide any prior known risk factors of which the bail bond recovery agent is aware including knowledge regarding any warrants.

(2)(a) Beginning November 1, 2008, bail recovery agents shall report to the department within ten business days after a forced entry on a form provided by the department the following information:

(i) Date and time of the forced entry;

(ii) Location;

(iii) Defendant name;

(iv) Bail bond agent named on the recovery contract;

(v) Bail recovery agent names who participated in the forced entry;

(vi) Was any person present during the forced entry injured?

(vii) Was property damaged?

(viii) Was the defendant present?

(ix) Was the defendant surrendered to jail?

(b) The Forced Entry Reporting Form can be submitted to the department by e-mail, fax or regular postage mail to the address information on the form.

WSR 08-20-053
PERMANENT RULES
CENTRAL WASHINGTON UNIVERSITY

[Filed September 24, 2008, 9:24 a.m., effective October 25, 2008]

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

Purpose: Modify existing rules to comply with current administrative practices.

Citation of Existing Rules Affected by this Order: Amending WAC 106-120-004, 106-120-006, 106-120-007, 106-120-024, 106-120-027, 106-120-028, 106-120-131, 106-120-132, and 106-120-143.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

Adopted under notice filed as WSR 08-17-073 on August 19, 2008.

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 9, 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: September 23, 2008.

Jerilyn S. McIntyre
President

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-004 Definitions. (1) "University" shall mean Central Washington University.

(2) "Vice-president" shall mean the vice-president for student affairs and enrollment management of the university or the vice-president's designee.

(3) "Student" shall mean a person enrolled either full or part time, pursuing undergraduate or graduate studies, or extension studies, or a person accepted for admission or readmission to the university.

(4) "University community" shall include the employees and students of Central Washington University and all property and equipment of the university.

(5) "Hazing" shall include any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending Central Washington University. The term does not include customary athletic events or other similar contests or competitions.

(6) "Sexual assault" occurs when the act is intentional and is committed either by:

(a) Physical force, violence, threat, or intimidation;

(b) Ignoring the objections of another person;

(c) Causing another's intoxication or impairment through the use of alcohol or drugs; or

(d) Taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to consent.

(7) "Sexual misconduct" occurs when an act is committed without intent to harm another and where, by failing to correctly assess the circumstances, a person mistakenly believes that effective consent was given and did not meet his/her responsibility to gain effective consent.

(8) "Sexual harassment" is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. More specifically, sexually harassing behavior includes, but is not limited to the following:

(a) Gender harassment, including sexist statements and behaviors that convey insulting, degrading, or sexist attitudes;

(b) Seductive behavior encompassing unwanted, inappropriate, and offensive physical or verbal sexual advances;

(c) Sexual bribery, involving solicitation of sexual activity or other sex-linked behavior by promise of reward;

(d) Sexual coercion of sexual activity or other sex-linked behavior by threat of punishment; and

(e) Sexual assault, attempted rape, and rape. Additional examples of sexual harassment can be found in the university's sexual harassment policy. (CWU Policies Manual 2-2.2.3.2 http://www.cwu.edu/~pres/policies/Part2-2.2.pdf).

(9) "Stalking" is a legal term for repeated harassment or other forms of invasion of a person's privacy in a manner that causes fear to its target. Stalking may include such acts as repeated following; unwanted contact (by letter or other means of communication); observing a person's actions closely for an extended period of time; or contacting family members, friends, or associates of a target inappropriately.

(10) Burden of proof: In determining whether sufficient cause exists, the burden of proof shall be on the university which must establish, by a preponderance of the evidence, that the student is responsible for a violation of the student conduct code. For the purpose of this code, the phrase "preponderance of the evidence," means that it is more likely that the student charged violated the student code by engaging in the conduct for which he/she is charged than that he/she did not.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-006 Students subject to student conduct code. Any student is subject to these rules, independent of any other status the individual may have with the university. Any action taken against a student under these rules shall be independent of other actions taken by virtue of another relationship with the university in addition to that of student.

The student conduct code shall apply to a student's conduct, even if the student withdraws from school, while a disciplinary matter is pending.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-007 Cooperation with law enforcement agencies. Central Washington University distinguishes its responsibility for student conduct from the controls imposed by the larger community beyond the university, and of which the university is a part. When students are charged with violations of laws of the nation or state, or ordinances of the county or city, the university will neither request nor agree to special consideration for students because of their status as students, but the university will cooperate with law enforcement agencies, courts, and any other agencies in programs for rehabilitation of students.

((~~Central Washington University reserves the right to impose the provisions of this chapter and apply further sanctions before or after law enforcement agencies, courts, and other agencies have imposed penalties or otherwise disposed of a case.~~)) University disciplinary proceedings may be initiated against a student charged with conduct that potentially violates both the criminal law and this student conduct code (that is if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal arrest and prosecution. Proceedings under this student conduct code may be carried out prior to, simultaneously with, or following civil or criminal proceedings.

University proceedings are not subject to challenge or dismissal referencing, as a basis, that criminal charges involving the same incident have been dismissed or reduced. Determinations made or sanctions imposed under this student

conduct code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of university rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant. The university is not bound by the rules of evidence observed by courts in this state and may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-024 Student conduct council—Chair. A student conduct council chair shall be elected at the ((~~first meeting each academic year and shall continue in office until the person resigns or is recalled~~)) beginning of each hearing and preside over that hearing. The duties of the chair are as follows:

(1) ((~~To call regular and special meetings of the council by notification to members at least twenty-four hours in advance of the meeting time, except in bona fide emergency situations.~~

~~(2) To preside over all regular and special meetings.~~

~~(3) To act as presiding officer at all meetings of the proceeding board.~~)) To preside over the hearing process;

(2) To draft a letter regarding the outcome of the hearing to include all sanctions and actions required by the student appearing before the student conduct council; and

(3) After a draft is placed on university letterhead, the chair will sign the letter.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-027 Proscribed conduct. A student shall be subject to disciplinary action or sanction upon violation of any of the following conduct proscriptions:

(1) Disruptive and disorderly conduct which interferes with the rights and opportunities of other students to pursue their academic studies.

(2) Academic dishonesty in all its forms including, but not limited to:

(a) Cheating on tests.

(b) Copying from another student's test paper.

(c) Using materials during a test not authorized by the person giving the test.

(d) Collaboration with any other person during a test without authority.

(e) Knowingly obtaining, using, buying, selling, transporting, or soliciting in whole or in part the contents of an unadministered test or information about an unadministered test.

(f) Bribing any other person to obtain an unadministered test or information about an unadministered test.

(g) Substitution for another student or permitting any other person to substitute for oneself to take a test.

(h) "Plagiarism" which shall mean the appropriation of any other person's work and the unacknowledged incorporation of that work in one's own work offered for credit.

(i) "Collusion" which shall mean the unauthorized collaboration with any other person in preparing work offered for credit.

(3) Filing a formal complaint with the vice-president for student affairs and enrollment management with the intention of falsely accusing another with having violated a provision of this code.

(4) Furnishing false information to any university official, especially during the investigation of alleged violations of this code.

(5) Furnishing false information to the student conduct council with the intent to deceive, the intimidation of witnesses, the destruction of evidence with the intent to deny its presentation to the student conduct council or the vice-president when properly notified to appear.

(6) Intentionally setting off a fire alarm or reporting a fire or other emergency or tampering with fire or emergency equipment except when done with the reasonable belief in the existence of a need therefore.

(7) Forgery, alteration, or misuse of university documents, records, or identification cards.

(8) Sexual harassment including stalking, forced and/or nonconsensual sexual activity in any form, including sexual assault and sexual misconduct.

(9) Actual or attempted physical/emotional abuse of any person or conduct which threatens or endangers the health and safety of any person or which intentionally or recklessly causes a reasonable apprehension of harm to any person.

(10) Harassment of any sort or any malicious act which causes harm to any person's physical or mental well being.

(11) Recklessly engaging in conduct which creates a substantial risk of physical harm to another person.

(12) Creating noise in such a way as to interfere with university functions or using sound amplification equipment in a loud and raucous manner.

(13) Theft or malicious destruction, damage or misuse of university property, private property of another member of the university community, whether occurring on or off campus; or theft or malicious destruction, damage or misuse on campus of property of a nonmember of the university community.

(14) Unauthorized seizure or occupation or unauthorized presence in any university building or facility.

(15) Intentional disruption or obstruction of teaching, research, administration, disciplinary proceedings, or other university activities or programs whether occurring on or off campus or of activities or programs authorized or permitted by the university pursuant to the provisions of this chapter.

(16) Intentional participation in a demonstration which is in violation of rules and regulations governing demonstrations promulgated by the university pursuant to the provisions of this chapter.

(17) Unauthorized entry upon the property of the university or into a university facility or any portion thereof which has been reserved, restricted in use, or placed off limits; unauthorized presence in any university facility after closing hours; or unauthorized possession or use of a key to any university facility.

(18) Possession or use on campus of any firearm, dangerous weapon or incendiary device or explosive unless such possession or use has been authorized by the university.

(19) Possession, use, or distribution on campus of any controlled substance as defined by the laws of the United

States or the state of Washington except as expressly permitted by law.

(20) Violation of the university policy on alcoholic beverages which states:

(a) Persons twenty-one years of age or older may possess and/or consume alcoholic beverages within the privacy of their residence hall rooms or apartments. Washington state law provides severe penalties for the possession or consumption of alcoholic beverages by persons under twenty-one years of age and for persons who furnish alcoholic beverages to minors. All university students should be aware of these laws and the possible consequences of violations.

(b) The university does not condone the consumption of alcoholic beverages by minors at functions sponsored by Central Washington University organizations. Organizations are held responsible for the conduct of their members at functions sponsored by the organization and for failure to comply with Washington state law.

(c) The student conduct council may place on probation any organization or prohibit a specific campus social function when the consumption of alcoholic beverages has become a problem of concern to the university.

(21) Conduct which violates the university policies on computer use.

(22) Violation of clearly stated proscriptions in any published rule or regulation promulgated by any official campus committee, commission, or council acting within the scope of its authority.

(23) Violation on or off campus of any university policy, city, county, state, or federal law. This includes participation in any university sponsored activity.

(24) Conspiracy to engage in hazing or participation in hazing of another.

(25) Failure to comply with the directive of a university official acting in the scope of authority may result in disciplinary action.

Any questions of interpretation of application or revision of the student conduct code shall be referred to the vice-president for student affairs or their designee.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-028 Disciplinary sanctions. The following may be the sanctions imposed by the vice-president for student affairs and enrollment management, or the vice-president's designee, or by the student conduct council.

(1) Warning. Notice in writing that the student has violated university rules or regulations or has otherwise failed to meet the university's standard of conduct. Such warning will contain the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary actions described below.

(2) Disciplinary probation. Formal action specifying the conditions under which a student may continue to be a student at the university including limitation of specified activities, movement, or presence on the CWU campus, including restricted access to any university building. The conditions specified may be in effect for a limited period of time or for the duration of the student's attendance at the university.

(3) Restitution. An individual student may be required to make restitution for damage or loss to university or other property and for injury to persons. Failure to make restitution will result in suspension until payment is made.

(4) Suspension. Dismissal from the university and from status as a student for a stated period. The notice suspending the student will state in writing the term of the suspension and any condition(s) that must be met before readmission is granted. The student so suspended must demonstrate that the conditions for readmission have been met. There is to be no refund of fees for the quarter in which the action is taken, but fees paid in advance for a subsequent quarter are to be refunded.

(5) Deferred suspension. Notice of suspension from the university with the provision that the student may remain enrolled contingent on meeting a specified condition. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(6) Expulsion. The surrender of all rights and privileges of membership in the university community and exclusion from the campus without any possibility for return.

(7) For the specific instance of hazing, forfeiture of any entitlement to state-funded grants, scholarships, or awards for a specified period of time.

More than one of the sanctions listed above may be imposed for any single violation.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-131 Initiation, investigation, and disposition of complaints. (1) Philosophy.

The problem-solving team deals with student behaviors which constitute violations of this code. The problem-solving team meets weekly to review residence hall incident reports filed by resident assistants and building managers, as well as police reports which deal with both on- and off-campus students.

The problem-solving team works together to suggest intervention strategies which are considered to be most appropriate and effective for eliminating specific negative student behaviors. The problem-solving team is chaired by the ((~~associate~~)) assistant to the vice-president for student affairs and includes representatives from public safety and police services, university housing and new student programs, the center for student empowerment, counseling services, international studies and programs, and the wildcat wellness center.

(2) Process.

Incidents that come to the attention of the problem-solving team may be addressed in one of the following ways:

(a) No action;

(b) Informal meetings with relevant university officials;

(c) Referral to the residence hall arbitration council, for resolving certain disputes within the residence halls;

(d) Initiate proceedings in the office of the vice-president for student affairs and enrollment management.

Official proceedings in the vice-president's office are conducted when it becomes apparent to the problem-solving team that the initial and more informal forms of intervention with a student have been unsuccessful in positively modifying a student's behavior.

(3) Investigation and disposition of complaints. The following rules will govern the processing of alleged violations of the proscribed conduct listed in the student conduct code with one exception. Allegations of discrimination, based on race, color, creed, religion, national origin, sex (including sexual harassment), sexual orientation, gender identity and gender expression, age, marital status, disability, or status as a protected veteran will utilize a separate process in order to provide both parties their rights under the law and in accordance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Copies of the discrimination grievance process are available in the office of the vice-president for student affairs and enrollment management.

(a) A complaint alleging misconduct ((~~against any student at the university~~)) related to this student conduct code may be filed by anyone ((~~at~~)) and reported to the office of the vice-president for student affairs and enrollment management. The report should be in standardized written form. Students, faculty members, administrators, and other employees of the university shall have concurrent authority to request the commencement of the disciplinary proceedings provided for in this chapter. A person filing a complaint shall be complainant of record and should file the complaint as soon as possible or within twenty working days.

(b) Any student charged in a complaint shall receive written notification from the vice-president. Such notice shall:

(i) Inform the student that a complaint has been filed alleging that the student violated specific provisions of the student conduct code and the date of the violation(s);

(ii) Set forth those provisions allegedly violated;

(iii) Specify a time and date the student is required to meet with the vice-president or designee; and

(iv) Inform the student that failure to appear at the appointed time at the vice-president's office may subject the student to suspension from the university.

(4) When the vice-president meets with the student, the vice-president shall:

(a) Provide for the student a copy of the student conduct code;

(b) Review the facts of the alleged violation with the student; and

(c) Conduct an investigation into the alleged violation.

(5) Upon completion of the review with the student and/or the investigation, the vice-president may:

(a) Drop the charges, when they appear to be invalid or without substance or capricious;

(b) Issue a verbal warning;

(c) Apply any of the sanctions as outlined in WAC 106-120-028 if such sanction is warranted by the evidence;

(d) Refer the case to the student conduct council; or

(e) Invoke the summary suspension procedure as outlined in WAC 106-120-143 when deemed appropriate.

(6) The vice-president shall inform the student that only suspension and expulsion sanctions may be appealed to the student conduct council, and that if an appeal is made, the vice-president shall take no action or make any determination, except for summary suspension, in the matter other than to inform the student of the time, date, and location of the proceeding by the student conduct council.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-132 Procedures for proceeding before the student conduct council. (1) When a case is referred to the student conduct council the vice-president shall forward to the council:

(a) A statement describing the alleged misconduct;

(b) The name and address of the complainant;

(c) The name and address of the student charged; and

(d) All relevant facts and statements.

(2) The ((~~secretary to the council~~)) vice-president shall call a special meeting of the council and arrange for a proceeding in the following manner:

(a) The ((~~council~~)) vice-president shall determine the time and place of the proceeding, which shall be at least ((~~ten~~)) five working days after delivery of written notice to the student. In the interest of timeliness and efficiency, upon the request of either the student or the vice-president, this ((~~ten~~)) five working day interval may be waived by the vice-president, with the student's permission. Time and place shall be set to make the least inconvenience for all interested parties. ((~~The chair may change the time and place of the proceeding for sufficient cause.~~

~~(b) The council shall draw lots to determine a proceeding board consisting of five student names and three faculty names, with one student and one faculty serving as alternates to be available until the proceeding board has been constituted and the chair selected who will act as the proceeding officer.~~))

(b) The members of the council shall be selected by the vice-president from the list of students and faculty appointed by the council based on their ability to attend the scheduled hearing. The proceedings board will consist of three students and two faculty members; and if possible, one student and one faculty will serve as alternates. Faculty and student members may be substituted for each other when faculty or student members are not available. A chair will be selected from the group assigned for each hearing and will preside over that meeting acting as the official representative of the committee.

(c) No case shall be heard unless ((~~the full membership of~~)) all the ((~~proceeding~~)) hearing board is present, unless approved by the appealing student.

(d) All cases will be heard de novo, whether the case be an appeal from a subsidiary judicial body or is heard as an original complaint.

(3) The student affairs and enrollment management secretary ((~~to the council~~)) shall send written notice by ((~~certified~~)) e-mail and mail of the proceeding to the student's last known address. Certified mail may be used, if appropriate. The notice shall contain:

(a) A statement of the date, time, place and nature of the proceeding;

(b) ((~~To the extent known,~~)) A list of witnesses who will appear, to the extent known; and

(c) A summary description of any documentary or other physical evidence that would be presented by the university.

(4) The student shall have all authority possessed by the university to obtain information he/she specifically describes in writing and tenders to the ((~~council chair~~)) vice-president no later than two working days prior to the proceeding or to request the presence of witnesses, or the production of other evidence relevant to the proceeding. However, the university shall not be liable for information requested by the student or the presence of any witnesses when circumstances beyond the control of the university prevent the obtaining of such information or the attendance of such witnesses at the proceeding.

(5) Proceedings will ordinarily be held in closed session unless the proceeding board determines there is a compelling reason for the proceeding to be open, or the student requests an open proceeding. A closed proceeding shall include only members of the proceeding board, the vice-president, persons directly involved in the proceeding as parties and persons called as witnesses.

(6) The proceeding shall be audio tape recorded, and the tape shall be on file at the office of the vice-president for a period of three years.

(7) The university shall be represented by the vice-president who shall present the university's case against the student.

(8) The student must represent himself or herself. The student may be accompanied by counsel, or another third party, who may offer advice. If the student utilizes an attorney as advisor, the student must give to the vice-president two working days notice of intent to do so. If the student elects to be advised by an attorney, the vice-president may elect to have the university advised by an assistant attorney general.

(9) The council chair shall insure that:

(a) The proceeding is held in an orderly manner giving full care that the rights of all parties to a full, fair and impartial proceeding are maintained.

(b) The charges and supporting evidence or testimony shall be presented first, and that there is full opportunity for the accused student to challenge the testimony and/or evidence, and to cross examine appropriately.

(c) The student charged shall next present evidence or testimony to refute the charge, and that there is full opportunity for the accuser to challenge testimony and/or evidence, and to cross examine appropriately.

(d) Only those materials and matters presented at the proceeding will be considered as evidence. The presiding officer shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(10) Any person disruptive of the proceeding or any other procedure described in this document may be excluded from the process by the chair of the student conduct council or by the vice-president, using such means as are necessary to ensure an orderly process. Any student engaging in such interference shall be in contempt and may be summarily suspended from the university by the student conduct council or the vice-president immediately. The student shall be subject to a suspension or any lesser sanction as may be determined by the student conduct council or the vice-president at the time the interference takes place or within fifteen working days thereafter.

(11) The student has a right to a fair and impartial proceeding, but the student's failure to cooperate with or attend a proceeding shall not preclude the council from making its finding of facts, conclusions, and recommendations. Failure by the student to cooperate may be taken into consideration by the student conduct council and the vice-president in deciding the appropriate disciplinary action.

(12) Upon conclusion of the proceeding, the proceeding board in closed session shall consider all the evidence presented and decide by majority vote to exonerate the student or to impose one of the sanctions authorized by this document.

(13) The student shall be provided with a copy of the board's findings of fact and conclusions regarding whether the student did violate any rule or rules of the student conduct code and the board's decision as to the appropriate sanction to be imposed.

(14) If a student charged with misconduct under this code has been charged with a crime for the same act or closely related acts by federal, state, or local authorities, or if it appears that such criminal charge is under consideration, the student conduct council may postpone action on the complaint until there has been a disposition of the criminal charge or of the consideration of filing such charge. However, prior to action by other agencies, the council may proceed to hear and decide the case if in the judgment of the council, the nature of the alleged misconduct and the circumstances surrounding it pose a serious risk to the health or well-being of the student or other members of the university. If there is a determination of guilt by the council and if the subsequent criminal proceedings result in a judgment of acquittal, the student may petition the student conduct council for a rehearing.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-143 Summary suspension proceedings. The vice-president may summarily suspend any student from the university pending investigation, action of prosecution of charges of an alleged proscribed conduct violation or violations, if the vice-president has reason to believe that the student's physical or emotional safety and well-being, or the safety and well-being of other university community members, or the protection of property requires such suspension.

(1) If the vice-president finds it necessary to exercise the authority to summarily suspend a student the vice-president shall:

(a) Give to the student an oral or written notice of intent to determine if summary suspension is an appropriate action;

(b) Give an oral or written notice of the alleged misconduct and violation(s) to the student;

(c) Give an oral or written explanation of the evidence in support of the charge(s) to the student;

(d) Determine a time for the summary suspension proceeding to be held within ((~~thirty-six hours~~)) two working days;

(e) Give an oral or written notice of the time and place of the summary suspension proceeding before the vice-president; and

(f) Give an oral or written explanation of the summary suspension which may be imposed on the student.

(2) At the place and time designated for the summary suspension proceeding, the vice-president shall:

(a) Consider the evidence relating specifically to the probability of danger to the student, to others on the campus, or to property;

(b) Provide the student with an opportunity to show why continued presence on campus does not constitute a danger to the physical and emotional well being of self or others, or a danger to property;

(c) Give immediate oral notice of the decision to the student to be followed by written notice; and

(d) If summary suspension is warranted, summarily suspend the student for no more than fifteen working days with a student conduct council proceeding of the allegations to have commenced by the end of the suspension period.

(3) If a student has been instructed by the vice-president to appear for summary suspension proceedings and then fails to appear at the time designated, the vice-president may suspend the student from the university, and shall give written notice of suspension to the student at the last address of record on file with the university.

(4) During the period of summary suspension, the suspended student shall not enter the campus of the university other than to meet with the vice-president. However, the vice-president may grant the student special permission for the express purpose of meeting with faculty, staff, or students in preparation for a proceeding before the student conduct council.

WSR 08-20-054
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 24, 2008, 9:43 a.m., effective October 25, 2008]

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

Purpose: Rules are updated to reflect changes in the state revenues in the levy base due to three new state programs.

Citation of Existing Rules Affected by this Order: Amending WAC 392-139-310.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 08-15-107 on July 18, 2008.

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 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: September 24, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-21-037, filed 10/10/07, effective 11/10/07)

WAC 392-139-310 Determination of excess levy base. The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - operations;
4399 Transportation - operations;
4499 Transportation - depreciation;
6199 Transportation - operations;
6299 Transportation - operations; and
6399 Transportation - operations.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education;
4321 Special education;
6124 Special education supplemental;
6224 Special education supplemental; and
6324 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;
4155 Learning assistance;
4165 Transitional bilingual;
4163 Promoting academic success;
4166 Student achievement;
4365 Transitional bilingual;
6151 Disadvantaged;
6153 Migrant;
6164 Limited English proficiency;
6251 Disadvantaged;

6253 Migrant;
6264 Limited English proficiency;
6267 Indian education - JOB;
6268 Indian education - ED;
6351 Disadvantaged;
6353 Migrant;
6364 Limited English proficiency;
6367 Indian education - JOM; and
6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);
4398 School food services;
6198 School food services (federal);
6298 School food services;
6398 School food services; and
6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

310004 Full-day kindergarten;
4134 Middle school vocational;
4175 Professional development;
6176 Targeted assistance;
6276 Targeted assistance; and
6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - unassigned;
6100 Special purpose - OSPI - unassigned;
6121 Special education - Medicaid reimbursement;
6138 Secondary vocational education;
6146 Skills center;
6152 School improvement;
6154 Reading first;
6162 Math and science - professional development;
6200 Direct special purpose grants;
6221 Special education - Medicaid reimbursement;
6238 Secondary vocational education;
6246 Skills center;
6252 School improvement;
6254 Reading first;
6262 Math and science - professional development;
6300 Federal grants through other agencies - unassigned;
6310 Medicaid administrative match;
6321 Special education - Medicaid reimbursement;
6338 Secondary vocational education;
6346 Skills center;
6352 School improvement;
6354 Reading first; and
6362 Math and science - professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;
310004 Full-day kindergarten;
4121 Special education;
4134 Middle school vocational;
4155 Learning assistance;
4163 Promoting academic success;
4165 Transitional bilingual;
4166 Student achievement;
4174 Highly capable;
4175 Professional development;
4198 School food services (state);
4199 Transportation - operations;
4499 Transportation - depreciation;
6121 Special education - Medicaid reimbursements;
6124 Special education - supplemental;
6138 Secondary vocational education;
6146 Skills center;
6151 Disadvantaged;
6152 School improvement;
6153 Migrant;
6154 Reading first;
6162 Math and science - professional development;
6164 Limited English proficiency;
6176 Targeted assistance;
6198 School food services (federal); and
6199 Transportation - operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

4321 Special education;
4365 Transitional bilingual;
4398 School food services;
4399 Transportation - operations;
5200 General purpose direct federal grants - unassigned;
6100 Special purpose - OSPI - unassigned;
6200 Direct special purpose grants;
6221 Special education - Medicaid reimbursement;
6224 Special education supplemental;
6238 Secondary vocational education;
6246 Skills center;
6251 Disadvantaged;
6252 School improvement;
6253 Migrant;
6254 Reading first;
6262 Math and science - professional development;
6264 Limited English proficiency;
6267 Indian education - JOM;
6268 Indian education - ED;
6276 Targeted assistance;
6298 School food services;
6299 Transportation - operations;

6300 Federal grants through other agencies - unassigned;
6310 Medicaid administrative match;
6321 Special education - Medicaid reimbursement;
6324 Special education supplemental;
6338 Secondary vocational education;
6346 Skills center;
6351 Disadvantaged;
6352 School improvement;
6353 Migrant;
6354 Reading first;
6362 Math and science - professional development;
6364 Limited English proficiency;
6367 Indian education - JOM;
6368 Indian education - ED;
6376 Targeted assistance;
6398 School food services;
6399 Transportation - operations; and
6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

WSR 08-20-062
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed September 24, 2008, 4:12 p.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: The department is revising this rule to renumber the entire chapter to four digits for ease of reading and reference; update references to reflect current standards, codes and federal requirements; separate certain larger sections into smaller sections; simplify and clarify resident protection program sections; add language on electronic monitoring; and delete and update sections on department review of nursing home renewal licenses.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-97-005, 388-97-012, 388-97-017, 388-97-027, 388-97-032, 388-97-037, 388-97-042, 388-97-043, 388-97-047, 388-97-051, 388-97-052, 388-97-053, 388-97-055, 388-97-060, 388-97-065, 388-97-07005, 388-97-07010, 388-97-07015, 388-97-07020, 388-97-07025, 388-97-07030, 388-97-07035, 388-97-07040, 388-97-07045, 388-97-07050, 388-97-07055, 388-97-07060, 388-97-07065, 388-97-07070, 388-97-075, 388-97-076, 388-97-077, 388-97-08010, 388-97-08020, 388-97-08030, 388-97-08040, 388-97-08050, 388-97-08060, 388-97-08070, 388-97-085, 388-97-090, 388-97-097, 388-97-110, 388-97-115, 388-97-120, 388-97-12010, 388-97-12020, 388-97-12030, 388-97-12040, 388-97-12050, 388-97-12060, 388-97-12070, 388-97-125, 388-97-130, 388-97-135, 388-97-140, 388-97-143, 388-97-147, 388-97-155, 388-97-160, 388-97-162, 388-97-165, 388-97-170, 388-97-175, 388-97-180, 388-97-185, 388-97-190, 388-97-195, 388-97-202, 388-97-203, 388-97-204, 388-97-205, 388-97-212, 388-97-220, 388-97-247, 388-97-249, 388-97-251, 388-97-253, 388-97-260, 388-97-285, 388-97-295, 388-97-29510, 388-97-29520, 388-97-29530, 388-97-29540, 388-97-29550, 388-97-29560, 388-97-310, 388-97-315, 388-97-325, 388-97-32510, 388-97-32520, 388-97-32530, 388-97-32540, 388-97-32550, 388-97-32560, 388-97-32570, 388-97-32580, 388-97-330, 388-97-33010, 388-97-33020, 388-97-33030, 388-97-33040, 388-97-33050, 388-97-335, 388-97-33510, 388-97-33520, 388-97-33530, 388-97-33540, 388-97-33550, 388-97-33560, 388-97-33570, 388-97-33580, 388-97-340, 388-97-34010, 388-97-34020, 388-97-345, 388-97-347, 388-97-350, 388-97-35010, 388-97-35020, 388-97-35030, 388-97-35040, 388-97-35050, 388-97-35060, 388-97-352, 388-97-353, 388-97-355, 388-97-357, 388-97-35710, 388-97-35720, 388-97-360, 388-97-36010, 388-97-36020, 388-97-36030, 388-97-36040, 388-97-36050, 388-97-36060, 388-97-36070, 388-97-365, 388-97-36510, 388-97-36520, 388-97-36530, 388-97-370, 388-97-37010, 388-97-37020, 388-97-375, 388-97-385, 388-97-400, 388-97-40010, 388-97-401, 388-97-402, 388-97-403, 388-97-405, 388-97-410, 388-97-415, 388-97-420, 388-97-425, 388-97-430, 388-97-43010, 388-97-43020, 388-97-43030, 388-97-43040, 388-97-43050, 388-97-455, 388-97-45510, 388-97-460, 388-97-46010, 388-97-465, 388-97-46510, 388-97-46520, 388-97-46530, 388-97-46540, 388-97-46550, 388-97-46560, 388-97-46570, 388-97-46580, 388-97-46590, 388-97-470, 388-97-47010, 388-97-47020, 388-97-480, 388-97-48010, 388-97-48020, 388-97-48030, 388-97-48040, 388-97-550, 388-97-555, 388-97-560, 388-97-565, 388-97-570, 388-97-575, 388-97-580, 388-97-585, 388-97-590, 388-97-595, 388-97-600, 388-97-605, 388-97-610, 388-97-615, 388-97-620, 388-97-625, 388-97-630, 388-97-635, 388-97-640, 388-97-645, 388-97-650, 388-97-655, 388-97-660, 388-97-665, 388-97-670, 388-97-675, 388-97-680, 388-97-685, 388-97-690, and 388-97-695.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Other Authority: 42 C.F.R. 489.52.

Adopted under notice filed as WSR 08-14-065 on June 24 [25], 2008.

Changes Other than Editing from Proposed to Adopted Version:

NEW SECTION

WAC 388-97-0380 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-97-0400, the nursing home must not use the following in the facility or on the premises:

(a) Audio monitoring equipment; or

(b) Video monitoring equipment if it includes an audio component.

(2) The ~~facility~~ nursing home may video monitor and video record activities in the facility or on the premises, without an audio component, only in the following areas:

(a) Entrances and exits as long as the cameras are:

(i) Focused only on the entrance or exit doorways; and

(ii) Not focused on areas where residents gather.

(b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;

(c) ~~(b)~~ Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and

(d) ~~(c)~~ Designated smoking areas, subject to the following conditions:

(i) Residents have been assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera is clearly visible;

(iv) The video monitor is not viewable by general public; and

(v) The facility notifies all residents in writing of the use of video monitoring equipment.

NEW SECTION

WAC 388-97-0660 Resident protection program definition. As used in WAC 388-97-0680 through 388-97-0840, the term **"individual,"** means anyone, ~~including a volunteer,~~ used by the nursing home ~~facility~~ to provide services to residents who is alleged to have abandoned abused, neglected, misappropriated property of a resident or financially exploited a resident~~. or misappropriated a resident's property~~. "Individual" includes, but is not limited to, employees, contractors, and volunteers.

NEW SECTION

WAC 388-97-0680 Investigation of mandated reports. (1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

(a) The review of facility and state agency records;

(b) Interviews with anyone who may have relevant information about the allegation; and

(c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-97-0700 Preliminary finding. If, after review of the results of the investigation, the department ~~makes a preliminary~~ determines~~ation~~ that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property ~~funds~~, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual ~~is able to~~ demonstrates that the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-97-0720 Notification of preliminary finding. (1) Within ten working days of making a ~~it's~~ preliminary finding ~~determination~~, the department will send notice of the ~~preliminary~~ finding:

(a) To the individual by first class and certified mail, return receipt requested. The department may choose to substitute personal service for certified mail;

(b) To the current administrator of the facility where the incident occurred; and

(c) To the appropriate licensing agency.

(2) The notice will include the following information:

(a) A description of the allegation;

(b) The date and time of the incident, if known;

(c) That the individual may appeal the preliminary finding;

(d) That the preliminary finding will become final unless the individual makes a written request for a hearing within thirty days of the date of the notice; and

(e) That if the finding becomes final, it will be reported to the department's registry and the appropriate licensing authority.

(3) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may also provide notification of a preliminary finding to:

(a) Other divisions within the department;

(b) The agency, program or employer with which the individual was associated including the current employer, if known;

(c) Law enforcement; and

(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW.

NEW SECTION

WAC 388-97-0760 Hearing procedures to dispute preliminary finding. Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request; except as provided in subsection (6);

(2) Neither the department nor the individual can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal; except under the circumstances described in subsection 6;

(6) If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty-day requirement by a maximum of sixty days; and

(7) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge shall issue an order dismissing the appeal and the preliminary finding will become final.

NEW SECTION

WAC 388-97-0780 Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding~~:~~ and the individual does not ask for an administrative hearing within the timeframe provided under WAC 388-97-0740;

~~(b) The individual does not ask for an administrative hearing within the timeframe provided under WAC 388-97-0740(3); or;~~

(b) ~~(c)~~ The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-97-0760; or

(iii) Issues an initial order upholding the finding; or ~~and the individual does not appeal the initial order to the department's board of appeals within the required timeframe; or;~~

(c) ~~(d)~~ The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists ~~of individuals found to have abandoned abused, neglected, misappropriated property or financially exploited a vulnerable adult~~ under the following circumstances:

(a) The department determines the finding was made in error; ~~It is rescinded following judicial review;~~

(b) The finding is rescinded following judicial review; ~~The department determines the finding was in error;~~

(c) At least one year after a single ~~the~~ finding of neglect has been finalized, the department may remove the ~~single~~ finding of neglect from the department's registry or department lists based upon a written petition by the individual and in accordance with requirements of federal law, 42 U.S.C. 1396r (g)(1)(D); or

(d) The department is notified of the individual's death.

NEW SECTION

WAC 388-97-0800~~0820~~ Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

(1) The individual;

(2) The current administrator of the facility in which the incident occurred;

(3) The administrator of the facility that currently employs the individual, if known;

(4) The department's registry;

(5) The appropriate licensing authority; and

(6) Any other lists maintained by a state or federal agency as appropriate.

NEW SECTION

WAC 388-97-0820~~0800~~ Appeal of administrative law judge's initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual ~~department~~ appeals the administrative law judge's decision, the ~~department will not change the~~ finding will remain on ~~in~~ the department's registry or other lists. ~~records until a final hearing decision is issued.~~

NEW SECTION

WAC 388-97-0840 Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, or ~~and~~ financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about resident and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

A final cost-benefit analysis is available by contacting Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 237, Amended 0, Repealed 216.

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 237, Amended 0, Repealed 216.

Date Adopted: September 24, 2008.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-22 issue of the Register.

WSR 08-20-068
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed September 25, 2008, 8:51 a.m., effective October 26, 2008]

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

Purpose: The purpose of this rule-making order is to adopt changes to Title 415 WAC that contain typographical errors and incorrect references to repealed statutes and rules. The substance and meaning of these rules are not changing.

Citation of Existing Rules Affected by this Order: Amending WAC 415-02-010, 415-02-310, 415-02-350, 415-02-360, 415-112-544, 415-113-055, and 415-113-057.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: For WAC 415-02-310 and 415-02-360 is chapter 41.45 RCW; for WAC 415-112-544 is RCW 41.32.800, 41.32.860, 41.32.802, 41.32.862; and for WAC 415-113-055 and 415-113-057 is chapter 41.54 RCW.

Adopted under notice filed as WSR 08-15-093 on July 17, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: September 25, 2008.

Sandra J. Matheson
Director

AMENDATORY SECTION (Amending WSR 00-10-016, filed 4/21/00, effective 5/22/00)

WAC 415-02-010 Identification. The department of retirement systems is a department of state government created by chapter 105, Laws of 1975-'76 2nd ex. sess.

(1) The chief executive officer of the department of retirement systems is the director of retirement systems.

(2) Members of the public may obtain information, make submittals or requests, or obtain copies of agency decisions by addressing their requests or submittals to the director of the Department of Retirement Systems at P.O. Box 48380, Olympia, Washington, 98504. Upon receipt of such a request or submittal, the director shall forward the same to the proper officer or employee of the department of retirement systems for an appropriate response.

(3) Members of the public who wish to inspect and/or copy public records maintained by the agency pursuant to chapter ((~~42.17~~)) 42.56 RCW shall do so in accordance with the methods and procedures established in chapter 415-06 WAC.

AMENDATORY SECTION (Amending WSR 03-06-044, filed 2/27/03, effective 4/1/03)

WAC 415-02-310 How does the department use my age in calculating benefits? This section provides an overview of the several different ways in which the department uses age in calculating benefits. The department may use your age to determine your retirement date, early retirement factors to apply, survivor factors, or cost of living adjustment factors.

(1) **Present value:** The department uses a rounding method to determine your age when calculating what your future lifetime monthly benefit is worth in present-day dollars. If the number of months in your age is under six months, the department will round down. If the number is six months or more, the department will round up. See WAC 415-02-340 for more information about the present value calculations.

Example 1:

At the time that the department is calculating Sharon's age in making a present value calculation, Sharon is 55 years, 5 months and 26 days old. The department will round down and use 55 as Sharon's age.

Example 2:

At the time that the department is calculating Donna's age in making a present value calculation, Donna is 54 years and 7 months old. The department will round up and use 55 as Donna's age.

(2) **Early retirement:** The department uses the difference between your "fully eligible retirement date" and your actual retirement date in calculating any actuarial reductions to your benefits. See WAC 415-02-320 for more information about early retirement.

(a) **Step 1: Determine the fully eligible retirement date.**

(i) The department first calculates the date on which you would have been fully eligible to retire.

(ii) **All plans** (except for LEOFF Plan 1, TRS Plan 1, WSPRS Plans 1 and 2, JRF and JRS): You can retire the first day of the month following your meeting the age requirement for retirement if you are otherwise eligible.

Example: Jake was born on May 12, 1934. On May 12, 1999, Jake reaches age 65 and has met the age requirement for retirement. Provided that he is otherwise eligible, Jake's retirement date is June 1, 1999.

(iii) **LEOFF Plan 1, TRS Plan 1, WSPRS Plans 1 and 2, JRF, and JRS:** If a retirement date other than the first of the month is allowed, you can retire on the day you meet the age requirement, or the following day (depending on the plan).

Example: If Jake is a member of this type of plan, he could retire May 12th or 13th, 1999 (his birthday or the day after his birthday).

(b) **Step 2: Determine the difference.** The department next calculates the difference between your fully eligible retirement date and your actual retirement date by subtracting the actual retirement year and month from the fully eligible retirement year and month. (Days are not used in the calculation.)

(i) **Example:**

Fully eligible date:	06/01/99
Minus actual retirement date:	08/01/95
Difference:	3 years, 10 months

(ii) **Example:**

Fully eligible date:	05/25/99
Minus actual retirement date:	08/01/95
Difference:	3 years, 9 months

(c) **Step 3: Determine the early retirement factor.** The department uses the difference calculated in step 2 to determine the early retirement factor (ERF) used to calculate your benefit as described in WAC 415-02-320.

(3) **Optional COLA Factor for PERS Plan 1 and TRS Plan 1.** The department uses the rounding method described in the "present value" subsection in this section to calculate your age when determining the optional COLA factor. See WAC 415-02-360 for a description of the optional COLA factor calculation.

(4) **Calculating age to use in determining the survivor option factor.** At retirement, if you select a survivor option, the department must calculate the difference between your age and your beneficiary's age. See WAC 415-02-380 for more information about survivor options.

(a) **Step 1:** The department calculates your age and your beneficiary's age at the time of your retirement.

(b) **Step 2:** The department rounds the ages, using the same method described in the "present value" subsection in this section.

(c) **Step 3:** The department subtracts your beneficiary's age from your age.

Example:

Member's age:	60
Minus beneficiary's age:	49
	11

Result: The department will use the survivor option factor for a beneficiary who is 11 years younger than the member.

Example:

Member's age:	65
Minus beneficiary's age:	67
	-2

Result: The department will use the survivor option factor for a beneficiary who is two years older than the member.

(5) **Terms used**

(a) JRF - Judicial retirement fund.

(b) JRS - Judicial retirement system.

(c) LEOFF - Law enforcement officers' and fire fighters' retirement system.

(d) PERS - Public employees' retirement system.

(e) SERS - School employees' retirement system.

(f) TRS - Teachers' retirement system.

(g) WSPRS - Washington state patrol retirement system.

AMENDATORY SECTION (Amending WSR 08-01-079, filed 12/17/07, effective 1/17/08)

WAC 415-02-350 What are cost-of-living adjustments (COLA) and how are they calculated? (1) **What is a cost-of-living adjustment (COLA)?** The value of a retiree's, beneficiary's, or ex-spouse's monthly allowance may change in the years after retirement because of inflation or other factors. A COLA automatically adjusts benefits based on the cost of living changes.

(2) **What retirement plans include COLAs?** With one exception, all retirement plans administered by the department provide one or more of the types of COLAs listed in subsection (3) of this section. The judges retirement fund (chapter 2.12 RCW) does not provide a COLA.

RETIREMENT SYSTEM	PLAN	COLA TYPE	STATUTE
JUDICIAL		Base	RCW 2.10.170
LEOFF	Plan 1	Base	RCW 41.26.240
LEOFF	Plan 2	Base	RCW 41.26.440
PSERS		Base	RCW 41.37.160
PERS	Plan 1	Uniform	RCW 41.40.197
PERS	Plan 1	Optional Auto	RCW 41.40.188 (1)(c)
PERS	Plan 2	Base	RCW 41.40.640
PERS	Plan 3	Base	RCW 41.40.840
SERS	Plans 2 and 3	Base	RCW 41.35.210
TRS	Plan 1	Uniform	RCW 41.32.489
TRS	Plan 1	Optional Auto	RCW 41.32.530 (1)(d)
TRS	Plan 2	Base	RCW 41.32.770

RETIREMENT SYSTEM	PLAN	COLA TYPE	STATUTE
TRS	Plan 3	Base	RCW 41.32.845
WSPRS	Plans 1 and 2	Base	RCW 43.43.260

(3) **What are the types of COLAs?**

(a) **Auto COLA**

The auto COLA, if offered under your plan, is an option you may select at retirement. If you choose this option, your monthly retirement allowance will be actuarially reduced at retirement, and you will receive an automatic adjustment in your monthly retirement allowance each year for the rest of your life. The auto COLA has no age requirement and is limited to a maximum of three percent of your monthly allowance.

(b) **Base COLA**

The base COLA is applied in July (April for LEOFF Plan 1) of each year and adjusts the benefit based on the change in the Consumer Price Index for the Seattle-Tacoma-Bremerton, Washington area. Base COLAs are limited to a maximum of three percent of the monthly allowance for all affected plans except LEOFF Plan 1. During a calendar year, the base COLA is payable to:

(i) Retirees who have been retired for at least one year by July 1st of each year (April 1st for LEOFF Plan 1); and

(ii) Beneficiaries or eligible ex-spouses who receive benefit payments from an account that, by July 1st, has paid a monthly benefit for at least one year (April 1st for LEOFF Plan 1).

(c) **Uniform COLA**

The uniform COLA is an annual adjustment to the benefit, based on years of service. The annual adjustment for the uniform COLA is independent from any other COLA. During a calendar year, it is payable to:

(i) Retirees who, by July 1st, have received a retirement benefit for at least one year and who, by December 31st, will have reached age sixty-six or older;

(ii) Beneficiaries and eligible ex-spouses who receive benefit payments from an account that, by July 1st, has paid a monthly benefit for at least one year and who, by December 31st, will have reached age sixty-six or older; and

(iii) Retirees, beneficiaries, or eligible ex-spouses of any age whose retirement benefit is calculated under the minimum formula.

(4) **Who is responsible for determining the amount of the COLA?** The office of the state actuary (OSA) bases the percentages of the COLAs on the Consumer Price Index. The Index is based on wages earned by urban wage earners and clerical workers in the Seattle-Tacoma-Bremerton, Washington area. OSA provides this information to the department annually.

AMENDATORY SECTION (Amending WSR 02-18-048, filed 8/28/02, effective 9/1/02)

WAC 415-02-360 What is the optional cost-of-living adjustment (COLA) for PERS Plan 1 and TRS Plan 1? (1) At the time of retirement, if you are a PERS Plan 1 or TRS Plan 1 member, you can choose initially reduced retirement payment benefits that will provide you with annual cost of living adjustments in the future.

For more information, see:

PERS Plan 1: RCW 41.40.188 (1)(e); WAC 415-108-326((~~(4)~~))

TRS Plan 1: RCW 41.32.530 (1)(d); WAC ((~~415-112-727(4)~~)) 415-112-504

(2) By opting to receive a lower dollar amount at the beginning of your retirement, you will receive a progressively higher amount as the payments continue.

(3) **Examples**

(a) **Example (a):**

Ernie, a TRS Plan 1 member, retires at age 55 with 30 years of service and chooses the COLA option. TRS Plan 1 provides two percent (.02) of average final compensation (AFC) per year of service. At the time he retires, Ernie's AFC is $4,295.33. As shown in the "Plan 1 Optional COLA" table below, Ernie would receive 0.7408 of his normal retirement benefit as the starting amount of the COLA-protected benefit. TRS would calculate the benefit as follows: 30.00 (years of service credit) x .02 x $4,295.33 (AFC) = $2,577.20 (monthly benefit without the COLA option). TRS would then multiply $2,577.20 x .7408 = $1,909.19 (the COLA-protected starting benefit Ernie would receive).

(b) **Example (b):**

Tina is a PERS Plan 1 member with 30 years of service credit at age 52 and eight months. Because she has reached 30 years of service, there is no reduction for an early retirement. However, Tina chooses the optional COLA. Tina would receive .7388 of her normal retirement benefit as the starting amount of the COLA-protected benefit. Her normal retirement benefit is $2,295.00; her COLA-reduced benefit will be $1,695.55.

(4) **Table -** The **optional cost-of-living adjustment (COLA)** table is based on the 1995-2000 actuarial experience study.

Use these factors to convert from standard option monthly benefit payments without a COLA to the same option with a COLA.

Plan 1 Optional COLA

Age	PERS 1 Factor	TRS 1 Factor		Age	PERS 1 Factor	TRS 1 Factor
20	0.6586	0.6554		61	0.7778	0.7662
21	0.6600	0.6566		62	0.7825	0.7708
22	0.6615	0.6580		63	0.7873	0.7754
23	0.6630	0.6593		64	0.7922	0.7801
24	0.6645	0.6607		65	0.7972	0.7849

Plan 1 Optional COLA

Age	PERS 1 Factor	TRS 1 Factor		Age	PERS 1 Factor	TRS 1 Factor
25	0.6661	0.6622		66	0.8022	0.7897
26	0.6678	0.6638		67	0.8073	0.7946
27	0.6696	0.6654		68	0.8124	0.7996
28	0.6714	0.6670		69	0.8176	0.8046
29	0.6732	0.6687		70	0.8229	0.8097
30	0.6752	0.6705		71	0.8282	0.8149
31	0.6772	0.6723		72	0.8335	0.8201
32	0.6793	0.6742		73	0.8389	0.8253
33	0.6814	0.6762		74	0.8443	0.8306
34	0.6836	0.6783		75	0.8497	0.8359
35	0.6859	0.6804		76	0.8551	0.8413
36	0.6883	0.6826		77	0.8605	0.8467
37	0.6908	0.6849		78	0.8659	0.8521
38	0.6933	0.6872		79	0.8713	0.8575
39	0.6960	0.6896		80	0.8766	0.8628
40	0.6987	0.6921		81	0.8819	0.8682
41	0.7015	0.6947		82	0.8871	0.8735
42	0.7044	0.6974		83	0.8922	0.8788
43	0.7074	0.7002		84	0.8971	0.8840
44	0.7105	0.7031		85	0.9020	0.8891
45	0.7137	0.7060		86	0.9066	0.8941
46	0.7170	0.7091		87	0.9111	0.8989
47	0.7204	0.7122		88	0.9153	0.9036
48	0.7238	0.7154		89	0.9192	0.9080
49	0.7274	0.7188		90	0.9230	0.9123
50	0.7311	0.7222		91	0.9264	0.9162
51	0.7349	0.7256		92	0.9296	0.9200
52	0.7388	0.7293		93	0.9326	0.9234
53	0.7427	0.7331		94	0.9353	0.9266
54	0.7468	0.7369		95	0.9378	0.9296
55	0.7510	0.7408		96	0.9401	0.9323
56	0.7552	0.7448		97	0.9423	0.9348
57	0.7595	0.7489		98	0.9444	0.9372
58	0.7640	0.7531		99	0.9464	0.9394
59	0.7685	0.7574				
60	0.7731	0.7618				

AMENDATORY SECTION (Amending WSR 05-12-043, filed 5/25/05, effective 6/25/05)

WAC 415-112-544 How does the department calculate the retirement allowance of a TRS Plan 2 or Plan 3 member who retires, reenters TRS membership, and then retires again? This rule establishes a method to actuarially recompute your defined benefit retirement allowance if you are a Plan 2 or Plan 3 member who retires, reenters TRS membership causing your retirement allowance to stop, and then retires again.

(1) **If you previously retired before age sixty-five,** the department will:

(a) Recompute your retirement allowance pursuant to RCW 41.32.760 (Plan 2) or 41.32.840 (Plan 3) using:

(i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(ii) Any increase in your average final compensation resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

(i) Based on the present value of the retirement allowance payments you received during your initial retirement;

(ii) To reflect the difference in the number of years between your current age and the attainment of age sixty-five, if applicable; and

(iii) To offset the cost of your benefit option if it includes a survivor feature. See WAC ((~~415-112-493~~)) 415-112-505.

(2) **If you previously retired at or after age sixty-five,** the department will recompute your retirement allowance pursuant to RCW 41.32.760 (Plan 2) or 41.32.840 (Plan 3) and include any additional service credit you earned and any increase in your average final compensation resulting from your reentry into membership. The department will actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC ((~~415-112-493~~)) 415-112-505.

(3) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-055 Am I eligible for a multiple system benefit? To be eligible for a multiple system benefit, you must meet the criteria listed in this section.

(1) **You may retire for service or disability.** You may retire with a multiple system benefit if you retire from all systems for service. You may also retire with a disability retirement from your current system, other than a benefit provided by RCW 41.40.220 or WSPRS, and a service retirement from your prior system.

(2) **You must retire from all systems.** You may only retire with a multiple system benefit if you retire from all dual member systems that you participate in.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Accumulated contributions" - WAC ((~~415-113-030~~)) 415-02-030.

(b) "Dual member system" - WAC 415-113-030.

(c) "Multiple system benefit" - WAC 415-113-030.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-057 Am I required to retire with a multiple system benefit? You are not required to retire with a multiple system benefit. You may elect to retire from a system or systems without the benefits or restrictions of chapter 41.54 RCW. If you choose to retire from more than one system without receiving a multiple system benefit, you are not subject to the maximum benefit limitation of RCW 41.54.070 and WAC 415-113-090(1).

(1) **Waiver of benefits.** If you decide not to receive a multiple system benefit, you waive the right to:

(a) Substitute your base salary between retirement systems for purposes of calculating a retirement allowance; or

(b) Combining your service from each system for purposes of determining retirement eligibility.

(2) **You are not required to retire with a multiple system benefit even if you repaid contributions as a dual member.** If you repaid previously withdrawn contributions from a prior dual member system under RCW 41.54.020, you may still elect to retire from one or more systems without receiving a multiple system benefit.

(3) **If you decline a multiple system benefit, you may withdraw your contributions.** If you elect to retire without receiving a multiple system benefit, you may withdraw your accumulated contributions from a system in lieu of receiving a retirement allowance, provided that withdrawal is otherwise permissible under the systems' provisions.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Accumulated contributions" - WAC ((~~415-113-030~~)) 415-02-030.

(b) "Base salary" - RCW 41.54.010(1).

(c) "Dual member" - RCW 41.54.010(4), WAC 415-113-030.

(d) "Dual member system" - WAC 415-113-030.

(e) "Multiple system benefit" - WAC 415-113-030.

WSR 08-20-069

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 25, 2008, 10:14 a.m., effective October 26, 2008]

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

Purpose: This rule-making order amends chapter 16-663 WAC, Service agents—Reporting, test procedures, standards and calibration of weighing and measuring devices, by deleting an obsolete service agent registration fee.

Citation of Existing Rules Affected by this Order: Amending WAC 16-663-120, 16-663-130, and 16-663-140.

Statutory Authority for Adoption: Chapters 19.94 and 34.05 RCW.

Adopted under notice filed as WSR 08-15-111 on July 18, 2008.

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 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: September 25, 2008.

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 00-22-072, filed 10/30/00, effective 11/30/00)

WAC 16-663-120 Registration, certification and standards. (1) Service agents and servicepersons who intend to provide service that permits a weighing or measuring device to be placed back into commercial service must register with the department annually. Service agents and servicepersons must register on a form provided by the department annually. The fee for registration is ((~~eighty dollars per service person~~)) specified in RCW 19.94.2582. This registration requirement does not apply to city sealers.

(2) Service agents and servicepersons registering with the department will specifically state the types of devices they will be placing in service. Such a statement is the agent's or person's certification that they are knowledgeable of the requirements of the state and possess proper and certified equipment and standards to perform the services.

(3) The registered service agent or serviceperson shall submit a copy of their tag or label, seal or seal press identification mark to the department at time of registration.

(4) The department will issue an official registration certification for each service agent and serviceperson whose application is approved. Official registration certificates are valid for a period of one year from date of registration.

(5) For requests that are denied the department will provide reasons, in writing, for the denial and refund payment.

AMENDATORY SECTION (Amending WSR 00-22-072, filed 10/30/00, effective 11/30/00)

WAC 16-663-130 Adequacy of standards and submission of standards for certification. (1) All service agents and servicepersons shall use standards of adequate quantity and design to place commercial weighing and measuring devices in service.

(2) Submission of standards for inspection. All standards used for servicing, repairing and/or calibrating commercial weighing and measuring devices must be submitted at least every two years for examination and certification. The standards will be submitted to the state's metrology laboratory or a laboratory of any state in which a reciprocity agreement has been entered. The state metrology laboratory examines and certifies standards using the current version of National Institute of Standards and Technology Handbook 105.

(3) Recognition of out-of-state certification of any standard that has been inspected and examined by any state or agency in which the director has entered a reciprocity agreement will be considered correct if said examination is within the previous two-year period. Proof of inspection must be submitted to the department with the registration application.

(4) Proof of certification shall be maintained by the owner of the standards and be kept with the standards during normal usage for the purpose of inspection by the director or authorized representative.

AMENDATORY SECTION (Amending WSR 00-22-072, filed 10/30/00, effective 11/30/00)

WAC 16-663-140 Identification of work—Labels and seals. (1) Each registered service agent and serviceperson shall identify his/her work on commercially used weighing and measuring devices by:

(a) Applying an adhesive tag or label in a conspicuous location on the device; or

(b) Using a distinctive security seal or seal press impression.

(2) The adhesive tag or label shall legibly show at least the serviceperson registration number, business telephone number and date of service.

(3) Any security seal or seal press used to comply with subsection (1) of this section shall identify the individual registered serviceperson applying the seal.

(4) The registered service agent or serviceperson shall submit a copy of the tag or label, seal or seal press identification mark to the department at time of registration.

((~~(5) The above requirements will be effective May 1, 2001.~~))

WSR 08-20-070
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed September 25, 2008, 10:15 a.m., effective October 26, 2008]

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

Purpose: This rule-making order amends chapter 16-674 WAC, Weights and measures—Exemptions, weighmasters and device registration, by deleting obsolete fees related to weighmaster licensing.

Citation of Existing Rules Affected by this Order: Amending WAC 16-674-030 and 16-674-055.

Statutory Authority for Adoption: Chapters 15.80 and 34.05 RCW.

Adopted under notice filed as WSR 08-15-114 on July 18, 2008.

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 2, Repealed 0.

Date Adopted: September 25, 2008.

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 02-15-141, filed 7/22/02, effective 8/22/02)

WAC 16-674-030 Weighmaster license issuance, expiration and fees. (1) Weighmaster licenses issued under

RCW 15.80.460 shall expire on June 30th following the date of issuance.

(2) Upon expiration, suspension or revocation of the license, the weighmaster must surrender their impression seal to the director or his/her representative within ten days if they do not renew their license, if their license is suspended or if their license is revoked. The seal may be surrendered by sending the seal to the department or by surrendering the seal to the director or his/her duly appointed representative.

(3) Businesses or individuals applying to renew their license or applying for their initial license with the department must have a current bond in the amount ((~~of one thousand dollars~~)) specified in RCW 15.80.480 and that bond must remain in force and effect for not less than the entire licensing period.

(4) Weighing and measuring devices used by weighmasters are considered to be in commercial use and must be registered. Registrations are accomplished through the department of licensing as part of the master license service under chapter 19.02 RCW.

(5) Proof of a scale test within the last twelve months must be submitted with the application.

(6) Applications must be submitted with the proper fees as specified in chapter 15.80 RCW.

(7) ((~~Fees for weighmasters are as follows:~~

~~Item~~	~~Fee~~
~~Annual application~~	~~$ 20.00~~
~~Each weigher~~	~~$ 5.00~~
~~Each seal rental~~	~~$ 5.00~~
~~Replacement seal~~	~~$ 25.00~~
~~Late renewal penalty~~	~~50% of total renewal fee~~

~~(8)~~)) Applications received without subsections (3), (4), (5) and (6) of this section will be considered incomplete applications and will be returned to the applicant.

AMENDATORY SECTION (Amending WSR 02-15-141, filed 7/22/02, effective 8/22/02)

WAC 16-674-055 Weighing and measuring devices. (1) Weighing and measuring devices used by weighmasters must meet all legal requirements for commercial weighing and measuring devices.

(2) ((~~Effective September 1, 2002,~~)) Weighmaster scales must be tested not less than every twelve months and must conform to the tolerances and specifications in the edition of NIST Handbook 44, "*Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*," adopted by the department in chapter 16-662 WAC. Inspections must be performed by either service agents registered with the department or by the department. The department is under no obligation to provide this inspection service.

(3) A legible copy of the current scale inspection and current master business license must be maintained at the same site as the scale and must be immediately made available to the director or his representative upon request.

WSR 08-20-071
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-08—Filed September 25, 2008, 4:10 p.m., effective October 26, 2008]

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

Purpose: These amendments restore the procedures and processes used by commissioner to review individual rate filings prior to changes made by the legislature in 2000 to the commissioner's authority to review individual health coverage rate filings. Carriers will be required to submit documentation of actuarial formulas, statistics, and assumptions in support of their rates for actuarial review of the commissioner.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-910, 284-43-925, 284-43-930, and 284-43-945.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.110, 48.44.020, 48.44.050, 48.46.060, 48.46.200.

Adopted under notice filed as WSR 08-15-158 on July 23, 2008.

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 4, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: September 25, 2008.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-901 Authority and purpose. This subchapter is adopted under the general authority of RCW 48.02.060, 48.44.017, 48.44.020, 48.44.050, 48.46.060, 48.46.062, and 48.46.200. Its purpose is to provide guidelines for the implementation of RCW 48.44.017(2), 48.44.020(3), 48.44.022, 48.44.023, 48.44.040, 48.46.060 (4) and (6), 48.46.062(2), 48.46.064, and 48.46.066 as to the filing of contract forms by health care service contractors and health maintenance organizations and the calculations and evaluations of premium rates for these contracts.

AMENDATORY SECTION (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

WAC 284-43-910 Definitions. For the purpose of this subchapter:

(1) "Adjusted earned premium" means the amount of "earned premium" the "carrier" would have earned had the "carrier" charged current "premium rates" for all applicable "plans."

(2) "Annualized earned premium" means the "earned premium" that would be earned in a twelve-month period if earned at the same rate as during the applicable period.

(3) "Anticipated loss ratio" means the "projected incurred claims" divided by the "projected earned premium."

(4) "Base rate" means the "premium" for a specific "plan," expressed as a monthly amount per "covered person or subscriber," prior to any adjustments for geographic area, age, family size, wellness activities, tenure, or any other factors as may be allowed.

(5) "Capitation expenses" means the amount paid to a provider or facility on a per "covered person" basis, or as part of risk-sharing provisions, for the coverage of specified health care services.

(6) "Carrier" means a health care service contractor or health maintenance organization.

(7) "Certificate" means the statement of coverage document furnished "subscribers" covered under a "group contract."

(8) "Claim reserves" means the "claims" that have been reported but not paid plus the "claims" that have not been reported but may be reasonably expected.

(9) "Claims" means the cost to the "carrier" of health care services provided to a "covered person" or paid to or on behalf of the "covered person" in accordance with the terms of a "plan." This includes "capitation payments" or other similar payments made to providers or facilities for the purpose of paying for health care services for a "covered person."

(10) "Community rate" means the weighted average of all "premium rates" within a filing with the weights determined according to current enrollment.

(11) "Contract" means an agreement to provide health care services or pay health care costs for or on behalf of a "subscriber" or group of "subscribers" and such eligible dependents as may be included therein.

(12) "Contract form" means the prototype of a "contract" and any associated riders and endorsements filed with the commissioner by a health care service contractor or health maintenance organization.

(13) "Contribution to surplus, contingency charges, or risk charges" means the portion of the "projected earned premium" not associated directly with "claims" or "expenses."

(14) "Covered person" or "enrollee" has the same meaning as that contained in RCW 48.43.005.

(15) "Current community rate" means the weighted average of the "community rates" at the renewal or initial effective dates of each plan for the year immediately preceding the renewal period, with weights determined according to current enrollment.

(16) "Current enrollment" means the monthly average number and demographic makeup of the "covered persons" for the applicable contracts during the most recent twelve months for which information is available to the carrier.

(17) "Earned premium" means the "premium" plus any rate credits or recoupments, applicable to an accounting period whether received before, during, or after such period.

(18) "Expenses" means costs that include but are not limited to the following:

(a) Claim adjudication costs;

(b) Utilization management costs if distinguishable from "claims";

(c) Home office and field overhead;

(d) Acquisition and selling costs;

(e) Taxes; and

(f) All other costs except "claims."

(19) "Experience period" means the most recent twelve-month period from which the carrier accumulates the data to support a filing.

(20) "Extraordinary expenses" means "expenses" resulting from occurrences atypical of the normal business activities of the "carrier" that are not expected to recur regularly in the near future.

(21) "Group contract" or "group plan" means an agreement issued to an employer, corporation, labor union, association, trust, or other organization to provide health care services to employees or members of such entities and the dependents of such employees or members.

(22) "Incurred claims" means "claims" paid during the applicable period plus the "claim reserves" as of the end of the applicable period minus the "claim reserves" as of the beginning of the applicable period. Alternatively, for the purpose of providing monthly data or trend analysis, "incurred claims" may be defined as the current best estimate of the "claims" for services provided during the applicable period.

(23) "Individual contract" means a "contract" issued to and covering an individual. An "individual contract" may include dependents.

(24) "Investment earnings" means the income, dividends, and realized capital gains earned on an asset.

(25) "Loss ratio" means "incurred claims" as a percentage of "earned premiums" before any deductions.

(26) "Medical care component of the consumer price index for all urban consumers" means the similarly named figure published monthly by the United States Bureau of Labor Statistics.

(27) "Net worth or reserves and unassigned funds" means the excess of assets over liabilities on a statutory basis.

(28) "Plan" means a "contract" that is a health benefit plan as defined in RCW 48.43.005 or a "contract" for limited health care services as defined in RCW 48.44.035.

(29) "Premium" has the same meaning as that contained in RCW 48.43.005.

(30) "Premium rate" means the "premium" per "subscriber" or "covered person" obtained by adjusting the "base rate" for geographic area, family size, age, wellness activities, or any other factors as may be allowed.

(31) "Projected earned premium" means the "earned premium" that would be derived from applying the proposed "premium rates" to the current enrollment.

(32) "Projected incurred claims" means the estimate of "incurred claims" for the rate renewal period based on the current enrollment.

(33) "Proposed community rate" means the weighted average of the "community rates" at the renewal dates of each plan for the renewal period, with weights determined according to current enrollment.

(34) "Provider" has the same meaning as that contained in RCW 48.43.005.

(35) "Rate renewal period" means the period for which the proposed "premium rates" are intended to remain in effect.

(36) "Rate schedule" means the schedule of all "base rates" for "plans" included in the filing.

(37) "Requested increase in the community rate" means the amount, expressed as a percentage, by which the "proposed community rate" exceeds the "current community rate."

(38) "Service type" means the category of service for which "claims" are paid, such as hospital, professional, dental, prescription drug, or other.

(39) "Small group contracts" or "small group plans" means the class of "group contracts" issued to "small employers," as that term is defined in RCW 48.43.005.

(40) "Staffing data" means statistics on the number of providers and associated compensation required to provide a fixed number of services or provide services to a fixed number of "covered persons."

(41) "Subscriber" means a person on whose behalf a "contract" or "certificate" is issued.

(42) "Unit cost data" means statistics on the cost per health care service provided to a "covered person."

(43) "Utilization data" means statistics on the number of services used by a fixed number of "covered persons" over a fixed length of time.

AMENDATORY SECTION (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

WAC 284-43-925 General contents of all filings. Each filing required by WAC 284-43-920 must be submitted with the filing transmittal form prescribed by and available from the commissioner. The form must include the name of the filing entity, its address, identification number, the type of filing being submitted, the form name or group name and number, and other relevant information. Filings also must include the information required on the filing summary set forth in WAC 284-43-945 for individual and small group plans and rate schedules or as set forth in WAC 284-43-950 for group plans and rate schedules other than those for small groups.

AMENDATORY SECTION (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

WAC 284-43-930 Contents of individual and small group filings. Under RCW 48.44.022 and 48.46.064 the experience of all individual plans must be pooled. Under RCW 48.44.023 and 48.46.066 the experience of all small group plans must be pooled. Filings for individual plans must include each individual plan rate schedule. Filings for small group plans must include base rates and annual base rate changes in dollar and percentage amounts for each small group plan. Each individual and small group filing must include the following information and documents:

(1) An actuarially sound estimate of incurred claims. Experience data, assumptions, and justifications of the carrier's projected incurred claims must be provided in a manner consistent with the carrier's rate-making methodology and incorporate the following elements:

(a) A brief description of the carrier's rate-making methodology, including identification of the data used and the kinds of assumptions and projections made.

(b) The number of subscribers by family size, or covered persons for the plans included in the filing. These figures must be shown for each month or quarter of the experience period and the prior two periods if not included in previous filings. This data must be presented in aggregate for the plans included in the filing and in aggregate for all of the carrier's plans.

(c) Earned premium for each month or quarter of the experience period and the prior two periods if not included in previous filings, for the plans included in the filing.

(d) An estimate of the adjusted earned premium for each month or quarter of the experience period and prior two periods for the plans included in the filing.

(e) Claims data for each month or quarter of the experience period and the prior two periods. Examples of claims data are incurred claims, capitation payments, utilization data, unit cost data, and staffing data. The specific data elements included in the filing must be consistent with the carrier's rate-making methodology.

(f) Documentation and justification of any adjustments made to the experience data.

(g) Documentation and justification of the factors and methods used to forecast incurred claims.

(2) An actuarially sound estimate of prudently incurred expenses. Experience data, assumptions, and justifications must be provided by the carrier as follows:

(a) A breakdown of the carrier's expenses allocated or assigned to the plans included in the filing for the experience period or for the period corresponding to the most recent "annual statement";

(i) An expense breakdown at least as detailed as the annual statement schedule "Underwriting and Investment Exhibit, Part 3, Analysis of Expenses" as revised from time to time;

(ii) The allocation and assignment methodology used in (a)(i) of this subsection may be based on readily available data and easily applied calculations;

(b) Identification of any extraordinary experience period expenses; and

(c) Documentation and justification of the assignment or allocation of expenses to the plans included in the filing; and

(d) Documentation and justification of forecasted changes in expenses.

(3) An actuarially sound provision for contribution to surplus, contingency charges, or risk charges. Assumptions and justifications must be provided by the carrier as follows:

(a) The methodology, justification, and calculations used to determine the contribution to surplus, contingency charges, or risk charges included in the proposed base rates; and

(b) The carrier's net worth or reserves and unassigned surplus at the beginning and end of the experience period.

(4) An actuarially sound estimate of forecasted investment earnings on assets related to claim reserves or other similar liabilities. The carrier must include documentation

and justification of forecasted investment earnings identified in dollars, and as a percentage of total premiums and the amount credited to the plans included in the filing.

(5) Adjustment of the base rate. Experience data, assumptions, justifications, and methodology descriptions must be provided and must include:

(a) Justifications for adjustments to the base rate, supported by data if appropriate, attributable to geographic region, age, family size, tenure discounts, and wellness activities;

(b) Justifications, supported by data if appropriate, of any other factors or circumstances used to adjust the base rates; and

(c) Description of the methodology used to adjust the base rate to obtain the premium rate for a specific individual or group, which is detailed enough to allow the commissioner to replicate the calculation of premium rates if given the necessary data.

(6) Actuarial certification. Certification by an actuary, as required by RCW 48.44.017(2), 48.44.023(3), 48.46.062(2) and 48.46.066(3).

(7) The requirements of subsections (1) through (6) of this section may be waived or modified upon the finding by the commissioner that a plan contains or involves unique provisions or circumstances and that the requirements represent an extraordinary administrative burden on the carrier.

AMENDATORY SECTION (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

WAC 284-43-945 Summary for individual and small group contract filings.

INDIVIDUAL AND SMALL GROUP FILING SUMMARY

Carrier Name	
Address	
Carrier Identification Number	

Rate Renewal Period:	From		To
Date Submitted:			

Proposed Rate Summary

Current community rate	per month
Proposed community rate	per month
Percentage change	%
Portion of carrier's total enrollment affected	%
Portion of carrier's total premium revenue affected	%

Components of Proposed Community Rate

	Dollars Per Month	% of Total
a) Claims		
b) Expenses		
c) Contribution to surplus, contingency charges, or risk charges		
d) Investment earnings		
e) Total (a + b + c - d)		

Summary of Pooled Experience

	Experience Period From To	First Prior Period From To	Second Prior Period From To
Member Months			
Earned Premium			
Paid Claims			
Beginning Claim Reserve			
Ending Claim Reserve			
Incurred Claims			
Expenses			
Gain/Loss			
Loss Ratio Percentage			

General Information

1. Trend Factor Summary

Type of Service	Annual Trend Assumed	Portion of Claim Dollars
Hospital	%	%
Professional	%	%
Prescription Drugs	%	%
Dental	%	%
Other	%	%

2. List the effective date and the rate of increase for all rate changes in the past three rate periods.

1) Date % 2) Date % 3) Date %

3. Since the previous filing, have any changes been made to the factors or methodology for adjusting base rates?

Geographic Area	❑ Yes	❑ No
Family Size	❑ Yes	❑ No
Age	❑ Yes	❑ No
Wellness Activities	❑ Yes	❑ No
Other (specify)	❑ Yes	❑ No

4. Attach a table showing the base rate for each plan affected by this filing.

5. Attach comments or additional information.

6. Preparer's Information

Name:
Title:
Telephone Number:

WSR 08-20-074
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed September 26, 2008, 10:58 a.m., effective October 27, 2008]

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

Purpose: Revisions are needed to update contact information.

Citation of Existing Rules Affected by this Order: Amending WAC 446-10-030.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 08-15-100 on July 17, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: September 23, 2008.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 07-04-039, filed 1/30/07, effective 3/2/07)

WAC 446-10-030 Description of central and field organizations of the Washington state patrol. (1) The Washington state patrol is a law enforcement agency. The Washington state patrol is headquartered in the General Administration Building, 210 - 11th Avenue S.W., Olympia, Washington 98504. The department has eight district headquarters with working addresses as follows:

District	I	-	2502 112th Street East, Tacoma 98445-5104
District	II	-	2803 - 156th Avenue S. E., Bellevue 98007
District	III	-	2715 Rudkin Road, Union Gap 98903
District	IV	-	West 6403 Rowand Road, Spokane 99204-5300
District	V	-	11018 N.E. 51st Circle, Vancouver 98682-3812
District	VI	-	2822 Euclid Avenue, Wenatchee 98801-5916
District	VII	-	2700 116th Street N.E., Marysville 98271-9425
District	VIII	-	4811 Werner Road, Bremerton 98312-3333

(2) Any person wishing to request access to public records of the Washington state patrol, or seeking assistance in making such a request, shall contact the public records officer of the Washington state patrol:

Public Records Officer
Washington State Patrol
P.O. Box 42631
Olympia, WA 98504
Phone: ((~~360-753-5467~~)) 360-596-4137
Fax: ((~~360-753-0234~~)) 360-596-4153
E-mail: pubrecs@wsp.wa.gov

Information is also available at the Washington state patrol's web site at http://www.wsp.wa.gov/.

(3) The public records officer shall oversee compliance with the act, but another Washington state patrol staff member may process the request. Therefore, these rules shall refer to the public records officer "or designee." The public records officer or designee and the Washington state patrol shall provide the "fullest assistance" to requestors; create and maintain for use by the public and Washington state patrol officials an index to public records of the Washington state patrol; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington state patrol.

WSR 08-20-075
PERMANENT RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed September 26, 2008, 11:03 a.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: To adjust the maximum civil penalty amount for inflation and to update the federal regulation reference date.

Citation of Existing Rules Affected by this Order: Amending Sections 3.11 and 3.25 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 08-17-059 on August 18, 2008.

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: September 25, 2008.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed ((~~$15,717.00~~)) $16,314.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than ((~~$15,717.00~~)) $16,314.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((~~2007~~)) 2008.

WSR 08-20-076
PERMANENT RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed September 26, 2008, 11:04 a.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: To exclude from our EPA delegation request certain newly promulgated EPA regulations.

Citation of Existing Rules Affected by this Order: Amending Sections 5.03 and 6.03 of Regulation I; and Section 2.02 of Regulation III.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 08-17-061 on August 18, 2008.

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: September 25, 2008.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, ((~~and~~)) the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, ((~~and~~)) the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWWW, CCCCCC, HHHHHH, and WWWWWW);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NOx), particulate matter ($PM_{2.5}$ or PM_{10}), sulfur oxides (SOx), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinylester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Dry cleaners subject to Section 3.03 of Regulation III; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥4" diameter inlet):

(A) Activated carbon adsorption;
(B) Afterburner;
(C) Barometric condenser;
(D) Biofilter;
(E) Catalytic afterburner;
(F) Catalytic oxidizer;
(G) Chemical oxidation;
(H) Condenser;
(I) Dry sorbent injection;
(J) Flaring;
(K) Non-selective catalytic reduction;
(L) Refrigerated condenser;
(M) Selective catalytic reduction; or
(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥10" diameter inlet):

(A) Baghouse;
(B) Demister;
(C) Electrostatic precipitator;
(D) HEPA (high efficiency particulate air) filter;
(E) HVAF (high velocity air filter);
(F) Mat or panel filter;
(G) Mist eliminator;
(H) Multiple cyclones;
(I) Rotoclone;
(J) Screen;
(K) Venturi scrubber;
(L) Water curtain; or
(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥27" diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;
(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills; or

(O) Wood preserving lines or retorts; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

AMENDATORY SECTION

REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) and Subpart OOO (Nonmetallic Mineral Processing Plants) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), ((~~and~~)) the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills) pertaining to kraft and sulfite pulp mills, ((~~and~~)) the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart WWWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCCC (Gasoline Dispensing Facilities), Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations), and Subpart WWWWWW (Plating and Polishing Operations);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that a complete notification is filed with the Agency prior to initial startup:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline and having a rated capacity of 1,001-19,999 gallons, PROVIDED THAT they are installed in accor-

dance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity ≥40,000 gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, rock (or concrete) crushers, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with ≤6% VOC by volume or ≤8.5% if refrigerated to <60°F, and cleaning solvents with a vapor pressure ≤25mm Hg or a VOC content ≤30% by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for reverse-air or manual cleaning) or <12:1 (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for mechanical or manual cleaning) or <12:1 (for pulse-jet cleaning).

(9) Replacement of existing paint spray booths. All the conditions in the previously issued Order of Approval remain in effect.

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity ≤1,000 pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity ≤1,000 pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or ≤12% hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of ≤20% by weight and using ≤10,000 amp-hours per day, or phosphoric acid anodizing with a bath concentration of ≤15% by weight of phosphoric acid and using ≤20,000 amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity ≤1,000 pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is ≤1% by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤26 inches, PROVIDED THAT it is operated at ≤400°F.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of <2,000 cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoggers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or

similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with ≥66% by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤10 gallons and containing ≤5% by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤0.6 psi containing ≤5% by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing ≤5% by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤2 gallons.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤8 fluid ounces, PROVIDED THAT it is not used to coat >9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤1 quart of coating.

(60) Spray-coating equipment used exclusively for application of automotive undercoating materials with a flash point >100°F.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing <1% VOC by weight and <0.1% HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letterpress).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or <10% VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, or petroleum refinery;

(C) *Any* liquids (other than asphalt) that also have a rated capacity ≤1,000 gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity <20,000 gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity <40,000 gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity ≥40,000 gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength ≤99% by weight;

(H) Nitric acid with an acid strength ≤70% by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength ≤30% by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains ≤1% VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content ≤5% by volume or a VOC composite partial pressure of ≤0.1 psi at 68°F; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring >1,000 gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(88) Batch mixers with a rated working capacity ≤55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts ≥90% of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤150 tons per hour.

(113) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤25 tons per hour.

(114) Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤10 tons per hour.

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

AMENDATORY SECTION

REGULATION III SECTION 2.02 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

It shall be unlawful for any person to cause or allow the operation of any source in violation of any provision of Part 61 or Part 63, Title 40, of the Code of Federal Regulations (excluding Part 61, Subparts B, H, I, K, Q, R, T, and W; and Part 63, Subpart LL, the provisions of Subpart M pertaining to area source perchloroethylene dry cleaners, ((~~and~~)) the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, and Subparts WWWWW, CCCCCC, HHHHHH, and WWWWWW) in effect as of the federal regulation reference date listed in Section 3.25 of Regulation I herein incorporated by reference.

WSR 08-20-077

PERMANENT RULES

PUGET SOUND CLEAN AIR AGENCY

[Filed September 26, 2008, 11:04 a.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: To clarify what constitutes "on time" submittal of compliance reports sent by operating permit sources; and to require reports to be submitted by both e-mail and postal service after June 30, 2009.

Citation of Existing Rules Affected by this Order: Amending Section 7.09 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 08-17-062 on August 18, 2008.

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: September 25, 2008.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 7.09 GENERAL REPORTING REQUIREMENTS FOR OPERATING PERMITS

(a) **Emission Reporting.** An emission report shall be required from each owner or operator of an operating permit source, listing those air contaminants emitted during the previous calendar year that equal or exceed the following (tons/year):

carbon monoxide (CO) emissions 25
facility combined total of all toxic air contaminant (TAC) emissions 6
any single toxic air contaminant (TAC) emissions 2
nitrogen oxide (NOx) emissions 25
particulate matter (PM_{10}) emissions 25
particulate matter ($PM_{2.5}$) emissions 25
sulfur oxide (SOx) emissions 25
volatile organic compounds (VOC) emissions 25

Annual emission rates shall be reported to the nearest whole tons per year for only those air contaminants that equal or exceed the thresholds above. The owner or operator of a source requiring a Title V operating permit under this Article shall maintain records of information necessary to document any reported emissions or to demonstrate that the emissions were less than the above amounts.

(b) **Operation and Maintenance Plan.** Owners or operators of air contaminant sources subject to ((~~Regulation I~~)) Article 7 of this regulation shall develop and implement an operation and maintenance plan to assure continuous compliance with Regulations I, II, and III. A copy of the plan shall be filed with the Control Officer upon request. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

(1) Periodic inspection of all equipment and control equipment;

(2) Monitoring and recording of equipment and control equipment performance;

(3) Prompt repair of any defective equipment or control equipment;

(4) Procedures for start up, shut down, and normal operation;

(5) The control measures to be employed to assure compliance with Section 9.15 of this regulation ((~~Regulation I~~)); and

(6) A record of all actions required by the plan.

The plan shall be reviewed by the source owner or operator at least annually and updated to reflect any changes in good industrial practice.

(c) **Compliance Reports.** After June 30, 2009, owners or operators of air contaminant sources subject to Article 7 of this regulation shall submit complete copies of all required compliance reports to this Agency in electronic format as an attachment to an e-mail message. The date the document is received by the Agency e-mail system shall be considered the submitted date of the report. Original written documents shall also be submitted for record purposes. Nothing in this section waives or modifies any requirements established under other applicable regulations.

WSR 08-20-078
PERMANENT RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed September 26, 2008, 11:05 a.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: To align the agency permit fees for agricultural burn permits with the statewide fee structure contained in the ecology agricultural burning rule (WAC 173-430-040). The proposal also includes appropriate cross references to chapter 173-430 WAC.

Citation of Existing Rules Affected by this Order: Amending Sections 8.04 and 8.05 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 08-17-060 on August 18, 2008.

Changes Other than Editing from Proposed to Adopted Version: In Section 8.05(a) added: "provided that if there is a conflict between this section and Chapter 173-430 WAC, this section governs."

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: September 25, 2008.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 8.04 GENERAL CONDITIONS FOR OUTDOOR BURNING

(a) The provisions of Chapters 173-425 WAC (Outdoor Burning) and 173-430 WAC (Agricultural Burning) are herein incorporated by reference. It shall be unlawful for any person to cause or allow any outdoor burning unless the burning is in compliance with Chapters 173-425 and 173-430 WAC.

(b) The provisions of Sections 9.05 and 9.15 of Regulation I shall not apply to outdoor burning.

(c) Nothing contained in Article 8 shall be construed to allow outdoor burning in those areas in which outdoor burning is prohibited by laws, ordinances, or regulations of the state or any city, county, or fire district.

(d) Nothing contained in Article 8 shall relieve the applicant from obtaining permits required by any state or local fire protection agency or from compliance with the ((~~Uniform~~)) Fire Code.

AMENDATORY SECTION

REGULATION I SECTION 8.05 AGRICULTURAL BURNING PERMITS

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in Chapter 173-430 WAC also apply to this section provided that if there is a conflict between this section and Chapter 173-430 WAC, this section governs.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

(1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and

(2) Burning is necessary for crop propagation or rotation, disease or pest control; and

(3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in RCW 70.94.650 as referenced in WAC 173-430-050); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning. The permit application shall be submitted on forms provided by the Agency and shall include:

(1) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);

(2) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and

(3) A non-refundable permit fee:

(A) For burning up to 10 acres (or equivalent), the fee is $25.00 ($12.50 for local administration and $12.50 for the research fund ((~~base fee~~)));

(B) For burning over 10 acres, the fee is ((~~$25.00 plus $2.50 for each additional acre~~)) $2.25 per acre ($1.25 for local administration, $.50 for the research fund, and $.50 for Ecology administration).

(d) **Permit Action and Content.**

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

(e) **Permit Denial.** No permit shall be issued if the Agency determines that the proposed burning will cause a nuisance. All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

WSR 08-20-098
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 30, 2008, 6:33 a.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: The current rule describes the length of time we certify a WASHCAP recipient as twenty-four months. The amendments under this filing extend the certification period to thirty-six months per an approved waiver from food and nutrition service (FNS).

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0090.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Other Authority: FNS waiver.

Adopted under notice filed as WSR 08-17-110 on August 20, 2008.

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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 29, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0090 How often do my WASHCAP food benefits need to be reviewed? (1) Your eligibility for WASHCAP food benefits must be reviewed at least every ((~~twenty-four~~)) thirty-six months.

(2) Your certification period is the amount of time your assistance unit is eligible for WASHCAP food benefits.

WSR 08-20-109
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed September 30, 2008, 11:14 a.m., effective October 31, 2008]

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

Purpose: The rule changes update current rules that conflict with state and federal law and eliminate an unnecessary rule.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-10-050; and amending WAC 314-10-090 and 314-10-100.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 08-15-073 on July 15, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 1.

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: September 24, 2008.

Lorraine Lee
Chairman

AMENDATORY SECTION (Amending WSR 96-19-018, filed 9/6/96, effective 10/7/96)

WAC 314-10-090 ((~~Tobacco sampling—Licenses.~~)) What tobacco products may be used for sampling promotions? (1) No person may engage in providing ((~~tobacco~~)) samples of tobacco products other than cigarettes within Washington state.

(2) No person may engage in providing samples of cigarettes without a valid sampler's license. A firm contracting with a tobacco manufacturer to distribute samples of a manufacturer's product is deemed to be the person engaged in the business of sampling. The liquor control board will issue any sampler's licenses.

(((~~(2)~~))) (3) The annual fee for a manufacturer's cigarette samplers license within the state is $500 and is designated a Class T1 license. The fee for independent businesses that provide samples of ((~~tobacco products~~)) cigarettes is $50 and is designated a Class T2 license. All sampler's licenses expire on the 30th day of June each year and must be renewed annually.

In adopting the language of ((~~WAC 314-10-090(3)~~)) subsection (4) of this section, the board affirms that sampling does have a direct impact upon the availability of product to minors. Many sampling activities, because of the large volume of product offered, promote secondary distribution to bystanders, especially minors. Addiction to nicotine can occur quickly after the use of a relatively small amount of product. It is the board's intention to limit this amount thereby reducing the opportunity and potential for product to be redistributed to minors.

(((~~(3)~~))) (4) A sample is the smallest portion representative of the product that is available for retail sales and distribution. T1 and T2 license holders may distribute samples of ((~~tobacco products~~)) cigarettes pursuant to chapter 70.155 RCW and chapter 314-10 WAC as follows:

(a) Cigarettes: No more than one sample package may be furnished per eligible customer per day. Such sample shall not contain more than twenty cigarettes per sample package.

(b) ((~~Cigars: No more than one sample of any single brand and type and no more than two samples may be furnished per eligible customer per day. Such sample shall not contain more than one cigar per sample package.~~

~~(c) Smokeless tobacco products: No more than one sample can, package or pouch may be furnished per eligible customer per day. Such sample can, package or pouch shall not exceed the size of the smallest unit available for sale at retail.~~

~~(d) All other tobacco products: No more than one sample unit may be furnished per eligible customer per day. Such sample unit shall not exceed the size of the smallest unit available for sale at retail.~~

~~(e)~~)) T1 and T2 licensees that have sample packages available that contain ((~~less tobacco product~~)) fewer cigarettes than allowed by this section are encouraged to provide such alternative sizes.

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

WAC 314-10-100 ((~~Samplers license—Distribution of tobacco products.~~)) How may cigarette sampling activity be conducted? (1) The cigarette sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. The person engaged in sampling shall carry the Class T1 or T2 license or a copy of the license at all times and produce same at the request of an enforcement officer as defined in RCW 7.80.040.

(2) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to:

(a) An area to which persons under 18 years of age are denied admission,

(b) A store or concession to which a cigarette retailers license has been issued, or

(c) At or adjacent to a production, repair or outdoor construction site or facility.

(3) Notwithstanding subsection (2) ((~~above~~)) of this section, no person may distribute or offer to distribute samples within or on a public street, sidewalk, or park that is within 500 feet of a playground, school, or other facility where that facility is being used primarily by persons under 18 years of age for recreational, educational or other purposes.

(4) Class T1 and T2 licensees shall provide the board, ((~~upon request~~)) forty-five days prior to a sampling event, the locations, dates and times sampling activities will take place.

(5) All T1 and T2 licensees must provide to the liquor control board, in a format prescribed by the board, a listing of the location, date, hours and quantities of ((~~tobacco products~~)) cigarettes distributed in the state for the previous six months.

(a) A report for the period covering January 1st through June 30th of each year is due by no later than July 31st of each year.

(b) A report for the period covering July 1st through December 31st is due by no later than January 30th of the immediately following year.

(c) The board may take administrative action against any ((~~tobacco~~)) cigarette sampler who fails to submit the required reports.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-10-050	Sales to persons under 18 years of age.

WSR 08-20-113
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket UT-073014, General Order R-551—Filed September 30, 2008, 1:12 p.m., effective October 31, 2008]

ORDER CORRECTING TEXT OF
WAC 480-120-071 (8)(a) and (b) SUBMITTED FOR ADOPTION

In the matter of amending WAC 480-120-071 and 480-120-103, relating to extension of service and application for service.

1 On September 3, 2008, the Washington utilities and transportation commission (commission) filed with the code reviser an order amending and adopting rules permanently in WAC 480-120-071 and 480-120-103, relating to extension of service and application for service. The order is filed at WSR 08-19-001. The effective date for the adoption of the rules is October 4, 2008.

2 The commission recently learned that an intended addition of the effective date to subsections (8)(a) and (b) of WAC 480-120-071, as published at WSR 08-19-001, was erroneously omitted in the rule submitted for adoption. The effective date that should have been included in subsections (8)(a) and (b) is set out below in italics:

WAC 480-120-071 Extension of service.

(8) **Application of rule.**

(a) The prior WAC 480-120-071, as it was in effect on June 1, 2008, will continue to apply to applications for extension of service that a company has completed or accepted before *October 4, 2008*.

(b) This section, as amended effective *October 4, 2008*, applies to all other requests for service before and after the effective date.

3 Failure to insert the effective date of October 4, 2008, to subsections (8)(a) and (b) of WAC 480-120-071, submitted to the code reviser with the adoption order constitutes an oversight. Accordingly the commission enters this order to correct the rule by inserting the October 4, 2008, effective date in subsections (8)(a) and (b) of WAC 480-120-071. A copy of the corrected rule is shown below this order as Appendix A.

DATED at Olympia, Washington, September 29, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-21 issue of the Register.

WSR 08-20-117
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed September 30, 2008, 4:02 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: The department is amending WAC 388-561-0200 Annuities and adopting new WAC 388-561-0201 Annuities established on or after November 1, 2008.

Amendments and new rules are necessary to meet the requirements of section 6012 of the Deficit Reduction Act (DRA) of 2005. Section 6012 added new requirements to Title XIX of the Social Security Act pertaining to the treatment of annuities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-561-0200.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Adopted under notice filed as WSR 08-17-112 on August 20, 2008.

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 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 1, Amended 1, Repealed 0.

Date Adopted: September 25, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-06-043, filed 3/5/01, effective 5/1/01)

WAC 388-561-0200 Annuities established prior to November 1, 2008. (1) The department determines how annuities affect eligibility for medical programs.

(2) A revocable annuity is considered an available resource.

(3) An irrevocable annuity established prior to May 1, 2001 is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(4) The income from an irrevocable annuity, meeting the requirements of this section, is considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not considered a resource or income.

(((~~(4)~~))) (5) An annuity established on or after May 1, 2001 and before November 1, 2008 will be considered an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the department as the beneficiary of the remaining funds up to the total of Medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(((~~(5)~~))) (6) An irrevocable annuity established on or after May 1, 2001 and before November 1, 2008 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(((~~(6)~~))) (7) An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

(((~~(7)~~))) (8) An irrevocable annuity, established on or after May 1, 2001 and before November 1, 2008 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ineligibility in the month of application.

(((~~(8)~~))) (9) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; ((~~or~~))

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client.

(((~~(9)~~))) (10) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, UNLESS the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-561-0201 Annuities established on or after November 1, 2008. (1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of Medicaid must disclose to the state any interest the applicant or spouse has in an annuity.

(2) A revocable annuity is considered an available resource.

(3) The following annuities are not considered available resources:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;

(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;

(c) A simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or

(d) A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(4) The purchase of an annuity established on or after November 1, 2008, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and

(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant;

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (http://www.ssa.gov/OACT/STATS/table4c6.html).

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the applicant is the annuitant:

(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (c) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:

(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after November 1, 2008 that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full pay out is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after November 1, 2008 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after November 1, 2008 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).

WSR 08-20-118
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed September 30, 2008, 4:09 p.m., effective October 31, 2008]

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

Purpose: The division of developmental disabilities is creating a new chapter 388-831 WAC, Community protection program, to implement ESSB 6630, Laws of 2006. This chapter codifies the rules relating to the administration of the community protection program as directed by the legislature.

Citation of Existing Rules Affected by this Order:

WAC	Effect of Rule
388-831-0010 Definitions	Adds definitions used in this chapter.
388-831-0020	Defines the community protection program (CPP).
388-831-0030	Defines individuals with community protection issues.
388-831-0040	Defines who is covered by these rules.
388-831-0050	Defines the steps necessary to receive services.
388-831-0060	Defines what is contained in the assessment.
388-831-0065	Defines what happens for refusal to participate in the assessment.
388-831-0070	Describes what information will be given to individuals considered for placement in the CPP.
388-831-0080	Describes the notification requirement to individuals who are appropriate for placement in the CPP.
388-831-0090	Describes the notification requirement to individuals who cannot be managed successfully in the CPP.
388-831-0100	Explains how to apply for the CPP.
388-831-0110	Describes what information will be shared with others.
388-831-0120	Describes what the services will be.
388-831-0130	Describes the services available in the CPP.
388-831-0150	Defines who can provide therapy.
388-831-0160	Describes the services available for individuals who refuse placement in the CPP.
388-831-0200	Defines how often progress will be reviewed.
388-831-0210	Defines what is included in the review of progress.
388-831-0220	Defines when placement in a less restrictive setting may be considered.
388-831-0230	Describes the process to move to a less restrictive setting.
388-831-0240	Defines when termination from the CPP may occur.
388-831-0250	Describes that participation in the CPP is voluntary but limits the services available if this occurs.
388-831-0260	Defines where the enforcement rules against a provider of residential services and support may be found.
388-831-0300	Defines the appeal rights for individuals receiving services through the CPP waiver.
388-831-0400	Clarifies that nothing in these rules create an entitlement to placement on the CPP waiver.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: ESSB 6630, Laws of 2006.

Adopted under notice filed as WSR 08-16-123 on August 5, 2008.

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 25, 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 25, Amended 0, Repealed 0.

Date Adopted: September 29, 2008.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-21 issue of the Register.

WSR 08-20-121
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 30, 2008, 5:56 p.m., effective October 31, 2008]

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

Purpose: The rule change deletes a definition that is no longer needed. Prior to 2007, the definition of "good cause" provided consistency for extensions of basic time periods for complaint processing. The rules were changed in 2007 and management oversight of time periods changed to continuous oversight. Since extensions are no longer needed, the definition of good cause is no longer needed.

Citation of Existing Rules Affected by this Order: Amending WAC 246-14-020.

Statutory Authority for Adoption: RCW 18.130.095.

Adopted under notice filed as WSR 08-16-114 on August 5, 2008.

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: September 30, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-24-073, filed 12/4/07, effective 1/4/08)

WAC 246-14-020 Definitions. (1) A "report" is information received by the department of health which raises concern about conduct, acts or conditions related to a credential holder or applicant or about the credential holder or applicant's ability to practice with reasonable skill and safety. If the disciplining authority determines a report warrants an investigation, the report becomes a "complaint."

(2) ((~~Basic time periods may be exceeded for "good cause." Good cause is determined on a case-by-case basis, balancing all relevant factors including risk of harm to the public. Some examples of relevant factors may be circumstances not within the control of the department or the disciplining authority, need for expert review not available within the department or the disciplining authority, and activities which cannot be completed within the time period despite effort to do so.~~

~~(3)~~)) "Days" are calendar days unless otherwise indicated. If a time period would end on a Saturday, Sunday, or state holiday, that time period will end on the next business day.

(((~~(4)~~)) (3) "Enhanced management oversight" is enhanced direction of a case imposed by department management as an enforcement mechanism when a basic time period is exceeded. Management will ensure the case moves through the stage promptly. Some examples of enhanced direction may be staffing changes, resource reallocation, and work planning.

WSR 08-20-123
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 1, 2008, 6:50 a.m., effective November 1, 2008]

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

Purpose: **Why was rule making proposed?** This proposal would update the appeal process to more accurately reflect the intent of chapter 88.04 RCW, the Charter Boat Safety Act, and chapter 49.17 RCW, the Washington Industrial Safety and Health Act. The penalty language is being changed to align the charter boat penalty structure with other Division of Occupational Safety and Health (DOSH) penalties. A few requirements are being updated to make them consistent with current United States Coast Guard (USCG) requirements under 46 C.F.R. Typographical errors found in a couple of references are also being corrected.

What changes were proposed?

New Section:

WAC 296-115-110 Appeal of decisions.

- This section was previously WAC 296-115-010. We repealed WAC 296-115-010 and moved these requirements to the end of the rule with a new section number to create a more logical flow for the rule.
- The place to request a hearing changed from the director to the assistant director, and we clarified the steps involved.
- The appeal venue changed to the BIIA to be consistent with RCW 88.04.055 for all citations **except** those regarding denial of a certificate of inspection or license, or a decision on the maximum passengers, crew, or total capacity of a charter boat.

Amended Sections:

WAC 296-115-005 Scope and purpose.

- Changed name from "Scope and Application" to be consistent with current DOSH rule design.

WAC 296-115-015 Definitions.

- Deleted definitions that are no longer in the rule.
- Added new terms (assistant director, employee, keel laid, master).

WAC 296-115-025 Vessel inspection and certification.

- Changed the title from "vessel inspection and licensing" for consistency within the rule and with USCG regulations.

WAC 296-115-030 Master's examination and licensing.

- Removed penalty language and placed it in the penalty section (WAC 296-115-100).

WAC 296-115-035 Specific inspection requirements.

- Applied clear rule-writing principles.

WAC 296-115-040 Vessel construction and arrangement.

- Applied clear rule-writing principles.

WAC 296-115-050 General requirements.

- Made life preserver requirements consistent with USCG regulations under 46 C.F.R. 180.71 by adding the requirement to provide an appropriate life jacket for each child-sized person on board.
- Made ring life buoy requirements consistent with USCG regulations under 46 C.F.R. 180.70(d) by adding requirement for a floating water light when operating at night.
- Updated fixed fire extinguishing system requirements to be consistent with USCG regulations under 46 C.F.R. 181.115 by including vessels with wood and fiber-reinforced hulls among those needed [needing] a fixed fire extinguishing system.
- Deleted requirement for use of carbon dioxide in the fixed fire extinguishing systems since it is no longer commonly used.
- Updated fixed fire extinguishing system requirements to be consistent with USCG regulations under 46 C.F.R. 181.410(10) by adding a requirement for an automatic shut-down device for power ventilation.
- Added Table 1, Portable Fire Extinguishers to assist employers in determining the correct type of fire extinguisher needed.
- Made deck railing requirements consistent with 46 C.F.R. 116.900 (c) and (g) by changing the spacing for rails from twelve inches to four inches, and clarifying that hand grabs in lieu of railings are only allowed for areas designed for crew. Corrected a typographical error in the USCG manual reference.
- Made emergency portable battery light requirements consistent with 46 C.F.R. 183.430 by clarifying minimum requirements.
- Applied clear rule-writing principles.

WAC 296-115-060 Operations.

- Made injury or casualty reporting requirements consistent with 46 C.F.R. 185.202 (a)(6) by clarifying types of injuries that require reporting, and adding fire on board the vessel as one of the conditions that require reporting.
- Made emergency drill requirements consistent with 46 C.F.R. 185.520(f) by adding requirement for documentation of drills.
- Applied clear rule-writing principles.

WAC 296-115-070 Rules of navigation.

- Corrected a typographical error and updated the reference number for the navigation rules.
- Updated to correct term for testing compass readings.
- Applied clear rule-writing principles.

WAC 296-115-100 Penalties for certificate of inspection and operator's license.

- Changed title for clarity.
- Changed penalty for owners of vessels who violate the certification and inspection provisions from $200 to penalties provided under WISHA to be consistent with RCW 88.04.320(3).
- Applied clear rule-writing principles.

WAC 296-115-120 Annual fee schedule.

- Changed the term "license" to "certification" to use consistent terminology within the rules and to be consistent with USCG requirements under 46 C.F.R.
- Applied clear rule-writing principles.

Repealed Sections:

WAC 296-115-001 Forward.

- This section was incorporated into WAC 296-115-005 Scope and purpose, to be more consistent with the structure of our other rules.

WAC 296-115-010 Appeal of decisions

- This section was renumbered as WAC 296-115-110 for better organizational flow. See new sections above.

Citation of Existing Rules Affected by this Order: Amending WAC 296-115-005 Scope and application, 296-115-015 Definitions applicable to all sections of this chapter, 296-115-025 Vessel inspection and licensing, 296-115-030 Master's examination and licensing, 296-115-035 Specific inspection requirements, 296-115-040 Construction and arrangement, 296-115-050 General requirements, 296-115-060 Operations, 296-115-070 Rules of navigation, 296-115-100 Violations and setting of penalties and 296-115-120 Annual fee schedule; repealing WAC 296-115-001 Forward and 296-115-010 Appeal of decisions; and new section WAC 296-115-110 Appeal of decisions.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005.

Adopted under notice filed as WSR 08-14-132 on July 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: Because of comments received, the final rule language was changed from the proposed rule language as follows:

Stakeholder Comment	CR-102 language	CR-103 language	Comment
WAC 296-115-050 (3)(a) Needs additional language stating that floatation devices are only required for vessels that operate further than a certain distance from shore.	**WAC 296-115-050** (3) The following lifesaving equipment is required: (a) All vessels carrying passenger must carry life floats or buoyant apparatus for all persons on board. (b) All life floats or buoyant apparatus must be international orange in color. (c) Vessels operating not more than one mile from land may be permitted to operate with reduced numbers of life floats or buoyant apparatus if the assistant director determines it is safe. (d) Lifeboats, life rafts, dinghies, dories, skiffs, or similar type craft may be substituted for the required life floats or buoyant apparatus if the substitution is approved by the assistant director. (e) Life floats, buoyant apparatus, or any authorized substitute must have the following equipment: (i) A life line around the sides at least equivalent to 3/8 inch manila, festooned in bights or at least three feet, with a seine float in the center of each bight. (ii) Two paddles or oars not less than four feet in length. (iii) A painter of at least thirty feet in length and of at least two-inch manila or the equivalent.	**WAC 296-115-050** (3) The following lifesaving equipment is required: (a) All vessels carrying passenger must carry life floats or buoyant apparatus for all persons on board. (i) All life floats or buoyant apparatus must be international orange in color. (ii) Vessels operating not more than one mile from land may be permitted to operate without or with reduced numbers of life floats or buoyant apparatus if the assistant director determines it is safe. (iii) Lifeboats, life rafts, dinghies, dories, skiffs, or similar type craft may be substituted for the required life floats or buoyant apparatus if the substitution is approved by the assistant director. (iv) Life floats, buoyant apparatus, or any authorized substitute must be U.S. Coast Guard approved and have the following equipment: • Two paddles or oars not less than four feet in length. • A painter of at least half-inch diameter and thirty feet in length.	We renumbered to show that (b) through (e) are all subrequirements of (a). We also clarified that for vessels operating within one mile from land, "reduced numbers" of life floats or buoyant apparatus could mean none, when permitted by the assistant director.

Stakeholder Comment	CR-102 language	CR-103 language	Comment
WAC 296-115-050 Regarding (5)(a)(i) on fire protection equipment. We have never been required to have a fire main system. The vessel was built to USCG standards when it was built.	**WAC 296-115-050** (5)(a) Fire pumps. (i) All vessels carrying more than 49 passengers must carry an approved power fire pump, and have a fire main system, including fire main, hydrants, hose, and nozzles. The fire hose may be a good commercial grade garden hose of not less than 5/8 inch size.	**WAC 296-115-050** (5)(a) Fire pumps. (i) All vessels carrying more than 49 passengers must carry an approved power fire pump capable of reaching any part of the vessel.	Deleted the extra information about a fire main.
WAC 296-115-060 (3)(i) Need further clarification on what hazardous materials could be legally carried on a passenger vessel, where they should be carried, how they should be handled. Hazardous materials can be anything from a can of fly spray to a 5-gallon can of gasoline.	**WAC 296-115-060 (3)(i)** Carrying hazardous substances is prohibited on vessels. However, the assistant director may authorize a vessel to carry specific types and quantities of hazardous substances if the assistant director deems it necessary.	**WAC 296-115-060 (3)(i)** Carrying hazardous substances is prohibited on vessels. However, the assistant director may authorize a vessel to carry specific types and quantities of hazardous substances if the assistant director approves the type, quantity, and manner in which it is carried.	The definitions section includes a definition of hazardous materials. However, we added more detail about the assistant director allowing hazardous materials under certain conditions.

A final cost-benefit analysis is available by contacting Steve Cant, P.O. Box 44620, Olympia, WA 98507-4620, phone (360) 902-5495, fax (360) 902-5719, e-mail cant235@lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 11, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 11, Repealed 2.

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 11, Repealed 2.

Date Adopted: October 1, 2008.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-005 Scope and ((~~application~~)) purpose. This chapter generally sets requirements according to chapter 88.04 RCW to protect the safety and health of passengers and crew on board charter boats, and provides penalties for violations of these requirements. Specifically, this chapter:

(1) ((~~This chapter~~)) Applies to vessels for hire that carry seven or more passengers when operated in state waters ((~~within the jurisdiction of the state of Washington. These rules do not apply to vessels in the navigable waters of the United States subject to the jurisdiction of~~)) which are not regulated by the United States Coast Guard.

(2) ((~~Pursuant to chapter 88.04 RCW, the director of the department of labor and industries will administer this chapter.~~

(3) All rules adopted by the United States Coast Guard pertaining to inland water passenger vessel service and navigation on inland waters will be applied to this chapter unless they conflict with specific provisions of this chapter or chapter 88.04 RCW.

(4) Special consideration. In applying the provisions of this section, the director may allow departures from the specific requirements when special circumstances or arrangements warrant such departures.

(5) The provisions of this chapter do)) Does not apply to:

(a) ((~~A~~)) Vessels that ((~~is a~~)) are charter boats but is being used by the documented or registered owner ((~~of the charter boat~~)) exclusively for ((~~the owner's~~)) their own noncommercial or personal pleasure purposes;

(b) ((~~A~~)) Vessels owned by ((~~a person~~)) people or corporate ((~~entity~~)) entities which ((~~is~~)) are donated and used by ((~~a person~~)) people or nonprofit organizations to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(c) ((~~A~~)) Vessels that ((~~is~~)) are rented, leased, or hired by ((~~an~~)) operators to transport passengers for noncommercial or personal pleasure purposes;

(d) ((~~A~~)) Vessels used exclusively for, or incidental to, ((~~an~~)) educational purposes; or

(e) ((~~A~~)) Bare boat charter boats.

(3) Is intended to be consistent with, and prevails in the event of a conflict with, the rules adopted by the United States Coast Guard under 46 CFR Subchapters K and T, in effect at the time the vessel's keel was laid.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-115-015 Definitions ((~~applicable to all sections of this chapter~~)).

((~~Note: Meaning of words. Unless the context indicates otherwise, words used in this chapter will have the meaning given in this section.~~))

(1) **Approved** means approved by the assistant director((~~,~~)) or an authorized representative. However, if a provision of this chapter requires approval by an agency or organi-

zation other than the department, such as nationally recognized testing laboratories or the United States Coast Guard ((~~is required~~)), then approval by the specified authority will be accepted.

(2) **Assistant director** means the assistant director of the division of occupational safety and health (DOSH) within the department of labor and industries.

(3) **Authorized person** means a person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the workplace.

(4) **Bare boat charter** means the unconditional lease, rental, or charter of a boat by the owner, or ((~~his or her~~)) owner's agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel.

(5) **Carrying passengers or cargo** means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(6) **CFR** means Code of Federal Regulations.

(7) **Charter boat** means a vessel or barge operating on waters of the state of Washington which is:

(a) Not inspected or licensed by the United States Coast Guard and over which the United States Coast Guard does not exercise jurisdiction; and

((~~which is~~)) (b) Rented, leased, or chartered to carry seven or more ((~~than six~~)) persons, or cargo.

(8) **Commercial** means any activity from which the operator, or the person chartering, renting, or leasing a vessel derives a profit, and/or which qualifies as a legitimate business expense under the Internal Revenue Statutes.

(9) **Competent person** means someone who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt action to eliminate them.

(10) **Confined space** means a space that is all of the following:

(((~~(1) Is~~)) (a) Large enough and arranged so ((~~configured~~)) that an employee ((~~can bodily~~)) could fully enter the space and perform ((~~assigned~~)) work; and

(((~~(2)~~)) (b) Has limited or restricted means for entry or exit (((~~for,~~)). Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, and pits ((~~are spaces that may have limited means of entry~~))); and

(((~~(3) Is~~)) (c) Not primarily designed for ((~~continuous employee~~)) human occupancy.

(11) **Defect** means any characteristic or condition that tends to weaken or reduce the strength of the tool, object, or structure of which it is a part.

(12) **Department** means the department of labor and industries.

((~~**Director** means the director of the department of labor and industries, or his/her designated representative.~~)) (13) Employee means:

(a) Someone who is employed in the business of an employer; and

(b) Every person in this state who is working for an employer under an independent contract for personal labor.

(14) **Employer** means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that operates a passenger vessel for hire in this state and employs one or more employees or contracts with one or more persons((~~, the essence of which is the~~)) for personal labor ((~~of such persons~~)). Any person, partnership, or business entity that has no employees, and is covered by the Industrial Insurance Act ((~~shall be~~)) is considered both an employer and an employee.

(15) **Enclosed space** means any space, other than a confined space, which is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

(16) **Equipment** means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for((~~, or appurtenance to~~)) a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(17) **Hazard** means a condition, potential or inherent, that is likely to cause injury, death, or occupational disease.

(18) **Hazardous substance** means a substance that, because it is explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death or injury, including all substances listed on the USCG hazardous materials list.

(19) **Inspection** means the examination of vessels by the assistant director or an authorized representative of the assistant director.

(20) **Keel laid** means the date a vessel's keel was laid or the vessel was at a similar stage of construction.

(21) **Maritime safety specialist ((~~in P&TS~~))** means a technical and operations specialist in maritime issues located in the department ((~~of labor and industries' policy and technical services section~~)).

(22) **Master** means the individual having command of the vessel and who is the holder of a valid license that authorizes the individual to serve as master of a small passenger vessel.

(23) **Passenger** means ((~~any person or persons, carried on board a vessel in consideration of the payment of a fee or other consideration.~~

Port means left hand side of a vessel as one faces the bow.

Starboard means right hand side of a vessel as one faces the bow.

Power driven vessel means any vessel propelled by machinery.

Qualified means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve problems relating to the subject matter, the work, or the project.~~

~~**Safety and health standard** means a standard that requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment~~)) a passenger who pays for carriage on a vessel, whether directly or indirectly to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

(24) **Should** means recommended.

((~~**Substantial** means constructed of such strength, of such material, and of such workmanship, that the object referred to will withstand all normal wear, shock, and usage.~~))

(25) **Standard safeguard** means a device intended to remove a hazard incidental to the machine, appliance, tool, or equipment to which the device is attached. Standard safeguards ((~~shall~~)) must be constructed of either metal, wood, other suitable material, or a combination ((~~of these~~)). The final determination of the sufficiency of any safeguard rests with the assistant director.

(26) **State waters** means all nonnavigable waters within the territorial limits of the state of Washington, and not subject to the jurisdiction of the United States Coast Guard.

(27) **Substantial** means an object is constructed of such strength, material, and workmanship that it will withstand all normal wear, shock, and usage.

(28) **Suitable** means that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(29) **Under way** means a vessel is not at anchor, ((~~or~~)) made fast to the shore, or aground.

(30) **USCG** means the United States Coast Guard.

(31) **United States Coast Guard Navigation** means rules International/Inland, Commandants Instruction ((~~M16672.29C~~)) M16672.2D as now adopted, or ((~~hereafter~~)) legally amended by the United States Coast Guard.

(32) **Vessel** means every description of motorized watercraft, other than a bare boat charter boat, seaplane, or sailboat, used or capable of being used to transport seven or more ((~~than six~~)) passengers, or cargo, on water for rent, lease, or hire.

(33) **Working day** means a calendar day, except Saturdays, Sundays, and legal holidays as ((~~set forth~~)) described in RCW 1.16.050((~~, as now or hereafter amended~~)). The time within which an act ((~~is to~~)) must be done ((~~under the provisions of this chapter shall be~~)) is computed by excluding the first working day and including the last working day.

((~~**Worker, personnel, man, person, employee,** and other terms of like meaning, unless the context indicates otherwise means an employee of an employer who is employed in the business of his/her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his/her personal labor for an employer whether by manual labor or otherwise.~~))

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-025 Vessel inspection and ((~~licensing~~)) certification. (1) The department must inspect all vessels subject to this chapter to ensure they are safe and seaworthy at least once each year.

(2) The department may also inspect a vessel:

(a) If requested to do so by the owner, operator, or master of the vessel((~~, and~~));

(b) After an explosion, fire, or any other accident involving the vessel((~~.~~

~~(2) The department may inspect a vessel~~));

(c) Upon receipt of a complaint from any person ((~~or,~~));

(d) At the discretion of the department((~~, at any other time~~)).

(3) The department will charge the owner of a vessel a fee for each certification or recertification inspection. ((~~This fee will be determined by the director. (~~))See WAC 296-115-120 for fee schedule.((~~)~~))

(4) No person will operate a passenger vessel if the vessel does not have a valid certificate of inspection issued by the department.

(5) After ((~~the department has inspected~~)) inspecting a vessel and determining it is ((~~satisfied the vessel is~~)) safe and seaworthy, the department will issue a certificate of inspection for that vessel. The certificate will be valid for one year after the date of inspection((~~,~~)) and contain:

(((~~(5)~~))) (a) The certificate must set forth the date of the inspection((~~,~~));

(b) The names of the vessel and the owner((~~,~~));

(c) The number of lifeboats ((~~and~~)), if required;

(d) The number of life preservers required((~~,~~));

(e) The number of passengers allowed((~~,~~)); and

(f) Any other information the department ((~~may~~)) requires by rule ((~~require~~)).

(6)(((~~(a) If at~~)) Any time a vessel is found to be not safe or seaworthy, or not in compliance with the provisions of this chapter((~~,~~));

(a) The department may refuse to issue a certificate of inspection until the deficiencies have been corrected and may cancel any certificate of inspection currently issued.

(b) The department must give the owner ((~~of the vessel~~)) a written statement ((~~of the reason(s)~~)) why the vessel was found to be unsafe, unseaworthy, or not in compliance with the provisions of this chapter, including a specific reference to the statute or rule ((~~with which the vessel did not comply~~)).

(7) ((~~An~~)) Department inspectors ((~~of the department~~)) may, upon ((~~the presentation of his or her~~)) presenting their credentials to the owner, master, operator, or agent in charge of a vessel, board the vessel without delay to make an inspection.

((~~The~~)) (a) Inspectors must inform the owner, master, operator, or agent in charge that ((~~his or her~~)) their intent is to inspect the vessel.

(((~~(8)~~))) (b) During the inspection, ((~~the~~)) inspectors must have access to all areas of the vessel. ((~~The~~)) Inspectors may question privately the owner, master, operator, or agent in charge of the vessel, or any crew member of or passenger on the vessel.

(((~~(9)~~))) (c) If any person refuses to allow ((~~an~~)) inspectors to board a vessel for an inspection, or refuses to allow access to any areas of the vessel, the department may request a warrant from the superior court for the county in which the vessel is located. The court will grant the warrant if:

(((~~(a) If~~))) • There is evidence that the vessel has sustained a fire, explosion, unintentional grounding, or has been involved in any other accident;

(((~~(b) If~~))) • There is evidence that the vessel is not safe or seaworthy; or

(((~~(c) Upon a showing~~))) • The department shows that the inspection furthers a general administrative plan for enforcing the safety requirements of chapter 88.04 RCW, the Charter Boat Safety Act.

(((~~(10)~~))) (8) The owner or master of a vessel must post the certificate of inspection behind glass or other suitable transparent material in a conspicuous area of the vessel.

~~(((11) No person will operate a passenger vessel if the vessel does not have a valid certificate of inspection.))~~

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-030 Master's examination and licensing. (1) The registered owner of passenger vessels or barges for hire is responsible to obtain an operator's license from the United States Coast Guard or the department for the master or operator of each vessel. A physical examination will be required.

(2) ((~~The department will penalize any person who acts as a master or operator on a vessel without having first received a United States Coast Guard or department license, or without having a valid license in his or her possession, or upon a vessel or class of vessels not specified in the license.~~

~~(3)~~)) The department may recommend suspension or revocation of a license to the United States Coast Guard for intemperance, incompetence, or a negligent, reckless, or willful disregard for duty.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-115-035 Specific inspection requirements. (1) ((~~Drydocking or hauling out.~~)) Each passenger vessel subject to the provisions in this section must be drydocked or hauled out at intervals not to exceed sixty months and the underwater hull and appendages, propellers, shafting, stern bearings, rudders, through-hull fittings, sea valves and strainers must be examined to determine that these items are in satisfactory condition.

(2) At the annual inspection the inspector must:

(a) View the vessel afloat and conduct the following tests and inspections of the hull:

(((~~(a)~~))) (i) Examine the hull exterior and interior, bulkheads, and weather deck.

(((~~(b)~~))) (ii) Examine and test by operation all watertight closures in the hull, decks, and bulkheads.

(((~~(c)~~))) (iii) Inspect all railings and bulwarks and their attachment to the hull.

(((~~(d)~~))) (iv) Inspect weathertight closures above the weather deck and drainage or water from exposed decks and superstructure.

(((~~(3) At the annual inspection the inspector will~~))) (b) Examine and test the following items:

(((~~(a)~~))) (i) Main propulsion machinery.

(((~~(b)~~))) (ii) Engine starting system.

(((~~(c)~~))) (iii) Engine control mechanisms.

(((~~(d)~~))) (iv) Auxiliary machinery.

(((~~(e)~~))) (v) Fuel systems.

(((~~(f)~~))) (vi) Sea valves and bulkhead closure valves.

(((~~(g)~~))) (vii) Bilge and drainage systems.

(((~~(h)~~))) (viii) Electrical system, including circuit protection.

(((~~(4) Lifesaving and fire extinguishing equipment. At each annual inspection the inspector must~~))) (c) Inspect the life saving and fire extinguishing equipment for serviceability.

(((~~(5) Miscellaneous systems and equipment. At each annual inspection the marine dock inspector must~~))) (d) Inspect and test the vessel's steering apparatus, ground tackle, navigation lights, sanitary facilities, pressure vessels, and any other equipment aboard the vessel for serviceability and safety.

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-040 Vessel construction and arrangement. (1) Application.

(a) ((~~The~~)) These requirements ((~~of this section~~)) apply to all vessels contracted for construction on or after June 7, 1979.

(b) Vessels constructed before the effective date of this chapter must be brought into substantial compliance with the requirements of this section. Where ((~~deviation exists and~~)) strict compliance is impractical, the assistant director may grant a temporary variance to allow a modification or a permanent variance if the intent of ((~~subsection (1)(c) of this section~~)) these requirements is met.

(c) The intent of ((~~the regulations in this part~~)) these requirements is to provide for a sound, seaworthy vessel, reasonably fit for the service it is intended to provide, and to ensure that the materials, scantlings, fastenings, and workmanship meet this intent. Primary consideration must be given to the provision of a seaworthy hull, protection against fire, means of escape in case of casualty, guards and rails in hazardous places, ventilation of closed spaces, and necessary facilities for passengers and crew.

(2) Hull structure.

(a) In general, ((~~compliance~~)) complying with the standards of the United States Coast Guard rules for small passenger vessels or with the standards of a recognized classification society ((~~will be~~)) is considered satisfactory evidence of the structural adequacy of a vessel.

(b) Special consideration will be given by the assistant director to materials or structural requirements not ((~~contemplated~~)) specified by the standards of a recognized classification society.

(3) Watertight integrity and subdivision.

(a) All vessels carrying more than forty-nine passengers must have a collision bulkhead and watertight bulkheads (or sufficient air tankage or other internal flotation) so the vessel will remain afloat (with positive stability) with any one main compartment flooded.

(b) All watertight bulkheads required by this part must be of substantial construction so ((~~as to be able to~~)) they remain watertight with water to the top of the bulkhead.

(c) Watertight bulkheads must extend intact to the bulkhead deck. Penetrations must be kept to a minimum and must be watertight.

(d) The weather deck on a flush deck vessel must be watertight and must not obstruct overboard drainage.

(e) Cockpits must be watertight except that companionways may be fitted if they are provided with watertight coamings and weathertight doors. Also, ventilation openings may be provided if they are situated as high in the cockpit as possible and the opening height does not exceed two inches.

(f) Cockpits must be self-bailing. The scuppers installed for this purpose must be located so ((~~as to be~~)) they are effective considering probable list and trim.

(g) Well decks must be watertight. Freeing ports may be installed if the provisions of applicable United States Coast Guard standards are followed.

(h) ((~~On vessels operating on protected waters,~~)) Weather deck hatches may be weathertight. All hatches must be provided with covers capable of being secured.

(i) The number of openings in the vessel's sides below the weather deck must be kept to a minimum.

(j) Any openings in a vessel's sides, such as portlights, must comply with applicable United States Coast Guard standards.

(4) Stability.

(a) All charter vessels ((~~subject to the provisions of this section~~)) must have a stability test, ((~~except that~~)) unless the assistant director ((~~may dispense with the requirements for a test if he deems~~)) determines that a test is not required((~~, on the basis of~~)) because sufficient evidence is provided by the owner that the vessel's stability is satisfactory for the service for which it is intended.

(b) A letter stating that the vessel has met ((~~the~~)) these stability requirements ((~~of this part~~)) must be posted in the pilothouse of each vessel.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-115-050 General requirements. (1) ((~~Application.~~

~~(a) The following rules are applicable to all vessels operated within the scope of this chapter.~~

~~(b)~~)) Where an existing charter vessel does not ((~~comply with~~)) meet a particular requirement of this section, the assistant director may grant:

(a) A temporary variance to allow time for modifications to be made.

(((~~(c) Where an existing vessel does not comply with a specific requirement contained herein but~~)) (b) A permanent variance if the degree of protection afforded is judged to be adequate for the service in which the vessel is used((~~, the director may grant a permanent variance~~)).

(2) Lifesaving equipment((~~. Where equipment~~)) required by this section ((~~is required to be of an approved type, the equipment is required to~~)) must be approved by the USCG.

(3) The following lifesaving equipment is required((~~,~~)):

(a) All vessels carrying passengers must carry life floats or buoyant apparatus for all persons on board.

(((~~(b)~~))) (i) All life floats or buoyant apparatus must be international orange in color.

(((~~(c) In the case of~~)) (ii) Vessels operating not more than one mile from land((~~, the director may permit operation with reduced amounts of~~)) are not required to carry life floats or buoyant apparatus((~~, when, in his opinion, it is safe to do so~~)).

(((~~(d)~~))) (iii) Lifeboats, life rafts, dinghies, dories, skiffs, or similar type craft may be substituted for the required life floats or buoyant apparatus if the substitution is approved by the assistant director.

(((~~(e)~~))) (iv) Life floats, buoyant apparatus, or any authorized substitute must be U.S. Coast Guard approved and have the following equipment:

(((~~(i) A life line around the sides at least equivalent to 3/8-inch manila, festooned in bights of at least three feet, with a seine float in the center of each bight.~~

~~(ii)~~)) • Two paddles or oars not less than four feet in length.

(((~~(iii)~~))) • A painter of at least one-half inch diameter and thirty feet in length ((~~and of at least two-inch manila or the equivalent~~)).

(((~~(f)~~))) (b) All vessels must have ((~~an~~)) a USCG-approved adult ((~~type~~)) life preserver for ((~~each person carried~~)) the number of people the vessel is certified to carry, with at least ten percent additional of a type suitable for children or greater number to provide a life jacket for each child-sized person on board.

(((~~(g)~~))) (i) Life preservers must be stowed in readily accessible places in the upper part of the vessel((~~,~~)); and

(ii) Each life preserver ((~~shall~~)) must be marked with the vessel's name.

(((~~(h)~~))) (c) All vessels must carry in a readily accessible location at least one ring life ((~~ring~~)) buoy of an approved type with sixty feet of buoyant line attached. The ring life buoy must:

(i) ((~~The life ring buoy must be carried in a readily accessible location and must be capable of being~~)) Be ready to cast loose at any time; and

(ii) Have a floating water light, unless operation is limited to daytime.

(4) Fire protection general.

(a) The general construction of a vessel must minimize fire hazards.

(b) Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from woodwork or other combustible material.

(c) Lamp, paint, and oil lockers and similar storage areas for flammable or combustible liquids must be constructed of metal or lined with metal.

(5) Fire protection equipment. Equipment required ((~~by this section, when required~~)) to be of an approved type((~~,~~))

must be ((~~of a type~~)) approved by the USCG or other agency acceptable to the director.

(((~~6~~))) (a) Fire pumps.

(((~~a~~))) (i) All vessels carrying more than forty-nine passengers must carry an approved power fire pump((~~, and~~)) capable of reaching any part of the vessel.

(ii) All other vessels must carry an approved hand fire pump. These pumps must be provided with a suitable suction and discharge hose((~~. These pumps~~)), and may also serve as bilge pumps.

(b) ((~~Vessels required to have a power fire pump must also have a fire main system, including fire main, hydrants, hose, and nozzles. The fire hose may be a good commercial grade garden hose of not less than 5/8 inch size.~~

~~(7)~~)) Fixed fire extinguishing system.

(((~~a) All~~))) (i) The following vessels ((~~powered by internal combustion engines using gasoline or other fuel having a flashpoint of 110°F or lower,~~)) must have a fixed fire extinguishing system to protect the machinery and fuel tank spaces((~~.~~)):

(((~~b~~))) • Those powered by internal combustion engines using gasoline or other fuel having a flashpoint of 110°F or lower; and

• Those with hulls constructed of fiber-reinforced plastic (FRP) or wood.

(ii) This system must be an approved type ((~~using carbon dioxide~~)) and have a capacity sufficient to protect the space.

(((~~c~~))) (iii) Controls for the fixed system must be installed in an accessible location outside the space protected.

(((~~8~~))) (iv) A device must be provided to automatically shut down power ventilation serving the protected space and engines that draw intake air from the protected space prior to release of the extinguishing agent into the space.

(c) Fire axe. All vessels must have one fire axe located in or near the pilothouse.

(((~~9~~))) (d) Portable fire extinguishers.

(((~~a~~))) (i) All vessels must have a minimum number of portable fire extinguishers of an approved size and type. The number required will be determined by ((~~the director~~)) Table 1, Portable Fire Extinguishers.

(((~~b~~))) (ii) Portable fire extinguishers must be inspected at least once a month. Extinguishers found defective must be serviced or replaced.

(((~~c~~))) (iii) Portable fire extinguishers must be serviced at least once a year. The required service must consist of discharging and recharging foam and dry chemical extinguishers and weighing and inspecting carbon dioxide extinguishers.

(((~~d~~))) (iv) Portable fire extinguishers must be hydrostatically tested at intervals not to exceed those specified in WAC 296-800-300 in the safety and health core rules.

(((~~e~~))) (v) Portable fire extinguishers of the vaporizing liquid type such as carbon tetrachloride and other toxic vaporizing liquids are prohibited and must not be carried on any vessel.

(((~~f~~))) (vi) Portable fire extinguishers must be mounted in brackets or hangers near the space protected. The location must be marked in a manner satisfactory to the assistant director.

Table 1
Portable Fire Extinguishers

		Type Extinguisher Permitted		
Space Protected	**Minimum # Required**	**CG Class**	**Medium**	**Minimum Size**
Operating station	1	B-I, C-I	Halon CO_2 Dry chemical	2.5 lb. 4 lb. 2 lb.
Machinery space	1 Located just outside exit	B-II, C-II	CO_2 Dry chemical	15 lb. 10 lb.
Open vehicle deck	1 for every 10 vehicles	B-II	Foam Halon CO_2 Dry chemical	2.5 gal. 10 lb. 15 lb. 10 lb.
Accommodation space	1 for each 2,500 sq. ft. or fraction thereof	A-II	Foam Dry chemical	2.5 gal. 10 lb.
Galley, pantry, concession stand	1	A-II, B-II	Foam Dry chemical	2.5 gal. 10 lb.

(((~~10~~))) (6) Means of escape.

(a) ((~~Except as otherwise provided in this section,~~)) All vessels must ((~~be provided with not less than~~)) have at least two avenues of escape from all general areas accessible to the passengers or where the crew may be quartered or normally employed. The avenues must be located so that if one is not available the other may be. At least one of the avenues should be independent of watertight doors.

(b) One vertical means of escape is acceptable where the length of the compartment is less than twelve feet((~~, one vertical means of escape will be acceptable~~)) under the following conditions:

(i) There is no source of fire in the space, such as a galley stove or heater and the vertical escape is remote from the engine and fuel tank space; or

(ii) The arrangement is such that the installation of two means of escape does not materially improve the safety of the vessel or those aboard.

((~~(11)~~)) (7) Ventilation.

(a) All enclosed spaces within the vessel must be properly vented or ventilated. Where such openings would endanger the vessel under adverse weather conditions, means must be provided to close them.

(b) All crew and passenger space must be adequately ventilated in a manner suitable to the purpose of the space.

((~~(12)~~)) (8) Crew and passenger accommodations.

(a) Vessels with crew members living aboard must have suitable accommodations.

(b) Vessels carrying passengers must have fixed seating for the maximum number of passengers permitted ((~~to be carried.~~

~~(c) Fixed seating must be installed with spacing to provide for ready escape in case of fire or other casualty.~~

~~(d) Fixed seating must be installed as follows, except that special consideration may be given by the director if escape over the side can be readily accomplished through windows or other openings in the way of the seats~~)), installed as follows:

(i) Spacing that provides for ready escape in case of fire or other casualty.

(ii) Aisles not over fifteen feet long must be not less than twenty-four inches wide.

((~~(ii)~~)) (iii) Aisles over fifteen feet long must be not less than thirty inches wide.

((~~(iii)~~)) (iv) Where seats are in rows the distance from seat front to seat front must be not less than thirty inches.

((~~(c)~~)) (v) The assistant director may grant special exception to fixed seating spacing requirements if escape over the side can be readily accomplished through windows or other openings in the way of the seats.

(c) Portable or temporary seating may be installed but must be arranged ((~~in general~~)) as provided for fixed seating.

((~~(13)~~)) (9) Toilet facilities and drinking water.

(a) Vessels must be provided with toilets and wash basins as specified in WAC 296-800-230((~~, except that in the case of~~)) unless vessels are used exclusively on short runs of approximately thirty minutes or less((~~, the director may approve other arrangements~~)).

(b) All toilets and wash basins must be fitted with adequate plumbing. Facilities for men and women must be in separate compartments, except in the case of vessels carrying forty-nine passengers and less, the assistant director may approve other arrangements.

(c) Potable drinking water must be provided for all passengers and crew((~~. The provisions of~~)) according to WAC ((~~296-800-230 apply~~)) 296-800-23005.

(d) Covered trash containers must be provided in passenger areas.

((~~(14)~~)) (10) Rails and guards.

(a) ((~~Except as otherwise provided in this section,~~)) Rails or equivalent protection must be installed near the periphery of all weather decks accessible to passengers and crews. Where space limitations make deck rails impractical for areas designed for crew only, such as at narrow catwalks in the way of deckhouse sides, hand grabs may be substituted.

(b) Rails must consist of evenly spaced courses. The spacing must not be greater than ((~~twelve~~)) four inches except as provided in WAC 296-115-050 ((~~(14)(f)~~)) (10)(d). ((~~The~~)) Lower rail courses may not be required ((~~where~~)) if all or part of the space below the upper rail course is fitted with a bulwark, chain link fencing, wire mesh or the equivalent.

(c) On passenger decks of vessels engaged in ferry or excursion type operation, rails must be at least forty-two inches high. The top rail must be pipe, wire, chain, or wood and must withstand at least two hundred pounds of side loading. The space below the top rail must be fitted with bulwarks, chain link fencing, wire mesh, or the equivalent.

(d) On vessels engaged in other than passenger service, the rails must be not less than thirty-six inches high((~~, except that~~)). Where vessels are used in special service, the assistant director may approve other arrangements, but in no case less than thirty inches high.

(e) Suitable storm rails or hand grabs must be installed where necessary in all passageways, at deckhouse sides, and at ladders and hatches where passengers or crew might have normal access.

(f) Suitable covers, guards, or rails must be installed in the way of all exposed and hazardous places such as gears or machinery. (See chapter 296-806 WAC, Machine safety for detailed requirements.)

((~~(15)~~)) (11) Machinery installation.

(a) Propulsion machinery.

(i) Propulsion machinery must be suitable in type and design for the propulsion requirements of the hull of the vessel in which it is installed. Installations meeting the requirements of the USCG or ((~~other~~)) USCG-recognized classification society ((~~will be~~)) are considered acceptable to the assistant director.

(ii) Installations using gasoline or diesel as a fuel must meet the requirements of applicable USCG standards.

((~~(iii) Installations using diesel fuel must meet the requirements of applicable USCG standards.~~))

(b) Auxiliary machinery and bilge systems.

(i) All vessels must be provided with a suitable bilge pump, piping, and valves for removing water from the vessel.

(ii) Vessels carrying more ((~~that~~)) than forty-nine passengers must have a power operated bilge pump. The source of power must be independent of the propulsion machinery. Other vessels must have a hand operated bilge pump, but may have a power operated pump if it is operated by an independent power source.

(c) Steering apparatus and miscellaneous systems.

(i) All vessels must be provided with a suitable steering apparatus.

(ii) All vessels must be provided with navigation lights and shapes, whistles, fog horns, and fog bells as required by the USCG rules of navigation.

(iii) All vessels must be equipped with a suitable number of portable battery lights for emergency purposes. There should be at least two, one located at the operating station and the other at the access to the propulsion machinery.

(d) Electrical installations. The electrical installations of all vessels must be at least equal to applicable USCG standards, or as approved by the assistant director.

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-060 Operations. (1) ((~~This section applies to all passenger vessel operations within the scope of this chapter.~~

~~(2)~~)) No person will rent, lease, or hire out a charter boat, ((~~nor~~)) carry, advertise for ((~~the~~)) carrying ((~~of, nor~~)), or arrange for ((~~the~~)) carrying ((~~of~~)), more than six passengers on a vessel for a fee or other consideration on ((~~the~~)) state waters ((~~of the state~~)) unless the vessel ((~~is in compliance with~~)) meets the ((~~provisions~~)) requirements of this chapter.

(((~~(3)~~))) (2) Notice of casualty.

(a) The owner or person in charge of any vessel involved in a marine accident or casualty involving any of the following must report the incident immediately to the department((~~,~~)):

(i) Damage to property in excess of one thousand five hundred dollars.

(ii) Major damage affecting the seaworthiness or safety of the vessel.

(iii) Loss of life or an injury to a person that ((~~incapacitates the person for more than seventy-two hours~~)) requires medical treatment beyond first aid.

(iv) Fire on board the vessel.

(b) The report must be in writing to the assistant director ((~~and~~)). Upon receipt of the report the assistant director may request an investigation by a marine dock inspector.

(((~~(4)~~))) (3) Miscellaneous ((~~operating requirements~~)) operations.

(a) In the case of collision, accident, or other casualty involving a vessel the operator, must((~~,~~)):

(i) So far as ((~~he can do so~~)) possible without serious danger to ((~~his own~~)) the vessel or persons aboard, render any necessary assistance to other persons affected by the collision, accident, or casualty to save them from danger. ((~~He must also give his~~))

(ii) Provide the name and address of the vessel owner and the name of ((~~his~~)) the vessel to any person injured and to the owner of any property damaged.

(b) The person in charge of the vessel must see that the provisions of the certificate of inspection are strictly adhered to. This will not ((~~be construed as limiting~~)) limit the person in charge from taking any action in an emergency ((~~that he deems~~)) judged necessary to help vessels in distress or to prevent loss of life.

(c) ((~~Persons operating~~)) The operator of a vessel((~~s~~)) must comply with the provisions of the USCG ((~~rules of the road for inland waters~~)) Navigation Rules International/Inland, Commandants Instruction M16672.2D.

(d) The operator of a vessel must test the vessel's steering gear, signaling whistle, controls, and communication system before getting under way for the day's operation.

(e) Vessels using fuel ((~~having~~)) with a flashpoint of 110°F or lower must not take on fuel when passengers are on board.

(f) All vessels must enforce "no smoking" provisions when fueling. Locations on the vessel where flammable or combustible liquids are stored must be posted "no smoking."

(g) All vessels must prepare and post emergency check-off lists in a conspicuous place accessible to crew and passengers, covering the following:

(i) Man overboard.

(ii) Fire.

(h) The persons in charge must conduct emergency drills to ensure that the crew is familiar with their duties in an emergency and must document the drills.

(i) ((~~The carriage of~~)) Carrying hazardous substances is prohibited on vessels. However, the assistant director may authorize a vessel to carry specific types and quantities of hazardous substances if ((~~he deems it necessary~~)) the assistant director approves the type, quantity, and manner in which it is carried.

(j) All areas accessible to passengers or crew must be kept in a clean and sanitary condition. All walking surfaces must be free of slipping or tripping hazards and in good repair.

(((~~(5) First-aid training. There must be present or available on~~)) (4) First aid.

(a) All passenger vessels at all times((~~,~~)) must have a person holding a valid certificate of first-aid/CPR training.

(((~~(6) Valid certification must be achieved by passing a course of first-aid instruction and participation in practical application of the following subject matter.~~

~~Bleeding control and bandaging.~~

~~Practical methods of artificial respiration, including mouth to mouth and mouth to nose resuscitation.~~

~~Closed chest heart massage.~~

~~Poisons.~~

~~Shock, unconsciousness, stroke.~~

~~Burns, scalds.~~

~~Sunstroke, heat exhaustion.~~

~~Frostbite, freezing, hypothermia.~~

~~Strains, sprains, hernias.~~

~~Fractures, dislocations.~~

~~Proper transportation of the injured.~~

~~Bites, stings.~~

~~Subjects covering specific health hazards likely to be encountered by coworkers of first-aid students enrolled in the course.~~

~~(7) First-aid equipment.~~)) (b) A first-aid kit or first-aid room must be provided on all ((~~passenger~~)) vessels. The size and quantity of first-aid supplies or equipment required must be determined by the number of persons normally dependent upon each kit or equipment. The first-aid kit or supplies must be in a weatherproof container with individually sealed packages for each type of item. The location of the first-aid station or kit ((~~location~~)) must be posted or marked "first aid" on the container.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-115-070 Rules of navigation. The operation and navigation of all charter vessels ((~~subject to this chapter~~)) must be in strict accordance with the United States Coast Guard Navigation Rules International/Inland, Commandants Instruction ((~~M16672.29C~~)) M16672.2D as now adopted, or

((~~hereafter~~)) legally amended by the United States Coast Guard.

(1) A copy of the United States Coast Guard Navigation Rules International/Inland, Commandants Instruction ((~~M16672.29C~~)) M16672.2D, must be on board all charter vessels ((~~subject to this chapter~~)) at all times when the vessel is under way.

(2) At least annually, where applicable, the operator of each vessel must "swing the ((~~vessel~~)) compass" to determine the actual compass readings in relation to true compass headings, and must maintain a record on board the vessel.

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-100 ((~~Violations and setting of~~)) Penalties for certificate of inspection and operator's license violations. (1) ((~~Violations of the mandatory provisions of this chapter will be subject to penalty. The amount of the penalty will be assessed in accordance with the guidelines and fixed schedules contained herein.~~)) For owners of vessels, any violation of the certification and inspection provisions of this chapter is punishable according to the penalties provided under the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

(2) The following fixed schedule penalties((~~:~~)) apply:

(a) ((~~Failure~~)) For failing to display certificate of inspection as required((~~:~~)) in WAC 296-115-025(8), fifty dollars to owner of the vessel.

(b) ((~~Operation of vessel in passenger service without a valid certificate of inspection: To owner of vessel, two hundred dollars per violation; to person~~)) For a nonowner who operates vessel without a valid certificate of inspection, one hundred dollars per violation.

(c) ((~~Operation of~~)) For operating a vessel in passenger service ((~~while not in possession of~~)) without a valid USCG/state of Washington operator's license((~~:~~)), one hundred dollars per violation to the owner of the vessel.

NEW SECTION

WAC 296-115-110 Appeal of decisions. (1) Within fifteen working days after receipt of the decision, a person may request a hearing with the assistant director regarding denial of a certificate of inspection or license, or a decision on the maximum passengers, crew, or total capacity of a charter boat.

(a) At the hearing the department must give the opportunity to produce witnesses and give testimony.

(b) The hearing will be held at the department's headquarters office or at another location designated by the assistant director and presided over by an authorized representative of the assistant director.

(c) Following the informal hearing the department will issue a final decision.

(d) A final decision may be appealed to the superior court for the state of Washington in either the county in which the certificateholder resides or in Thurston County within thirty days after the suspension or revocation order is entered.

(e) The action being appealed will remain in effect until the applicant presents proof that the specified requirements are met, or until the appeal is otherwise resolved.

(2) For all other citations, follow the appeal process in chapter 49.17 RCW.

AMENDATORY SECTION (Amending Order 89-10, filed 10/10/89, effective 11/24/89)

WAC 296-115-120 Annual fee schedule. (1) The annual ((~~license~~)) certification fee for passenger vessels or barges is ((~~$250.00~~)) two hundred fifty dollars plus ((~~$2.00~~)) two dollars per ton for each vessel.

(2) The fee for an operator's license for passenger vessels or barges is ((~~$50.00~~)) fifty dollars for the first year; this covers application and test costs. The renewal fee is ((~~$25.00~~)) twenty-five dollars annually.

(3) Additional inspection service when required is at the rate of ((~~$25.00~~)) twenty-five dollars per hour, plus travel and per diem.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-115-001	Foreword.
WAC 296-115-010	Appeal of decisions.

WSR 08-20-125
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)

[Filed October 1, 2008, 8:47 a.m., effective November 1, 2008]

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

Purpose: The adopted rules will clarify that the use of laser, light, radiofrequency, and plasma (LLRP) devices classified as prescriptive medical devices by the Food and Drug Administration are the practice of osteopathic medicine. The adopted rules define delegation and supervision for the use of LLRP devices by osteopathic physicians and osteopathic physician assistants.

Statutory Authority for Adoption: RCW 18.57.005, 18.57A.020, 18.130.050.

Adopted under notice filed as WSR 08-13-093 on June 18, 2008.

A final cost-benefit analysis is available by contacting Erin Obenland, Board of Osteopathic Medicine and Surgery, P.O. Box 47866, phone (360) 236-4945, fax (360) 236-2406, e-mail erin.obenland@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, 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 2, Amended 0, Repealed 0.

Date Adopted: July 25, 2008.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-853-630 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities, and other physical conditions in human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) An osteopathic physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that an allied health care professional may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the osteopathic physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the osteopathic physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The osteopathic physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include the following:

(a) A mechanism to identify complications and problematic effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised allied health care professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and osteopathic physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of the treating allied health care professionals.

OSTEOPATHIC PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) An osteopathic physician who meets the requirements in subsections (1) through (9) of this section may delegate an LLRP device procedure to a properly trained allied health care professional licensed under the authority of RCW 18.130.040, whose scope of practice allows the use of a prescriptive LLRP medical device, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of osteopathic medicine;

(b) Such delegated use falls within the supervised allied health care professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye;

(d) An osteopathic physician has a written office protocol for the supervised allied health care professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual osteopathic physician authorized to use the LLRP device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised allied health care professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised allied health care professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made;

(e) The supervised allied health care professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment;

(f) The delegating osteopathic physician ensures that the supervised allied health care professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating osteopathic physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised allied health care professional may complete the initial treatment if the physician is called away to attend to an emergency;

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating osteopathic physician provided there is a local back-up physician, licensed under chapter 18.57 or 18.71 RCW, who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. In case of an emergency the delegating osteopathic physician or a back-up physician shall be reachable by phone and able to see the patient within sixty minutes.

(11) The use of, or the delegation of the use of, an LLRP device by an osteopathic physician assistant is covered by WAC 246-854-220.

(12) This section only applies to the use of LLRP devices by osteopathic physicians and osteopathic physician assistants.

NEW SECTION

WAC 246-854-220 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities and other physical conditions of human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) An osteopathic physician assistant may use an LLRP device with the consent of the sponsoring or supervising osteopathic physician who meets the requirements under WAC 246-853-630, is in compliance with the practice arrangement plan approved by the board, and in accordance with standard medical practice.

(5) An osteopathic physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that an allied health care practitioner may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

OSTEOPATHIC PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) An osteopathic physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained allied health care professional licensed under the authorization of RCW 18.130.040, whose scope of practice allows the use of a prescriptive LLRP medical device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised allied health care professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised allied health care professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment;

(e) The delegating osteopathic physician assistant has written office protocol for the supervised allied health care professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual osteopathic physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised allied health care professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised allied health care professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure on the patient's record or medical chart;

(f) The osteopathic physician assistant is responsible for ensuring that the supervised allied health care professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The osteopathic physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

WSR 08-20-126
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)

[Filed October 1, 2008, 8:49 a.m., effective November 1, 2008]

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

Purpose: In 2007, the legislature passed HB 1331 amending RCW 18.92.030 to allow the veterinary board of governors to adopt rules fixing minimum standards of continuing education for veterinary technicians. These rules establish standards of continuing education for licensed veterinary technicians, designate approved training methods, and identify continuing education providers.

Statutory Authority for Adoption: RCW 18.92.030 and HB 1331 (chapter 235, Laws of 2007).

Adopted under notice filed as WSR 08-09-103 on April 21, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-935-280 Basic requirement—Amount, the proposed rule inaccurately stated that the continuing education requirements would be effective beginning with license renewals on or after July 23, 2008. The date has been corrected to July 23, 2007.

A final cost-benefit analysis is available by contacting Judy Haenke, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4828, fax (360) 586-4359, e-mail judy.haenke@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, 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 5, Amended 0, Repealed 0.

Date Adopted: June 9, 2008.

William H. Keatts, DVM, Chair
Veterinary Board of Governors

CONTINUING EDUCATION REQUIREMENTS

NEW SECTION

WAC 246-935-270 Purpose. The purpose of these rules is to establish standards of continuing education for licensed veterinary technicians. The rules designate approved training methods, identify continuing education providers and set minimum continuing education credit requirements.

NEW SECTION

WAC 246-935-280 Basic requirement—Amount. Continuing education consists of programs of learning which contribute directly to the advancement or enhancement of the skills of licensed veterinary technicians. Beginning with license renewals on or after July 23, 2007, licensed veterinary technicians must complete thirty hours of continuing education every three years. No more than ten hours can be earned in practice management courses in any three-year reporting period. Licensed veterinary technicians must comply with chapter 246-12 WAC relating to continuing education requirements.

NEW SECTION

WAC 246-935-290 Qualified organizations approved by the veterinary board of governors. Courses offered by the following organizations qualify as continuing education courses for veterinary technicians.

(1) The Washington State Association of Veterinary Technicians.

(2) National Association of Veterinary Technicians in America.

(3) All veterinary technician specialty academies recognized by the North American Veterinary Technician Association.

(4) The American Association of Veterinary State Boards (AAVSB).

(5) The American Veterinary Medical Association (AVMA).

(6) The Washington State Veterinary Medical Association.

(7) Any board approved college or school of veterinary medical technology.

(8) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.

(9) The American Animal Hospital Association.

(10) Veterinary specialty boards recognized by the American Veterinary Medical Association.

(11) Regional veterinary conferences and allied organizations recognized by AAVSB.

(12) The Registry of Approved Continuing Education (RACE).

(13) Other courses as approved by the board.

NEW SECTION

WAC 246-935-300 Self-study continuing veterinary technician education activities. The board may grant continuing education credit for participation in self-study educational activities. The board may grant a licensee a total of ten credit hours under this section for any three-year reporting period. Self-study educational activities may include:

(1) Credit for reports. The board may grant continuing education credit for reports on professional veterinary literature. Licensees must submit requests for credit to the veterinary board of governors at least sixty days prior to the end of the reporting period. The request must include a copy of the article, including publication source, date and author. The report must be typewritten and include at least ten descriptive statements about the article.

(a) Professional literature approved for these reports are peer reviewed veterinary medical journals.

(b) Each report qualifies for one credit hour. The board may grant a licensee up to five credit hours of continuing veterinary technician education under this subsection if the combined total of ten hours for all types of self-study continuing veterinary medical education is not exceeded.

(2) Credit for preprogrammed educational materials. The board may grant a licensee continuing education credit for viewing and participating in board-approved formal preprogrammed veterinary technician educational materials. The preprogrammed materials must be approved by an organization listed in WAC 246-935-290, and must require successful completion of an examination. Preprogrammed educational materials include, but are not limited to:

(a) Correspondence courses offered through journals or other sources;

(b) Cassettes;

(c) Videotapes;

(d) CD-ROM;

(e) Internet.

NEW SECTION

WAC 246-935-310 Exceptions. The board may excuse from or grant an extension of continuing education requirements to a licensed veterinary technician due to illness or other extenuating circumstances.

Licensees seeking an extension must petition the board, in writing, at least forty-five days prior to the end of the reporting period.

WSR 08-20-128
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Order 08-03—Filed October 1, 2008, 8:56 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: The main purpose of amending existing PEBB rules and adopting new rules in Title 182 WAC is to:

- Implement legislation extending participation in the PEBB program to tribal governments.
- Implement legislation to expand eligible dependents to include unmarried adult children up to age twenty five.
- Amend and clarify rules regarding participation, withdrawal, and appeals by certain employing entities.
- Clarify rules regarding retiree enrollment and eligibility.
- Amend rules affected by a recent amendment to the Family Medical Leave Act.
- Add the dependent care assistance program as a benefit for state agencies and higher education.
- Amend rules regarding PEBB member appeals.

In addition to these specific subject areas, the health care authority is amending rules to clarify eligibility for student dependents and dependents with disabilities.

Citation of Existing Rules Affected by this Order: Amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.160.

Adopted under notice filed as WSR 08-17-081 on August 19, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 14, 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 4, Amended 22, 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 1, 2008.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Agency" means the health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, blind vendors, counties, municipalities, political subdivisions, and tribal governments participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period ((~~designated by the administrator~~)) when: Subscribers may apply to transfer their enrollment from one health plan to another((~~, enroll in medical if the subscriber had previously waived such insurance coverage, or add dependents~~)); a dependent may be enrolled; a dependent's enrollment may be waived; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB benefits services program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB benefits services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits ((~~to~~)) for eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-180 Premium payments and refunds. PEBB premium payments for retiree, COBRA or an extension of PEBB insurance coverage begin to accrue the first of the month of PEBB insurance coverage. ((~~The effective date of health plan enrollment will be retroactive to the loss of other coverage.~~))

Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.

PEBB premiums will be refunded using the following method:

(1) When a PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer a dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or employing agency except as indicated in WAC 182-12-148(3).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or ((~~designee~~)) the PEBB appeals committee may approve a refund which does not exceed twelve months of premium if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the ((~~HCA~~)) PEBB appeals committee; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the employer or subscriber to the HCA. Upon request of an employer, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the employer or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the ((~~employer~~)) employing agency, subscriber, or beneficiary, as appropriate.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-190 The employer contribution is set by the HCA and paid to the HCA for all eligible employees. Every department, division, or agency of state government, and such county, municipal or other political subdivision, tribal government, or an agency or instrumentality of a tribal government, K-12 school district or educational service district that are covered under PEBB insurance coverage, must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions are set by the HCA and are subject to the approval of the governor.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each eligible employee in pay status eight or more hours during a calendar month or each eligible employee on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical is waived.

(4) PEBB insurance coverage for any county, municipality or other political subdivision, tribal government, or an agency or instrumentality of a tribal government, or any K-12 school district or educational service district may be canceled by HCA if the premium contributions are delinquent more than ninety days.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-115.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-196 What happens if my health plan becomes unavailable? Employees and retirees for whom the chosen health plan becomes unavailable due to a change in contracting service area, or the retiree's entitlement to Medicare must select a new health plan within sixty days after notification by the PEBB benefits services program.

(1) Employees who fail to select a new medical or dental plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization or the Uniform Dental Plan with existing dependent enrollment.

(2) Retirees and survivors eligible under WAC 182-12-250 or 182-12-265 who fail to select a new health plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization and the Uniform Dental Plan. However, retirees enrolled in Medicare Parts A and B, and who enroll in Medicare Part D may be assigned to a PEBB Medicare plan that does not include a pharmacy benefit.

Any subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as allowed in WAC 182-08-198.

(3) Enrollees continuing PEBB health plan enrollment under WAC 182-12-133, 182-12-148 or 182-12-270(2) ((~~or (3)~~)) must select a new health plan no later than sixty days after notification by the PEBB benefits services program or their health plan enrollment will end as of the last day of the month in which the plan is no longer available.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-197 Employees must select ((~~insurance coverages~~)) PEBB benefits and complete enrollment forms within thirty-one days of the date they become eligible for PEBB benefits. (1) Employees who are newly eligible for PEBB benefits must complete ((~~an enrollment~~)) the appropriate forms indicating enrollment and their health plan choice ((~~and return it~~)), or their decision to waive medical under WAC 182-12-128. Employees must return the forms to their employing agency no later than thirty-one days after they become eligible for PEBB benefits, as stated in WAC 182-12-115. Newly eligible employees who do not return an enrollment form to their employing agency indicating their medical and dental choice within thirty-one days will be enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan Preferred Provider Organization; and

(b) Dental enrollment (if the employing agency participates in PEBB dental) will be Uniform Dental Plan.

(2) Newly eligible employees may enroll in optional insurance coverage (except for employees of agencies that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their employing agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their employing agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will be automatically enrolled in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and return it to their employing agency no later than thirty-one days after they become eligible for PEBB benefits.

(4) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical FSA or DCAP or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their employing agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(5) When an employee's employment ends, insurance coverage ends (WAC 182-12-131). Employees who are later reemployed and become newly eligible for PEBB benefits enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one employing agency to another employing agency without a break in state service. This includes movement of employees between any agencies described as eligible groups in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution-based enrollment in PEBB insurance coverage.

(c) When employees continue insurance coverage under WAC 182-12-133 (1) or (2) and are reemployed into a benefits eligible position before the end of the maximum number of months allowed for continuing PEBB health plan enrollment. Employees who are eligible to continue optional life or optional long-term disability but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to employment.

(6) When an employee's employment ends, participation in the state's salary reduction plan ends. If the employee is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days.

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-08-198 When may a subscriber change health plans? (1) Subscribers may change health plans during the annual open enrollment. The subscriber must submit the appropriate enrollment form((~~(~~))s((~~)~~)) to change health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January of the following year.

(2) Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must ((~~be based on and related~~)) correspond to the ((~~change in status~~)) event that ((~~created~~)) creates the special open enrollment ((~~opportunity~~)) for either the subscriber ((~~and~~)) or the subscriber's dependents or both. To make a health plan change, the subscriber must submit the appropriate enrollment form((~~(~~))s((~~)~~)) (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment form((~~(~~))s((~~)~~)) to their employing agency. All other subscribers submit the enrollment form((~~(~~))s((~~)~~)) to the PEBB benefits services program. Enrollment in the new health plan will begin the first day of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of the month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, enrollment will begin the month in which the event occurs. The following events create a special open enrollment:

(a) Subscriber acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, legal custody or legal guardianship;

(b) Subscriber's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Subscriber has a change in marital status, including legal separation documented by a court order;

(e) Subscriber or a dependent loses comprehensive group ((~~insurance~~)) health coverage;

(f) Subscriber or a dependent has a change in employment status that affects ((~~whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent(s). This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible for benefits or eligibility ending~~)) the subscriber's or a

dependent's eligibility, level of benefits, or cost of insurance coverage.

(g) Subscriber((~~'s~~)) or ((~~their~~)) a dependent((~~'s~~)) has a change in residence ((~~changes affecting the~~)) that affects health plan availability ((~~or the~~)), benefits, or ((~~the~~)) cost of ((~~their~~)) insurance coverage. If the subscriber moves and ((~~their~~)) the subscriber's current health plan is not available in ((~~their~~)) the new location but ((~~they do~~)) the subscriber does not select a new health plan, the PEBB benefits services program may enroll ((~~them~~)) the subscriber in the Uniform Medical Plan Preferred Provider Organization or Uniform Dental Plan.

(h) Subscriber receives a court order or medical support order requiring the subscriber, ((~~their~~)) the subscriber's spouse, or the subscriber's qualified domestic partner to provide insurance coverage for an eligible dependent.

(i) Subscriber receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the eligible subscriber or eligible dependent in PEBB medical than a medical assistance program.

(j) Seasonal employees whose off-season occurs during the annual open enrollment. They may select a new health plan upon their return to work.

(k) Subscriber enrolls in PEBB retiree insurance coverage.

(l) Subscriber or an eligible dependent becomes entitled to Medicare, enrolls in or disenrolls from a Medicare Part D plan.

(m) Subscriber experiences a disruption that could function as a reduction in benefits for the subscriber or the subscriber's dependent(s) due to a specific condition or ongoing course of treatment. A subscriber may not change their health plan if ((~~their~~)) the subscriber's or an enrolled dependent's physician stops participation with the subscriber's health plan unless the PEBB appeals manager determines that a continuity of care issue exists. The PEBB appeals manager will use criteria that include but are not limited to the following in determining if a continuity of care issue exists:

(i) Active cancer treatment; or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy; or

(vi) Language barrier.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

NEW SECTION

WAC 182-08-199 When may an employee enroll in or change their election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? (1) An eligible employee may enroll in or change their election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. Employees must submit the appropriate enrollment form, or complete the appropriate online enrollment process, to reenroll no later than the end of the annual open enrollment. The enrollment or new election will begin January of the following year.

(2) Employees may enroll or change their election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment. To make a change or enroll, the employee must submit the appropriate forms as instructed on the forms no later than sixty days after the event occurs. Enrollment will begin the first day of the month following approval by the plan administrator. For purposes of this section, an eligible dependent includes the employee's opposite sex spouse and any other person who qualifies as the employee's dependent under Section 152 of the IRC without regard to the income limitations of that section. It does not include a domestic partner who is the same sex as the subscriber unless the domestic partner otherwise qualifies as a dependent under Section 152 of the IRC. The following changes are events that create a special open enrollment for purposes of an eligible employee making a change:

(a) Employee acquires a new eligible dependent;

(b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Employee has a change in marital status, including legal separation documented by a court order;

(e) Employee or a dependent has a change in employment status that affects the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage under a plan provided by the employee's employer or the dependent's employer;

(f) Employee's or a dependent's residence changes that affects health plan availability, level of benefits, or cost of insurance coverage;

(g) Employee receives a court order or medical support order requiring the employee or the employee's spouse to provide insurance coverage for an eligible dependent;

(h) Employee receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the eligible employee or eligible dependent in PEBB medical than in a medical assistance program;

(i) Seasonal employees whose off-season occurs during the annual open enrollment may enroll in the plan upon their return to work;

(j) Employee or an eligible dependent gains or loses eligibility for Medicare or Medicaid;

(k) Employees who change dependent care providers may make a change in their DCAP to reflect the cost of the new provider;

(l) If an employee's dependent care provider imposes a change in the cost of dependent care, the employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (a)(1) through (8), incorporating the rules of Section 152 (b)(1) and (2) of the IRC;

(m) The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-230 Participation in PEBB benefits by employer groups, K-12 school districts and educational service districts. This section applies to all employer groups, K-12 school districts and educational service districts participating in PEBB insurance coverage.

(1) ((~~For purposes of this section, "employer group" means those employee organizations representing state civil service employees, blind vendors, county, municipality, and political subdivisions that meet the participation requirements of WAC 182-12-111 (2), (3) and (4) and that participate in PEBB insurance coverage.~~

~~(2)~~))(a) Each employer group must determine an employee's eligibility for PEBB insurance coverage in accordance with the applicable sections of chapter 182-12 WAC, RCW 41.04.205, and chapter 41.05 RCW.

(b) Each employer group, K-12 school district and educational service district applying for participation in PEBB insurance coverage must submit required documentation and meet all participation requirements in the then-current *Introduction to PEBB Coverage K-12 and Employer Groups* booklet(s).

(((~~(3)(a)~~)) (2) Each employer group, K-12 school district or educational service district applying for participation in PEBB insurance coverage must sign an ((~~interlocal~~)) agreement with the HCA.

(((~~(b) Each interlocal agreement must be renewed no less frequently than once in every two-year period.~~

~~(4)~~)) (3) At least twenty days before the premium due date, the HCA will cause each employer group, K-12 school district or educational service district to be sent a monthly billing statement. The statement of premium due will be based upon the enrollment information provided by the employer group, K-12 school district or educational service district.

(a) Changes in enrollment status must be submitted to the HCA before the twentieth day of the month when the change occurs. Changes submitted after the twentieth day of each month may not be reflected on the billing statement until the following month.

(b) Changes submitted more than one month late must be accompanied by a full explanation of the circumstances of the late notification.

(((~~(5)~~)) (4) An employer group, K-12 school district or educational service district must remit the monthly premium as billed or as reconciled by it.

(a) If an employer group, K-12 school district or educational service district determines that the invoiced amount requires one or more changes, they may adjust the remittance only if an insurance eligibility adjustment form detailing the adjustment accompanies the remittance. The proper form for reporting adjustments will be attached to the ((~~interlocal~~)) agreement as Exhibit A.

(b) Each employer group, K-12 school district or educational service district is solely responsible for the accuracy of the amount remitted and the completeness and accuracy of the insurance eligibility adjustment form.

(((~~(6)~~)) (5) Each employer group, K-12 school district or educational service district must remit the entire monthly premium due including the employee share, if any. The employer group, K-12 school district or educational service district is solely responsible for the collection of any employee share of the premium. The employer must not withhold portions of the monthly premium due because it has failed to collect the entire employee share.

(((~~(7)~~)) (6) Nonpayment of the full premium when due will subject the employer group, K-12 school district or educational service district to disenrollment and termination of each employee of the group.

(a) Before termination for nonpayment of premium, the HCA will send a notice of overdue premium to the employer group, K-12 school district or educational service district which notice will provide a one-month grace period for payment of all overdue premium.

(b) An employer group, K-12 school district or educational service district that does not remit the entirety of its overdue premium no later than the last day of the grace period will be disenrolled effective the last day of the last month for which premium has been paid in full.

(c) Upon disenrollment, notification will be sent to both the employer group, K-12 school district or educational service district and each affected employee.

(d) Employer groups, K-12 school districts or educational service districts disenrolled due to nonpayment of premium have the right to a dispute resolution hearing in accordance with the terms of the ((~~interlocal~~)) agreement.

(e) Employees canceled due to the nonpayment of premium by the employer group, K-12 school district or educational service district are not eligible for continuation of group health plan coverage according to the terms of the Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees whose coverage is canceled have conversion rights to an individual insurance policy as provided for by the employer group, K-12 school district or educational service district.

(f) Claims incurred by employees of a disenrolled group after the effective date of disenrollment will not be covered.

(g) The employer group, K-12 school district or educational service district is solely responsible for refunding any employee share paid by the employee to the employer group, K-12 school district or educational service district and not remitted to the HCA.

(((~~(8)~~)) (7) A disenrolled employer group, K-12 school district or educational service district may apply for reinstatement in PEBB insurance coverage under the following conditions:

(a) Reinstatement must be requested and all delinquent premium paid in full no later than ninety days after the date the delinquent premium was first due, as well as a reinstatement fee of one thousand dollars.

(b) Reinstatement requested more than ninety days after the effective date of disenrollment will be denied.

(c) Employer groups, K-12 school districts or educational service districts may be reinstated only once in any two-year period and will be subject to immediate disenrollment if, after the effective date of any such reinstatement, subsequent premiums become more than thirty days delinquent.

(((~~(9)~~))) (8) Upon written petition by the employer group, K-12 school district or educational service district disenrollment of an employer group, K-12 school district or educational service district or denial of reinstatement may be waived by the administrator upon a showing of good cause.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Agency" means the health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Employer group" means those employee organizations representing state civil service employees, blind vendors, counties, municipalities, political subdivisions, and tribal governments participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period ((~~designated by the administrator~~)) when; Subscribers may ((~~apply to~~)) transfer their enrollment from one health plan to another((~~, enroll in medical if the enrollee had previously waived such insurance coverage or add dependents~~)); a dependent may be enrolled; a dependent's enrollment may be waived; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB benefits services program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB benefits services program within HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits ((~~to~~)) for eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees ((~~of the state~~)) (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or eligible survivor who has been desig-

nated by the HCA as the individual to whom the HCA and ((~~contractual~~)) contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-111 Eligible entities and individuals. The following entities and individuals shall be eligible for PEBB insurance coverage subject to the terms and conditions set forth below:

(1) State agencies. Every department, division, or separate agency of state government, including all state higher education institutions, the higher education coordinating board, and the state board for community and technical colleges is required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(a) Employees of technical colleges previously enrolled in a benefits trust may end PEBB benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to end PEBB benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may end PEBB benefit participation only as an entire bargaining unit. All administrative or managerial employees may end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employee organizations. Employee organizations representing state civil service employees and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for purchasing insurance benefits, may participate in PEBB insurance coverages at the option of each employee organization provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit((~~. If the group meets the minimum size standards established by HCA,~~)) with the following exceptions:

• Bargaining units may elect to participate separately from the whole group((~~,~~)); and ((~~the~~))

• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of a plan year.

(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of ((~~the~~)) a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents must be the same as the requirements for dependents of the state employees and retirees as in WAC 182-12-260.

(g) The legislative authority or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least ((~~thirty~~)) sixty days before the effective date of termination. If the employee organization ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(3) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.

(4) Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit((~~. If the group meets the minimum size standards established by HCA,~~)) with the following exception:

• Bargaining units may elect to participate separately from the whole group((~~,~~)); and ((~~the~~))

• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of ((~~the~~)) a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of local government employees must be the same as the requirements for dependents of state employees and retirees in WAC 182-12-260.

(g) The legislative authority or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least ((~~thirty~~)) sixty days before the effective date of termination. If a county, municipality, or political subdivision ends ((~~coverage in~~)) PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the ((~~entity~~)) K-12 school district or educational service district must transfer to PEBB insurance coverage as a unit((~~. If the K-12 school district or educational service district meets the minimum size standards established by HCA,~~)) with the following exceptions:

• Bargaining units may elect to participate separately from the whole group((~~. For enrolling by bargaining unit, all~~)); and

• Nonrepresented employees ((~~will be considered a single bargaining unit~~)) may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The school district or educational service district must submit an application together with ((~~employee census data and, if available, prior claims experience of the entity to the HCA~~)) an estimate of the number of employees and dependents to be enrolled. The application for the PEBB insurance coverage is subject to ((~~the approval of the HCA~~)) review for compliance with PEBB terms and conditions of participation.

(c) The school district or educational service district must agree to participate in all PEBB insurance coverage. The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(d) The school district or educational service district must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of the plan year.

(e) Beginning September 1, 2003, the HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district. Each participating school district or educational service district must agree to collect an employee premium by health plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.

(f) The eligibility requirements for dependents of K-12 school district and educational service district employees must be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.

(g) The school district or educational service district must give the HCA written notice of its intent to end PEBB insurance coverage participation at least ((~~thirty~~)) sixty days before the effective date of termination, and may end participation only at the end of a plan year.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(6) Tribal governments: Employees of a tribal government, or an agency or instrumentality of a tribal government, may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance as a unit with the following exceptions:

• Bargaining units may elect to participate separately from the whole group; and

• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The tribal council or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.

(d) The tribal council or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of tribal government employees must be the same as the requirements for dependents of state employees and retirees in WAC 182-12-260.

(g) The tribal council or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination. If a tribal government, or an agency or instrumentality of a tribal government, ends PEBB insurance coverage, retired and disabled employees are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(7) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-112 Insurance eligibility for higher education. For insurance eligibility, the HCA considers the higher education personnel board, the council for postsecondary education, and the state board for community and technical colleges to be higher education agencies.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-116 Who is eligible ((~~for the PEBB flexible spending account~~)) to participate in the state's salary reduction plan? ((~~Beginning January 1, 2006, all~~)) (1) The following employees are eligible to participate in the state's salary reduction plan provided they are eligible for PEBB benefits as defined in WAC 182-12-115 and they elect to participate within the time frames described in WAC 182-08-197 or 182-08-199.

(a) Employees of public four-year institutions of higher education((~~,~~)).

(b) Employees of the state community and technical colleges and of the state board for community and technical colleges ((~~who are eligible for PEBB benefits, as defined in WAC 182-12-115, are eligible for the PEBB medical flexible spending account plan. Beginning July 1, 2006, all~~)).

(c) Employees of state agencies ((~~who are eligible for PEBB benefits, are eligible for the PEBB medical flexible spending account plan.~~

~~If an employee terminates employment after becoming a plan participant and later on in the same plan year is hired into a new position that is eligible for PEBB benefits, the employee may not resume participation in the PEBB medical flexible spending account until the beginning of the next plan year~~)).

(2) Employees of employer groups, K-12 school districts and educational service districts are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-12-128 May an employee waive health plan enrollment? (1) Employees must enroll in dental, life and long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage. Employees may waive enrollment in PEBB medical by submitting the appropriate enrollment form to their employing agency during the following times:

(a) Employees may waive medical when they become eligible for PEBB benefits. ((~~The~~)) Employees must indicate they are waiving medical on the appropriate enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) Employees may waive medical during the annual open enrollment if they submit the appropriate enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January of the following year.

(c) Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, medical is automatically waived for all eligible dependents, with the exception of adult dependents who may enroll in a health plan if the employee has waived medical coverage.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) The annual open enrollment period;

(b) A special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the appropriate ((~~enrollment~~)) form((~~(~~))s((~~)~~)), the PEBB benefits services program may require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) Employees may waive enrollment in medical or enroll in medical if one of these special open enrollment events occur. The change in enrollment must ((~~be based on and related~~)) correspond to the ((~~change in status~~)) event that creates the special open enrollment. The following changes are events that create a special open enrollment:

(a) Employee acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, legal custody or legal guardianship;

(b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Employee has a change in marital status, including legal separation documented by a court order;

(e) Employee or a dependent loses comprehensive group insurance coverage;

(f) Employee or ((~~one of the employee's~~)) a dependent((~~s~~)) has a change in employment status that affects ((~~whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent: This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible or ceasing to be eligible for employer benefits~~)) the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

(g) Employee or a dependent has a change in place of residence that affects the ((~~subscriber's~~)) employee's or ((~~the~~)) a dependent's ((~~health plan~~)) eligibility ((~~or the~~)), level of benefits, or cost of ((~~the~~)) insurance coverage;

(h) Employee receives a court order or medical support enforcement order requiring the employee, ((~~their~~)) spouse, or qualified domestic partner to enroll an eligible dependent;

(i) Employee receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the employee or an eligible dependent in PEBB medical than a medical assistance program.

To change enrollment during a special open enrollment, the employee must submit the appropriate ((~~enrollment~~)) form((~~(~~))s((~~)~~)) to their employing agency no later than sixty days after the event that creates the special open enrollment.

Enrollment in insurance coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, insurance coverage will begin the month in which the event occurs.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-133 What options for continuing coverage are available to employees when they are no longer eligible for PEBB insurance coverage paid for by their employer? Eligible employees covered by PEBB insurance coverage have options for providing continued coverage for themselves and their dependents during temporary or permanent loss of eligibility. Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.

(1) When an employee is on leave without pay due to an event described in (a) through (f) of this subsection, insurance coverage may be continued at the group rate by self-paying premiums. Employees may self-pay for a maximum of twenty-nine months. The number of months that an employee self-pays premium during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long-term disability insurance. The following types of leave qualify to continue coverage under this provision:

(a) The employee is on authorized leave without pay;

(b) The employee is laid off because of a reduction in force (RIF);

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is applying for disability retirement;

(e) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(f) The employee is on approved educational leave.

(2) Part-time faculty and part-time academic employees may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. These employees may continue any combination of medical, dental and life insurance.

(3) The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives enrollees the right to continue medical and dental for a period of eighteen to twenty-nine months when they lose eligibility due to one of the following qualifying events.

(a) Termination of employment.

(b) The employee's hours are reduced to the extent of losing eligibility.

(4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to ((~~twelve~~)) twenty-six weeks, as provided in WAC 182-12-138.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-138 If an employee is approved for family and medical leave, what insurance coverage may be continued? Employees on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive up to ((~~twelve~~)) twenty-six weeks of employer-paid medical, dental, basic life, and basic long-term disability insurance ((~~while on family and medical leave and~~)). These employees may also continue current optional life and long-term disability. ((~~All~~)) The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave. The employee must pay the premium amounts associated with insurance coverage ((~~must be paid~~)) monthly as ((~~they~~)) premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month ((~~of fully~~)) for which a full premium is paid ((~~coverage~~)).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) **Procedural requirements.** Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit ((~~an election~~)) the appropriate forms to enroll or defer insurance coverage within sixty days after ((~~their~~)) the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who ((~~cancel PEBB health plan coverage or~~)) do not enroll in a PEBB health plan at retirement are only eligible to enroll if they have deferred enrollment and maintained comprehensive coverage as ((~~defined~~)) identified in WAC 182-12-200 or 182-12-205.

(b) The employee and enrolled dependents who are entitled to Medicare must enroll and maintain enrollment in both Medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to Medicare after enrollment in PEBB retiree insurance, they must enroll and maintain enrollment in Medicare.

(2) **Eligibility requirements.** Eligible employees (as defined in WAC 182-12-115) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when ((~~their~~)) the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the ((~~health care authority's~~)) PEBB appeals committee to determine eligibility (see WAC ((~~182-16-030~~)) 182-16-032). Employees must meet other retiree insurance election procedural requirements.

• Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

• Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

• Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011 (13)), are eligible if they meet their retirement plan's age requirement and length of service when PEBB employee insurance coverage ends. They do not have to receive a retirement plan payment.

• Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's age requirement, or are at least age fifty-five with ten years of state service.

• Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

• Employees not retiring under ((~~the public employees'~~)) a Washington state-sponsored retirement ((~~system~~)) plan must meet the same age and years of service had the person been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

• Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as ((~~a~~)) retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to

enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected state officials.** Employees who are elected state officials (as defined under WAC 182-12-115(6)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and fire fighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-175 May a local government entity or tribal government entity applying for participation in PEBB insurance coverage include their retirees in the transfer unit? Local government or tribal government entities applying for participation in PEBB insurance coverage under WAC 182-12-111 (4) and (6), may request inclusion of retired employees who are covered under their retiree health plan at the time of application. The PEBB benefits services program will use the following criteria for approval of these requests for inclusion of retirees.

(1) The local government or tribal government retiree health plan must have existed at least three years before the date of application for participation in PEBB health plans.

(2) Eligibility for coverage under the local government's or tribal government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage.

(3) The retiree must have maintained continuous enrollment in their local government or tribal government retiree health plan.

(4) To protect the integrity of the risk pool, if total local government or tribal government retiree enrollment exceeds ten percent of the total PEBB retiree population, the PEBB benefits services program may:

(a) Stop approving inclusion of retirees with local government or tribal government unit transfers; or

(b) May adopt a new rating methodology reflective of the cost of covering local government or tribal government retirees.

(5) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(6) Employees eligible for retirement subsequent to the local government or tribal government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-200 May a retiree who is enrolled as a dependent in a PEBB health plan or a Washington state K-12 school district sponsored health plan defer enrollment in a PEBB retiree health plan? Retirees who are enrolled in a PEBB or Washington state K-12 school district sponsored medical plan as a dependent may defer enrollment in a PEBB retiree health plan. Retirees who defer enrollment in medical cannot remain enrolled in dental. Retirees who defer may later enroll themselves and their dependents in PEBB retiree medical, or medical and dental, if they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in retiree insurance. Retirees may enroll:

(1) During any PEBB annual open enrollment period. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment period.); or

(2) No later than sixty days after enrollment in the PEBB or K-12 school district sponsored medical plan ends. (Enrollment in the PEBB health plan will begin the first day of the month after the PEBB or K-12 school district health plan ends.)

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-12-205 May a retiree defer enrollment in a PEBB health plan at or after retirement? Except as stated in subsection (1)(c) of this section and for adult dependents as defined in WAC 182-12-260 (4)(d), if ((a)) retirees defer((s)) enrollment in a PEBB health plan, they also defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other life insurance.

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other comprehensive medical as identified below:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) To defer health plan enrollment, the retiree must ((send a completed election)) submit the appropriate forms to the PEBB benefits services program requesting to defer. The PEBB benefits services program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may enroll in a PEBB health plan as follows:

(a) Retirees who defer while enrolled in employer-sponsored medical may enroll in a PEBB health plan by ((sending a completed election)) submitting the appropriate forms and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment ((period)).); or

(ii) No later than sixty days after their employer-sponsored medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the employer-sponsored medical ends.)

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by ((sending a completed election)) submitting the appropriate forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment ((period)).); or

(ii) No later than sixty days after the federal retiree medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the federal retiree medical ends.)

(c) Retirees who defer enrollment while enrolled in Medicare Parts A and B and Medicaid may enroll in a PEBB health plan by ((sending a completed election)) submitting the appropriate forms and evidence of continuous enrollment in creditable coverage to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment ((period)).); or

(ii) No later than sixty days after their Medicaid coverage ends (Enrollment in the PEBB health plan will begin the first day of the month after the Medicaid coverage ends.); or

(iii) No later than the end of the calendar year when their Medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a Medicare Part D plan. (Enrollment in the PEBB health plan will begin the first day of January following the end of the calendar year when the Medicaid coverage ends.)

(d) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit ((an election)) the appropriate forms to the PEBB benefits services program no later than sixty days after the date their PEBB employee life insurance ends. However, employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends. Retirees may not defer enrollment in retiree term life insurance.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the PEBB benefits services program within HCA.

(1) This section applies to the surviving spouse and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and fire fighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as

defined in RCW 43.43.120, and reserve officers and fire fighters as defined in RCW 41.24.010.

(3) "Surviving spouse and children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) Children. The term "children" includes ((~~the following~~)) unmarried children of the emergency service worker who are((~~: Under the age of twenty or under the age of twenty-four if he or she is a dependent student attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing~~)) under the age of twenty-five. Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" ((~~are~~)) is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren; and

(iii) Legally adopted children.

(4) Surviving spouses and children who are entitled to Medicare must enroll in both parts A and B of Medicare.

(5) The survivor (or agent acting on their behalf) must ((~~send a completed election~~)) submit the appropriate forms (to either enroll or defer enrollment in a PEBB health plan) to PEBB benefits services program no later than one hundred eighty days after the latter of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer fire fighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose ((~~election~~)) appropriate forms ((~~is~~)) are received by the PEBB benefits services program no later than September 1, 2006;

(b) The first of the month that is ((~~no more~~)) not earlier than sixty days before the date that the PEBB benefits services program receives the ((~~election~~)) appropriate forms (for example, if the PEBB benefits services program receives the ((~~election~~)) appropriate forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB benefits services program receives the ((~~election~~)) appropriate forms.

For surviving spouses and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b). For children age twenty through age twenty-four who enroll and are not students under the age of twenty-four attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing: The adult dependent premium must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if enrolled in comprehensive medical coverage through an employer.

(ii) Survivors may enroll in a PEBB health plan when they lose employer medical coverage. Survivors will need to provide evidence that they were continuously enrolled in comprehensive medical coverage through an employer when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors may not add new dependents acquired through birth, marriage, or establishment of a qualified domestic partnership.

(10) Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive medical coverage through an employer during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-260 Who are eligible dependents? The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse.

(2) Domestic partner qualified by the PEBB declaration of domestic partnership that meets all of the following criteria:

(a) Partners have a close personal relationship in lieu of a lawful marriage;

(b) Partners are not married to anyone;

(c) Partners are each other's sole domestic partner and are responsible for each other's common welfare;

(d) Partners are not related by blood as close as would bar marriage; and

(e) Partners are barred from a lawful marriage in Washington state.

(3) Domestic partner qualified by the certificate of state registered domestic partnership or registration card issued by the Washington secretary of state for a same-sex partnership.

(4) Children ((~~through age nineteen~~)). Children are defined as the subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child, children of the subscriber's qualified domestic partner, or children specified in a court order or divorce decree. In addition, children include extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's qualified domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program.

Eligible children include:

(a) ((~~The subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support of a child in anticipation of adoption of the child, children of the subscriber's qualified domestic partner, or children specified in a court order or divorce decree;~~)) Unmarried children through age nineteen.

(b) Married children through age nineteen who qualify as dependents of the subscriber under the Internal Revenue Code((~~;~~)).

(c) ((~~Extended dependents in the legal custody or legal guardianship of the subscriber, their spouse, or qualified domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. This does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program;~~

~~(d)~~)) Unmarried children age twenty through age twenty-three who are attending high school or are registered students at an accredited secondary school, college, university, vocational school, or school of nursing (students). A married child is eligible as a student if the child is a dependent of the subscriber under the Internal Revenue Code.

(i) ((~~Student health plan enrollment begins the first day of the month of the quarter or semester for which the child is registered begins. Health plan enrollment ends the last day of the month in which the student stops attending or in which the quarter or semester ends, whichever is first, except that dependent student eligibility continues year-round for those who attend three of the four school quarters or two semesters.~~

~~(ii) Student eligibility for enrollment in a PEBB health plan continues during the three month period following graduation provided the subscriber is covered, the child has not reached age twenty-four, and meets all other eligibility requirements.~~

~~(iii)~~)) A child is eligible as a student or can maintain eligibility as a student when not registered for courses through the summer or off quarter/semester as long as the child meets all other eligibility requirements and is in any one of the following circumstances:

• The child attended the three consecutive quarters or two consecutive semesters before the off quarter/semester.

• The child is an enrolled dependent turning age twenty or renewing annual student certification and the child is expected to register for three consecutive quarters or two consecutive semesters after the off quarter/semester.

• The child recently graduated. Graduation is defined as the successful completion of studies to earn a degree or certificate, not the date of the graduation ceremony. The child is eligible for the three month period following graduation.

(ii) For student dependents who are not eligible for the summer or off quarter/semester according to (c)(i) of this subsection, student eligibility begins the first day of the month of the quarter or semester for which the child is registered, and eligibility ends the last day of the month in which the student stops attending or in which the quarter or semester ends, whichever is first.

The PEBB benefits services program certifies students ((~~recertification occurs~~)) annually. Health plan enrollment ends the last day of the month in which certification ends or the student ceases to meet eligibility criteria, whichever comes first. See WAC 182-12-262 (3)(g) and (7) for enrollment requirements.

(d) Unmarried children age twenty through age twenty-four (adult dependents).

Subscriber must pay the adult dependent premium for adult dependents whom the subscriber has enrolled. Nonpayment of premium will result in termination of coverage back to the end of the month for which the last full month premium was paid.

Adult dependents must enroll in the same health plan as the subscriber.

Exception: The adult dependent may enroll in a different health plan than the subscriber if the dependent does not reside within the subscriber's plan service area or the subscriber has waived or deferred medical.

(e) ((~~Children as defined in (a) through (d) of this subsection who have disabilities are eligible by subsection (5) of this section.~~

~~(5)~~)) Children of any age with disabilities, developmental disabilities, mental illness or mental retardation who are incapable of self-support, provided such condition occurs before age twenty or during the time the dependent was eligible as a student under (c) of this subsection (((~~(4) of this section~~)).

(((~~(a)~~))) The subscriber must provide evidence that such disability occurred as stated below:

(i) For ((~~children~~)) a child enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability within sixty days of the child's attainment of age twenty.

(ii) For ((~~children~~)) a child enrolled in PEBB insurance coverage as a student under (c) of this subsection (((~~(4)(d) of this section~~)), the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under (c) of this subsection (((~~(4)(d) of this section~~)).

(iii) ((~~To enroll~~)) For a child, age twenty or older, who is a new dependent or for a child, age twenty or older, who is a dependent of a newly eligible subscriber, the child may be enrolled as a dependent child with disabilities((~~, age twenty~~

~~or older,~~)) if the subscriber ((~~must~~)) provides evidence that the condition occurred before the child reached age twenty or evidence that when the condition occurred the child would have satisfied PEBB eligibility for student coverage under (c) of this subsection (((~~(4) of this section. The PEBB benefits services program will request evidence of the child's disability periodically thereafter~~)) had the subscriber been eligible for PEBB benefits at the time.

(((~~(b)~~))) The subscriber must notify the PEBB benefits services program, in writing, no later than sixty days after the date that a child age twenty or older no longer qualifies under this subsection.

(((~~(i)~~))) For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. The child may be eligible to continue enrollment as an adult dependent, as per (d) of this subsection, or in a PEBB health plan under provisions of WAC 182-12-270.

(((~~(ii)~~))) Children age twenty and older who become capable of self-support do not regain eligibility under (e) of this subsection (((~~(5) of this section~~))) if they later become incapable of self-support.

(((~~(c) Disability recertification occurs~~))) The PEBB benefits services program will recertify the eligibility of children with disabilities periodically.

(((~~(6)~~))) (5) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

(((~~(7)~~))) (6) The enrollee (or the subscriber on their behalf) must notify the PEBB benefits services program, in writing, no later than sixty days after the date they are no longer eligible under this section. A PEBB continuation of coverage election notice and continued health plan enrollment will only be available if the PEBB benefits services program is notified in writing within the sixty-day period.

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-12-262 When may subscribers enroll, waive or remove eligible dependents? (1) **Subscribers may enroll or waive eligible dependents when the subscriber becomes eligible** and enrolls in PEBB insurance coverage. If enrolled, the dependent's effective date will be the same as the subscriber's effective date. Unless a dependent is independently eligible for PEBB ((~~insurance~~)) health plan coverage, the subscriber must be enrolled to enroll their dependent.

Exceptions:

• Adult dependents may enroll in a health plan if the employee has waived medical coverage or the retiree has deferred enrollment in PEBB retiree insurance in accordance with PEBB rule;

OR

• Eligible dependents of a retiree may enroll in a health plan if the retiree deferred PEBB retiree insurance coverage due to the retiree's enrollment in Medicare and creditable Medicaid under WAC 182-12-205 (1)(c).

(2) **Subscribers may enroll eligible dependents during the annual open enrollment** with ((~~insurance~~)) health plan coverage beginning January of the following year.

(3) **Subscribers may enroll a newly acquired dependent or a dependent that becomes eligible during a special open enrollment.**

(a) A spouse may be enrolled upon marriage. If the date of marriage is the first day of the month, ((~~insurance~~)) health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(b) A qualified domestic partner may be enrolled upon declaration or registration of the domestic partnership (see WAC 182-12-260). If the date of declaration or registration is the first day of the month, ((~~insurance~~)) health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(c) Newborn children may be enrolled upon birth and adopted children may be enrolled when the subscriber assumes legal responsibility for the child in anticipation of adoption. The child's ((~~insurance~~)) health plan coverage will begin on the date of birth or the date the subscriber assumes legal responsibility for the child in anticipation of adoption. The subscriber must submit the appropriate ((~~enrollment~~)) form((~~(~~))s((~~)~~)) as described in subsection (7) of this section no later than sixty days after birth or assuming legal responsibility for the child.

(d) Children acquired through marriage or a qualified domestic partnership may be enrolled upon marriage or declaration or registration of the domestic partnership as described in (a) or (b) of this subsection.

(e) ((~~Children~~)) Extended dependents acquired through legal guardianship or legal custody (see WAC 182-12-260(4)(((~~(c)~~))) may be enrolled upon issuance of a court order granting such responsibility to the subscriber, ((~~their~~)) spouse, or qualified domestic partner. If legal guardianship or legal custody begins on the first day of the month, ((~~insurance~~)) health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(f) Children age twenty through age twenty-four (adult dependents) may be enrolled when they become eligible (see WAC 182-12-260 (4)(d)). If they become eligible on the first day of the month, health plan coverage will begin on that date; otherwise, it will begin the first of the month following the date they become eligible. For enrollment requirements, see subsection (7) of this section.

(g) Children ((~~twenty years or older~~)) who become eligible as ((~~a~~)) students ((~~or as a child with disabilities~~)) may be enrolled ((~~after~~)) provided the child's eligibility is certified by the PEBB benefits services program. If enrolled, the child's insurance coverage will begin ((~~as follows:~~

~~(i) Insurance coverage for a student will begin on the first day of the month of the quarter or semester for which the student is registered.~~

~~(ii) Insurance~~)) or continue on the first day of the month the child becomes eligible as a student according to WAC 182-12-260 (4)(c).

(h) A child twenty years or older who becomes eligible as a child with disabilities under WAC 182-12-260 (4)(e) may be enrolled after the child's eligibility is certified by the PEBB benefits services program.

Health plan coverage ((~~for a child with disabilities~~)) will begin on the first day of the month that eligibility is certified by the PEBB benefits services program.

(4) **Subscribers may change the enrollment (enroll, waive or remove) of their dependents outside of the annual open enrollment if a special open enrollment event occurs.** The change in enrollment must ((~~be based on and related~~)) correspond to the ((~~change in status~~)) event that creates the special open enrollment for either the subscriber ((~~and~~)) or the subscriber's dependents or both. Enrollment in ((~~insurance~~)) health plan coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, ((~~insurance~~)) health plan coverage will begin the month in which the event occurs. The following changes are events that create a special open enrollment for medical and dental:

(a) Subscriber acquires ((~~a new~~)) an eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, legal custody or legal guardianship;

(b) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(c) Subscriber has a change in marital status, including legal separation documented by a court order;

(d) Subscriber or a dependent loses comprehensive group health insurance coverage;

(e) Subscriber or ((~~one of the subscriber's~~)) a dependent((~~s~~)) has a change in employment status that affects ((~~whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent: This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible for or ceasing to be eligible for employer benefits~~)) the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

(f) Subscriber or a dependent has a change in place of residence that affects the subscriber's or ((~~the~~)) a dependent's ((~~health plan~~)) eligibility ((~~or the~~)), level of benefits, or cost of ((~~the~~)) insurance coverage;

(g) Subscriber receives a court order or medical support enforcement order requiring the subscriber, their spouse, or qualified domestic partner to provide insurance coverage for an eligible dependent. (A former spouse is not an eligible dependent.);

(h) Subscriber receives formal notice that the department of social and health services has determined it is more cost-effective to enroll an eligible dependent in PEBB medical than a medical assistance program.

(5) **Subscribers may waive (interrupt or postpone) enrollment of an eligible dependent.**

(a) Employees may only waive dependents if those dependents are enrolled in ((~~other~~)) another comprehensive group ((~~insurance coverage~~)) health plan. Employees may only waive an eligible dependent's enrollment at the following times:

(i) When the employee is first eligible and enrolls in PEBB benefits. (The dependent's enrollment will be waived beginning with the employee's effective date.);

(ii) During the annual open enrollment. (The dependent's enrollment will be waived beginning January of the following year.);

(iii) No later than sixty days after the dependent becomes eligible as described in subsection (3) of this section. (The dependent's enrollment will be waived beginning the date enrollment would have begun.); or

(iv) During a special open enrollment as described in subsection (4) of this section. (The dependent's enrollment will be waived as of the date corresponding to the ((~~change in status~~)) event that ((~~created~~)) creates the special open enrollment.)

(b) Retirees, survivors or individuals continuing PEBB insurance coverage under WAC 182-12-133 or 182-12-270 may waive enrollment of an eligible dependent outside of the annual open enrollment or a special open enrollment. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.

(c) Subscribers may enroll eligible dependents that were waived as stated in subsections (2) and (4) of this section.

(6) **Subscribers must remove dependents from the subscriber's insurance coverage within sixty days of the date the dependent no longer meets eligibility criteria** in WAC 182-12-250 or 182-12-260. Insurance coverage enrollment ends the last day of the month in which the dependent is eligible.

Subscribers may remove a lawful spouse from PEBB insurance coverage in the event of legal separation documented by a court order, provided the court did not order the subscriber to maintain the spouse's health plan enrollment. Subscribers must remove former spouses and former qualified domestic partners upon finalization of a divorce, annulment, or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former spouse or partner.

Consequences for not submitting notice as described in subsection (7) of this section within sixty days of any dependent ceasing to be eligible may include:

(a) The dependent's loss of eligibility to continue health plan enrollment under one of the continuation options described in WAC 182-12-270;

(b) The subscriber being billed for claims paid by the health plan for services after the dependent lost eligibility; and

(c) The subscriber being responsible for premiums paid by the state for the dependent's health plan enrollment after the dependent lost eligibility.

(7) **Subscribers must submit the appropriate ((~~enrollment~~)) form((~~(~~)s((~~)~~)) within the time frames described in this subsection.** Employees submit the ((~~enrollment~~)) appro-

priate form((~~(~~))s((~~)~~)) to their employing agency. All other subscribers submit the ((~~enrollment~~)) appropriate form((~~(~~))s((~~)~~)) to the PEBB benefits services program. In addition to the appropriate forms indicating dependent enrollment, the PEBB benefits services program may require the subscriber to provide evidence of eligibility or evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll their eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the ((~~enrollment~~)) appropriate form((~~(~~))s((~~)~~)) that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the appropriate ((~~enrollment~~)) forms((~~(~~))s((~~)~~)) no later than the end of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the appropriate enrollment form((~~(~~))s((~~)~~)) no later than sixty days after the dependent becomes eligible.

(d) ((~~If the subscriber wants to enroll a child age twenty or older as a registered student, the subscriber must submit the appropriate enrollment form(s) required to certify the child as a student no later than sixty days after the first day of the month of the quarter or semester that the subscriber wants to enroll the student in PEBB insurance coverage.~~

(~~e~~))) If the subscriber wants to enroll a child age twenty or older as a child with disabilities, the subscriber must submit the appropriate enrollment form(s) required to certify the dependent's eligibility within the relevant time frame described in WAC 182-12-250(3) or 182-12-260((~~(5)~~)) (4).

((~~(f)~~))) (e) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the appropriate ((~~enrollment~~)) form((~~(~~))s((~~)~~)) no later than sixty days after the event that creates the special open enrollment.

((~~(g)~~))) (f) If the subscriber wants to waive a dependent's enrollment, the subscriber must submit the appropriate ((~~enrollment~~)) forms. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-265 What options for continuing health plan enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage as a surviving dependent. An eligible surviving spouse, qualified domestic partner, or child must enroll in or defer enrollment in a PEBB ((~~health~~)) medical plan no later than sixty days after the date of the employee's or retiree's death.

(1) Dependents who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan enrollment as a survivor under retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving spouse, qualified domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible for PEBB retiree insurance as a survivor. However, the dependent may continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents who lose eligibility due to the death of a PEBB eligible retiree may continue health plan enrollment under retiree insurance.

(a) The retiree's spouse or qualified domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents ((~~who are waiving enrollment in a PEBB health plan~~)), whose enrollment in a PEBB health plan is waived at the time of the retiree's death, are eligible to enroll or defer enrollment in PEBB retiree insurance. A form to enroll or defer PEBB health plan enrollment must be hand-delivered or mailed to the PEBB benefits services program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the dependent must provide satisfactory evidence of continuous enrollment in other medical coverage from the most recent open enrollment for which enrollment in PEBB was waived.

(3) Surviving spouses or eligible children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in a PEBB health plan provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB benefits services program of their decision to enroll or defer enrollment in a PEBB health plan no later than sixty days after the date of death of the employee or retiree. If PEBB health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan enrollment without a gap subject to payment of premium. In order to avoid duplication

of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan under WAC 182-12-200 and 182-12-205. To notify the PEBB benefits services program of their intent to enroll or defer enrollment in a PEBB health plan the surviving dependent must ((~~send a completed election~~)) submit the appropriate forms to the PEBB benefits services program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-270 What options are available to dependents who cease to meet the eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation options in subsection (1)((~~,~~)) or (2)((~~, or (3)~~)) of this section by self-paying premiums following their loss of eligibility. The PEBB benefits services program must receive ((~~a timely election~~)) the appropriate forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, qualified domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment under provisions of WAC 182-12-250 or 182-12-265((~~.~~)); or

(2) Dependents ((~~of a lawful marriage~~)) who lose eligibility because they no longer meet the eligibility criteria in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA)((~~; or~~

~~(3) Dependents of~~)).

Exception: A qualified domestic partner who loses eligibility because he or she no longer meets the eligibility criteria in WAC 182-12-260 may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No extension of PEBB coverage will be offered unless the PEBB benefits services program is notified through hand-delivery or United States Postal Service mail of a completed notice of qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

AMENDATORY SECTION (Amending WSR 91-14-025, filed 6/25/91, effective 7/26/91)

WAC 182-16-010 Adoption of model rules of procedure. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by this agency in PEBB benefits related proceedings. Those rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Administrator" means the administrator of the health care authority (HCA) or designee;

"Agency" means the health care authority;

((~~"Agent" means a person, association, or corporation acting on behalf of the health care authority pursuant to a contract between the health care authority and the person, association, or corporation.~~)) "Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB benefits services program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB benefits services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits ((~~to~~)) for eligible employees ((~~of the state~~)) (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary

on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-030 ((~~Appeals of decisions of the agency or its agent—Applicability.~~)) How can an employee or an employee's dependent appeal a decision made by an employing agency about eligibility or enrollment in benefits? ((~~Except as provided by RCW 48.43.530 and 48.43.535, any person aggrieved by a decision of the health care authority or its agent may appeal that decision.~~

~~(1) **Eligibility appeals**. Decisions concerning eligibility determinations are reviewable by the health care authority. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.~~

~~(2) **Noneligibility appeals**. Appeals of decisions made by the agency's self-insured medical plans, managed health care plans, and other agency contractors are governed by the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility determinations.~~

~~(3) **Dental plan appeals**. Any enrollee of the health care authority's self-administered dental plan aggrieved by a decision of the agency or its agent may appeal to the PEBB appeals manager. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.~~

~~(4) **Retirement plan age appeals**. Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may appeal the denial of their retiree insurance eligibility. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice. Employees must meet other retiree insurance election procedural requirements. Eligibility denials caused by these circumstances may be reversed:~~

~~(a) Misleading or incorrect written information provided by employees of the health care authority or employers;~~

~~(b) Loss of COBRA coverage due to Medicare eligibility;~~

~~(c) Other related miscalculations of the duration of COBRA coverage; or~~

~~(d) Administrative errors or delays attributable to the state that have material impact on eligibility.~~

~~(5) **Limited retiree insurance coverage reinstatement**. Reinstatement of a retiree's insurance coverage may be approved when coverage was terminated because of late payment or late paperwork, or in extraordinary circumstances such as the retiree's impaired decision-making which adversely affects eligibility. No retiree's insurance coverage may be reinstated more than three times. Reinstatement may be approved only if:~~

~~(a) The retiree or a representative acting on their behalf submits a written appeal within sixty days after the notice of termination was mailed; and~~

~~(b) The retiree agrees to make payment in accordance with the terms of an agreement with the HCA.~~)) Any employee or employee's dependent aggrieved by a decision made by an employing agency with regard to public employee benefits eligibility or enrollment may appeal that decision to the employing agency.

Note: Eligibility decisions address whether an employee or an employee's dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including but not limited to the submission of proper documentation and meeting enrollment deadlines.

The employing agency may only reverse eligibility or enrollment decisions based on circumstances that arose due to delays caused by the employing agency or error(s) made by the employing agency.

(1) Any employee or employee's dependent aggrieved by an eligibility or enrollment decision made by an employing agency may appeal the decision by submitting a written request for review to the employing agency. The employing agency must receive the request for review within thirty days of the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the employing agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the employing agency's written decision shall be sent to the employing agency's administrator or designee and to the PEBB appeals manager. The employing agency's written decision shall become the employing agency's final decision effective fifteen days after the date it is rendered.

(2) Any employee or employee's dependent who disagrees with the employing agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the employing agency's written decision on the request for review.

As well, any employee or employee's dependent may appeal a decision about premium payments by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-032 How can a retiree or self-pay enrollee appeal a decision made by the PEBB benefits services program regarding eligibility, enrollment or premium payments? Any retiree or self-pay enrollee aggrieved by a decision made by the PEBB benefits services program with regard to public employee benefit eligibility, enrollment, or premium payments may appeal the decision to the PEBB appeals committee.

Note: Eligibility decisions address whether a retiree, self-pay enrollee or their dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including, but not limited to the submission of proper documentation, enrollment deadlines, and premium related issues.

The PEBB appeals manager must receive the notice of appeal within sixty days of the date of the denial notice by the PEBB benefits services program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(3) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-034 How can a PEBB enrollee appeal a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property or casualty insurance? Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance may do so by following the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility, enrollment and premium payment determinations. Employees and their dependents should refer to WAC 182-16-030 for eligibility, enrollment and premium payment appeals. Retirees, self-pay enrollees, and their dependents should refer to WAC 182-16-032 for eligibility, enrollment and premium payment appeals.

NEW SECTION

WAC 182-16-036 How can an enrollee appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any enrollee aggrieved by a decision regarding the medical FSA and DCAP offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan.

(2) Any enrollee who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP offered under the state's salary reduction plan. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any enrollee aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice by the PEBB benefits services program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-037 How can an enrollee appeal a decision by the agency's self-insured dental plan? Any enrollee aggrieved by a decision by the agency's self-insured dental plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice by the agency's self-insured dental plan. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(3) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-038 How can an entity or organization appeal a decision to deny its participation in PEBB? Any entity or organization whose application to participate in PEBB benefits has been denied may appeal the decision to the PEBB appeals committee. For rules regarding eligible entities, see WAC 182-12-111. The PEBB appeals manager

must receive the notice of appeal within thirty days of the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appealing party in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision on the notice of appeal within thirty days of receiving the notice of appeal. The written decision shall be sent to the appealing party.

(3) Any appealing party aggrieved with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-040 ((~~Appeals—Notice of appeal contents.~~)) What should the request for review or notice of appeal contain? ((~~Except as provided by RCW 48.43.530 and 48.43.535 and WAC 182-16-030(2), any person aggrieved by a decision of the health care authority or its agent may appeal that decision by filing a notice of appeal with the PEBB appeals manager. The notice of appeal must~~)) A request for review or notice of appeal is to contain:

(1) ((~~The name and mailing address of the enrollee;~~

~~(2)~~)) The name and mailing address of the appealing party;

(((~~(3)~~))) (2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed ((~~making it clear~~)) and clarifying what is believed to be unlawful or ((~~unjust~~)) in error;

(5) A ((~~clear and concise~~)) statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered and substantiates why the decision should be reversed. Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision;

(7) ((~~A copy of the health care authority's or its agent's response to the issue the appealing party has raised;~~

~~(8)~~)) The type of relief sought;

(((~~(9)~~))) (8) A statement that the appealing party has read the notice of appeal and believes the contents to be true;

(((~~(10)~~))) (9) The signature of the appealing party((~~'s signature and~~)) or the ((~~signature of his or her~~)) appealing party's representative((~~, if any;~~

~~(11) The appealing party shall file the original notice of appeal with the PEBB benefits services program using hand delivery, electronic mail or United States Postal Service mail. The notice of appeal must be received by the PEBB benefits services program within ninety days after the decision of the PEBB staff was mailed to the appealing party. The PEBB appeals manager shall acknowledge receipt of the copies filed with the PEBB benefits services program;~~

~~(12) The health care authority's appeals committee will render a written decision within thirty working days after receipt of the complete notice of appeal~~)).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-050 ((~~Appeals—Hearings.~~)) How can an enrollee or entity get a hearing if aggrieved by a decision made by the PEBB appeals committee? (1) ((~~If the appealing party is not satisfied with the decision of the health care authority's~~)) Any party aggrieved by a decision of the PEBB appeals committee, ((~~the appealing party~~)) may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. ((~~The appeal is not effective unless~~)) The PEBB appeals manager must receive((~~s~~)) the ((~~written~~)) request for ((~~a~~)) an administrative hearing within thirty days of the date of the ((~~appeals~~)) written decision ((~~was mailed to the appealing party~~)) by the PEBB appeals committee.

(((~~(2)~~))) (3) The agency shall set the time and place of the hearing and give not less than twenty days notice to all parties ((~~and persons who have filed written petitions to intervene~~)).

(((~~(3)~~))) (4) The administrator, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this chapter.

(((~~(4)~~))) (5) All hearings must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

(((~~(5)~~))) (6) Within ninety days after the hearing record is closed, the administrator or his or her designee shall render a decision which shall be the final decision of the agency. A copy of that decision ((~~accompanied by a written statement of the reasons for the decision~~)) shall be ((~~served on~~)) mailed to all parties ((~~and persons who have intervened~~)).

WSR 08-20-133
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 1, 2008, 9:46 a.m., effective November 1, 2008]

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

Purpose: This rule making will amend WAC 296-17-35203 in response to 2008 legislative changes in RCW 51.12.120 (chapter 88, Laws of 2008). This amendment will clarify the definition of "temporary and incidental." It also specifies premium liability and provides information regarding workers' compensation coverage requirements when Washington employers hire Washington workers to work out-of-state.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-35203.

Statutory Authority for Adoption: Chapter 88, Laws of 2008, RCW 51.12.120 and 51.16.035.

Other Authority: Title 51 RCW.

Adopted under notice filed as WSR 08-16-110 on August 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: The amendments to WAC 296-17A-7500 were deleted. This section included fifty-one subclassifications that identified the outside states. There was no rating associated with these classifications, and they were only intended for internal tracking purposes and were determined to not be necessary for this rule making.

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 1, 2008.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17-35203 Special reporting instruction. (1) **Professional and semiprofessional athletic teams.** Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(6).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(I) The employers' unified business identification account number (UBI).

(II) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(III) The total contract award.

(IV) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(V) Physical location/site where the work will be performed including legal description.

(VI) Number of acres covered by the contract.

(VII) Dates during which the work will be performed.

(VIII) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This

notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(I) The name of the contractor who has been engaged to perform the work;

(II) The contractor's UBI number;

(III) The contractor's farm labor contractor number;

(IV) The total contract award;

(V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(VI) Location where the work is to be performed;

(VII) A contact name and phone number of the person, firm, or corporation who let the contract;

(VIII) The total estimated wages to be paid by the contractor and any subcontractors;

(IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) **Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) **Special drywall industry rule.**

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of doubleboard application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) **I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You

must file this report at the same time you file your quarterly report:

Total owners hours ÷ (owners hours + workers hours) = % of owner discount.

% of owner discount x (total footage of job – subcontracted footage, if any) = Total owner deduction of footage.

(c) **Can I deduct material installed or finished by subcontractors?** You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) **I understand there are discounted rates available for the drywall industry. How do I qualify for them?** To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) **Can I be disqualified from using the discounted rates?** Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) **If I discover I have made an error in reporting or paying premium, what should I do?** If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) **Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

(8) **Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).**

(a) **General definitions.** For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

Note: Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers,

the essence of which is the personal labor of such worker or workers.

(b) **Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state?** A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, it will not need to pay premiums in Washington for work in the other state during the calendar year, as long as it fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTerritorial/Default.asp

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

Note: Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

(c) **What if a Washington employer knows the Washington workers work in another state will exceed the temporary and incidental period?** If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, it must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

(d) **What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but it does not occur?** If a Washington employer did not pay workers compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or nonconsecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

(e) **What records must the employer keep while employing Washington workers in another state?** In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) **What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental?** A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which it has Washington workers performing work. The supplemental report must include the following information:

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

(g) **Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state?** Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) **If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington?** Yes, but only if the Washington employer:

(i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;

(ii) Provides proof of out-of-state coverage;

(iii) Filed the appropriate quarterly reports with the department when due; and

(iv) Otherwise complied with all statutory and regulatory requirements of Washington state.