

WSR 09-07-001
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed March 4, 2009, 12:02 p.m., effective April 4, 2009]

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

Purpose: The department is amending the child protective services (CPS) rule to establish a ninety day timeline for a CPS investigation. The new language is essential for children's administration to implement the legislature's intent in chapter 220, Laws of 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-15-021.

Statutory Authority for Adoption: Chapter 26.44 RCW, RCW 74.08.090, 74.13.031, 74.04.050.

Other Authority: Chapter 220, Laws of 2007.

Adopted under notice filed as WSR 09-02-076 on January 7, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.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: February 23, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-021 How does CPS respond to reports of alleged child abuse or neglect? (1) CPS must assess all reports that meet the definition of child abuse or neglect using a risk assessment process to determine level of risk and response time.

(2) CPS must provide an in-person response to alleged victims and must attempt an in-person response to the alleged perpetrator of child abuse and neglect in referrals assessed at moderate to high risk.

(3) CPS may refer reports assessed at low to moderately low risk to an alternative response system.

(4) CPS may interview a child, outside the presence of the parent, without prior parental notification or consent (RCW 26.44.030(10)).

(5) Unless the child objects, CPS must make reasonable efforts to have a third party present at the interview so long as the third party does not jeopardize the investigation (RCW 26.44.030).

(6) CPS may photograph the alleged child victim to document the physical condition of the child (RCW 26.44.050).

(7) CPS ~~((must establish in procedure, timelines for the completion of investigations and standards for written findings))~~ attempts to complete investigations within forty-five days. In no case shall the investigation extend beyond ninety days unless the investigation is being conducted under local protocol, established pursuant to chapter 26.44 RCW, and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary.

WSR 09-07-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 4, 2009, 4:00 p.m., effective April 4, 2009]

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

Purpose: In response to an audit conducted by the Centers for Medicare and Medicaid Services, the amendment and new sections bring this chapter into compliance with federal medicaid regulations, and delineates essential requirements for the delivery of school-based healthcare services. The department is changing the name of this chapter to school-based healthcare services for children in special education, amending WAC 388-537-0100 and adding new sections to chapter 388-537 WAC. The new sections solidify requirements for (1) provider qualifications; (2) healthcare services covered under this program; (3) the appropriate documentation for program audits and monitoring, and (4) requirements for billing and payment. The changes make it easier for the school districts to comply with program rule, thus providing qualified service to the children in special education.

Citation of Existing Rules Affected by this Order: Amending WAC 388-537-0100.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Other Authority: RCW 74.09.500, 42 C.F.R. 440.110.

Adopted under notice filed as WSR 08-19-100 (supplemental notice to WSR 08-15-129) on September 17, 2008.

Changes Other than Editing from Proposed to Adopted Version: The following text changes have no material impact on the rule:

WAC 388-537-0200 School-based healthcare services for children in special education - Definitions, added the following text to the definition of "Child with a disability": Visual impairment (including blindness);

WAC 388-537-0500 School-based healthcare services for children in special education - Noncovered services, added the following text:

(17) RN/LPN continuously monitoring a child during the school day.

A final cost-benefit analysis is available by contacting Jonell O. Blatt, Rules, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1571, fax (360) 586-9727, e-mail blattj@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 8, 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 8, Amended 1, Repealed 0.

Date Adopted: March 4, 2009.

Stan Marshburn
Interim Secretary

AMENDATORY SECTION (Amending WSR 01-02-076, filed 12/29/00, effective 1/29/01)

WAC 388-537-0100 (~~(School medical services for students in special education programs)~~) **School-based healthcare services for children in special education - Purpose.** (1) ~~((The medical assistance administration (MAA) pays school districts or educational service districts (ESD) for qualifying medical services provided to an eligible student. To be covered under this section, the student must be eligible for Title XIX (i.e., either the categorically needy or medically needy programs).~~

(2) ~~To qualify for payment under this section, the medical services must be provided:~~

(a) ~~By the school district or the ESD; and~~

(b) ~~To the eligible special education student as part of the student's individualized education program (IEP) or individualized family service plan (IFSP).~~

(3) ~~To qualify for payment under this section, the medical services must be provided by one of the following service providers:~~

(a) ~~A qualified Medicaid provider as described under WAC 388-502-0010;~~

(b) ~~A psychologist, licensed by the state of Washington or granted an educational staff associate (ESA) certificate by the state board of education;~~

(c) ~~A school guidance counselor, or a school social worker, who has been granted an ESA certificate by the state board of education; or~~

(d) ~~A person trained and supervised by any of the following:~~

(i) ~~A licensed registered nurse;~~

(ii) ~~A licensed physical therapist or physiatrist;~~

(iii) ~~A licensed occupational therapist; or~~

(iv) ~~A speech pathologist or audiologist who:~~

(A) ~~Has been granted a certificate of clinical competence by the American speech, hearing, and language association;~~

(B) ~~Is a person who completed the equivalent educational and work experience necessary for such a certificate; or~~

(C) ~~Is a person who has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

(4) ~~Student service recommendations and referrals must be updated at least annually.~~

(5) ~~The student does not need a provider prescription to receive services described under this section.~~

(6) ~~MAA pays for school-based medical services according to the department-established rate or the billed amount, whichever is lower.~~

(7) ~~MAA does not pay individual school practitioners who provide school-based medical services.~~

(8) ~~For medical services billed to Medicaid, school districts or ESD, must pursue third-party resources)) The department of social and health services (DSHS) pays school districts for school-based healthcare services provided to children in special education in accordance with the individuals with disabilities education act (IDEA). The services must:~~

(a) Address the physical and/or mental disabilities of a child;

(b) Be prescribed or recommended by a physician or other qualified healthcare provider within his or her scope of practice under state law; and

(c) Be included in the child's individualized education program (IEP).

NEW SECTION

WAC 388-537-0200 School-based healthcare services for children in special education - Definitions. The following definitions and those found in WAC 388-500-0005 apply to this chapter:

"Assessment" - For purposes of this chapter an assessment is made-up of tests given to an individual child by qualified professionals to evaluate whether a child is determined to be a child with a disability and in need of special education and related services. Assessments are a part of the evaluation and re-evaluation processes.

"Child with a disability" - For purposes of this chapter, a child with a disability means a child evaluated and determined to need special education and related services because of a disability in one or more of the following eligibility categories:

- Mental retardation;
- Hearing impairment (including deafness);
- Speech or language impairment;
- Serious emotional disturbance (emotional behavioral disability);
- Orthopedic impairment;
- Autism;
- Visual impairment (including blindness);
- Traumatic brain injury;
- Other health impairment;
- Specific learning disability;
- Deaf/blindness;
- Multiple disabilities; or
- A developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services.

"Direct healthcare services" - Services provided directly to a child either one-on-one or in a group setting.

"Educational staff associate (ESA) certification" - The ESA certificate is an official document that attests to minimum prerequisites of age, moral character/fitness, education, experience, competence, and preparation program, depending on the certificate types. The ESA certification is required to serve in a Washington public school.

"Evaluation" - Procedures used according to WAC 392-172A-03005 through 392-172A-03080 to determine whether a student has a disability, and the nature and extent of the special education and related services needed.

"Fee-for-service" - For the purpose of this section, the general payment method the department uses to reimburse providers for covered medical services provided to medical assistance clients when those services are not covered under the department's managed care plans or state children's health insurance program (SCHIP).

"Individuals with disabilities education act (IDEA)" - The IDEA is a United States federal law that governs how states and public agencies provide early intervention, special education, and related services to children with disabilities. It addresses the educational needs of children with disabilities from birth to age of twenty-one.

"Individualized education program (IEP)" - A written statement of an educational program for a student eligible for special education. (See WAC 392-172A-03090 through 392-172A-03135.)

"Qualified healthcare provider" - See WAC 388-537-0350.

"Re-evaluation" - Procedures used to determine whether a student continues to be in need of special education and related services. (See WAC 392-172A-03015.)

"Related services" - Developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from specially designed instruction. For purposes of this program, related services include: physical therapy, occupational therapy, speech-language therapy, audiology services, psychological assessments, counseling, and nursing services.

NEW SECTION

WAC 388-537-0300 School-based healthcare services for children in special education - Client eligibility. Children in special education must be receiving Title XIX Medicaid under a categorically needy program (CNP) or medically needy program (MNP) to be eligible for school-based healthcare services. Eligible children enrolled in a managed care organization (MCO) receive school-based healthcare services on a fee-for-service basis.

NEW SECTION

WAC 388-537-0350 School-based healthcare services for children in special education - Provider qualifications. The department pays school districts to provide certain healthcare services (see WAC 388-537-0400) to eligible children (see WAC 388-567-0300). These services must be provided by qualified healthcare providers who meet Wash-

ington state and federal requirements and operate within the scope of their practitioner's license:

- (1) Audiology services delivered by:
 - (a) A licensed audiologist; or
 - (b) A school-based audiologist who:
 - (i) Meets the education and work experience necessary for a state professional license;
 - (ii) Holds a valid school audiologist educational staff associate certificate; and
 - (iii) Limits their audiology services to the school setting.
- (2) Counseling services delivered by:
 - (a) A licensed independent social worker;
 - (b) A licensed advanced social worker;
 - (c) A licensed mental health counselor; or
 - (d) A school-based social worker or mental health counselor who:
 - (i) Meets the education and work experience necessary for a state professional license;
 - (ii) Holds a valid school social worker or school counselor educational staff associate certificate; and
 - (iii) Limits their counseling services to the school setting.
- (3) Nursing services delivered by:
 - (a) A licensed registered nurse;
 - (b) A licensed practical nurse; or
 - (c) A noncredentialed school employee who is delegated certain limited healthcare tasks by a registered nurse and, trained and supervised according to professional practice standards.
- (4) Occupational therapy services delivered by:
 - (a) A licensed occupational therapist; or
 - (b) A certified occupational therapy assistant supervised by a licensed occupational therapist in accordance with professional practice standards.
- (5) Physical therapy services delivered by:
 - (a) A licensed physical therapist; or
 - (b) A licensed physical therapist assistant supervised by a licensed physical therapist in accordance with professional practice standards.
- (6) Psychological services delivered by:
 - (a) A licensed psychologist; or
 - (b) A school-based psychologist who:
 - (i) Holds a masters degree in school psychology;
 - (ii) Holds a valid school psychologist educational staff associate certificate; and
 - (iii) Limits their psychological services to the school setting.
 - (c) A school-based psychologist who:
 - (i) Holds a doctoral degree in psychology;
 - (ii) Holds a valid school psychologist educational staff associate certificate; and
 - (iii) Limits their psychological services to the school setting.
- (7) Speech therapy services delivered by:
 - (a) A licensed speech-language pathologist;
 - (b) A speech-language pathology assistant, who has graduated from a speech-language pathology assistant program, and is supervised by a speech-language pathologist with a certificate of clinical competence (CCC) in accordance with professional practice standards; or

- (c) A school-based speech-language pathologist who:
- (i) Meets the education and work experience necessary for a state professional license;
 - (ii) Holds a valid school speech-language pathologist educational staff associate certificate; and
 - (iii) Limits their speech therapy services to the school setting.
- (8) For services provided under the supervision of a physical therapist, occupational therapist or speech-language pathologist the following requirements apply:
- (a) The nature, frequency and length of the supervision must be provided in accordance with professional practice standards and adequate to assure the child receives quality therapy services.
 - (b) At a minimum, supervision must be one-on-one communication between the supervisor and the supervised professional.
 - (c) Documentation of supervisory activities must be on record and available to the department upon request.
 - (9) It is the responsibility of the school district to assure providers meet the professional requirements necessary for reimbursement.

NEW SECTION

WAC 388-537-0400 School-based healthcare services for children in special education - Covered services. Covered services include:

- (1) Evaluations, when the child is determined to be a child with a disability and in need of special education and related services;
- (2) Direct healthcare services including:
 - (a) Audiology;
 - (b) Counseling;
 - (c) Nursing;
 - (d) Occupational therapy;
 - (e) Physical therapy;
 - (f) Psychological assessments;
 - (g) Speech-language therapy.
- (3) Re-evaluations, to determine whether the child continues to need special education and related services.

NEW SECTION

WAC 388-537-0500 School-based healthcare services for children in special education - Noncovered services. Noncovered services include, but are not limited to the following:

- (1) Attending meetings;
- (2) Charting;
- (3) Equipment preparation;
- (4) Instructional assistant contact;
- (5) Parent consultation;
- (6) Parent contact;
- (7) Planning;
- (8) Preparing and sending correspondence to parents or other professionals;
- (9) Professional consultation;
- (10) Report writing;
- (11) Review of records;
- (12) Set-up;

- (13) Teacher contact;
- (14) Test interpretation;
- (15) Travel;
- (16) Observation; and
- (17) For the purposes of this chapter, the department does not reimburse school districts for a RN or LPN to monitor a child continuously throughout the school day.

NEW SECTION

WAC 388-537-0600 School-based healthcare services for children in special education - School district requirements for billing and payment. To receive payment from the department for school-based healthcare services, a school district must:

- (1) Have a current, signed core provider agreement with the department;
- (2) Meet the applicable requirements in chapter 388-502 WAC; and
- (3) Bill according to the department's published school-based healthcare services billing instructions.

NEW SECTION

WAC 388-537-0700 School-based healthcare services for children in special education - School district documentation requirements. (1) The school districts must maintain sufficient documentation to support and justify the paid claims, to include, at a minimum:

- (a) Professional assessment reports;
 - (b) Evaluation and re-evaluation reports;
 - (c) Individualized education program (IEP); and
 - (d) Treatment notes for each date of service the provider billed to the department.
- (2) All provider licenses and other credentials must be current and on file with the school district and available for review upon request.
- (3) All records must be easily and readily available to the department upon request.

NEW SECTION

WAC 388-537-0800 School-based healthcare services for children in special education - Program monitoring/audits. (1) School districts must participate in the monitoring process.

- (2) The department monitors school-based healthcare services as established by the school-based healthcare services program manager and in compliance with the department's monitoring policy and plan.
- (3) The department conducts audits of school-based healthcare services in accordance with chapter 388-502A WAC.
- (4) The department authority to conduct audits and recover overpayments is found in RCW 74.09.200, 74.09.220 and 74.09.290.

WSR 09-07-010
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed March 5, 2009, 4:06 p.m., effective April 5, 2009]

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

Purpose: The amendment to WAC 192-310-160 clarifies that only the exempted officers of a private corporation must be related by blood or marriage.

Citation of Existing Rules Affected by this Order: Amending WAC 192-310-160.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 08-21-077 on October 14, 2008.

Date Adopted: February 6, 2009.

Karen T. Lee
 Commissioner

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/09)

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corpora-

tion and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all exempted officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers exempted do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

WSR 09-07-011
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed March 5, 2009, 4:08 p.m., effective April 5, 2009]

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

Purpose: The rule implements SSB 6751, adopted by the 2008 legislature, which establishes good cause for individuals to voluntarily quit work to enter an approved apprenticeship training program. The rule describes the conditions under which the amended law applies and defines terms.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

Adopted under notice filed as WSR 08-21-055 on October 9, 2008.

Changes Other than Editing from Proposed to Adopted Version: The wording of the rule is modified slightly to clarify that active participation in training includes working or seeking work in accordance with the apprenticeship agreement and that an individual must have been accepted into the apprenticeship program before quitting work.

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.

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

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

Date Adopted: February 6, 2009.

Karen T. Lee
Commissioner

NEW SECTION

WAC 192-150-160 Entering approved apprenticeship training—RCW 50.20.050 (2)(b)(xi). (1) **Effective date.** RCW 50.20.050 (2)(b)(xi) and this section apply to job separations that occur on or after June 12, 2008.

(2) **Application.** This section applies only if you quit work to enter into related/supplemental (classroom) instruction that is part of an apprenticeship program. If you quit work to begin employment for an employer who is a party to an apprenticeship agreement, the department will review the separation under RCW 50.20.050 (2)(b)(i) and WAC 192-150-050 to determine if you left work to accept a bona fide job offer.

(3) **Definitions.** For purposes of this chapter:

(a) "To enter" means to begin participation in the apprenticeship program.

(i) The term "to enter" includes:

(A) Apprentices who accept temporary work with an employer who is not a party to the apprenticeship agreement and quit work to re-enter training.

(B) Apprentices who quit work for a participating employer to enter a different apprenticeship program.

(ii) The term "to enter" does not include:

(A) Claimants applying for an apprenticeship program who at the time of quitting work are not enrolled in apprenticeship or pre-apprenticeship training. Their eligibility for benefits will be reviewed under RCW 50.20.050(2).

(B) Current apprentices who temporarily stop work for a participating employer to attend related/supplemental instruction that is a required component of their apprenticeship agreement. Claimants in this situation are considered to be on temporary layoff from work. Their eligibility for commissioner approved training will be reviewed under WAC 192-200-020(3).

(b) "Active participation" means attending classes, engaging in other activities that are part of the related/supplemental instruction, and working or seeking work in accordance with the apprenticeship agreement.

(c) The terms "apprentice," "apprenticeship agreement," "apprenticeship program," "approved," and "related/supplemental instruction" have the meanings described in WAC 296-05-003.

(4) **Establishing good cause.** If you quit work to enter an apprenticeship program, you will have good cause within the meaning of RCW 50.20.050 (2)(b)(xi) if you satisfactorily demonstrate that:

(a) You have been accepted into and are entering an apprenticeship program approved by the Washington state apprenticeship training council;

(b) Prior to leaving work, you had a confirmed start date for related/supplemental instruction; and

(c) You continued in your employment for as long as was reasonably consistent with whatever arrangements were necessary to begin the related/supplemental instruction. In any event, you will not be eligible for benefits until the week prior to the week the related/supplemental instruction begins.

WSR 09-07-023

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 6, 2009, 3:34 p.m., effective April 6, 2009]

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

Purpose: In response to a petition from the Opticians Association of Washington, this rule amends WAC 246-824-075 Continuing education requirements for dispensing opticians by adding the Joint Commission of Allied Health Personnel in Ophthalmology and the Council on Optometric Practitioner Education to the list of organizations qualified as providers of continuing education courses. An organization that no longer exists is deleted.

Citation of Existing Rules Affected by this Order: Amending WAC 246-824-075.

Statutory Authority for Adoption: RCW 18.34.120.

Adopted under notice filed as WSR 08-21-156 on October 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 1, Repealed 0.

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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: March 6, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-824-075 Continuing education requirements for dispensing opticians. Purpose and scope. The purpose of these requirements is to ensure the continued high quality of services provided by the licensed dispensing optician. Continuing education consists of educational activities designed to review existing concepts and techniques and conveys information and knowledge about advances in the field of opticianry, so as to keep the licensed dispensing opticians abreast of current and forecasted developments in a rapidly changing field.

(1) Basic requirements. Licensed dispensing opticians must complete thirty hours of continuing education every three years as required in chapter 246-12 WAC, Part 7.

(2) Fifteen of the credit hours must relate to contact lenses.

(3) Qualification of program for continuing education credit. Courses offered by the organizations and methods listed in this section will be presumed to qualify as continuing education courses. The secretary reserves the authority to refuse to accept credits in any course if the secretary determines that the course did not provide information sufficient in amount or relevancy to opticianry. Qualifying organizations and methods for the purposes of this section shall include in-class training, correspondence courses, video and/or audio tapes offered by any of the following:

- (a) American Board of Opticianry;
- (b) National Academy of Opticianry;
- (c) Optical Laboratories Association;
- (d) National Contact Lens Examiners;
- (e) ~~((Pacific coast contact lens society;~~
- ~~(f))~~ Contact Lens Society of America;
- ~~((g))~~ ~~(f)~~ Opticians Association of Washington;
- ~~((h))~~ ~~(g)~~ Joint Commission of Allied Health

Personnel in Ophthalmology:

~~(h)~~ Council on Optometric Practitioner Education:

~~(i)~~ Opticianry colleges or universities approved by the secretary;

~~((j))~~ ~~(j)~~ Speakers sponsored by any of the above organizations;

~~((k))~~ ~~(k)~~ Any state or national opticianry association; and

~~((l))~~ ~~(l)~~ Additional qualifying organizations or associations as approved by the secretary.

WSR 09-07-029

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 08-14—Filed March 10, 2009, 9:59 a.m., effective April 10, 2009]

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

Purpose: The purpose of this rule is to amend the compensation schedule mathematical formula multipliers in regulation so that the full range of compensation (\$1 to \$100 per gallon of oil spilled) required in state law can be calculated. This rule will amend WAC 173-183-830(3), 173-183-840(2), 173-183-850(2), and 173-183-860(2), by replacing current multipliers with new multipliers that are capable of achieving the full range of compensation required in state law. This rule will also change WAC 173-183-830(3), 173-183-840(2), 173-183-850(2), and 173-183-860(2) by replacing the \$50 ceiling limit value with the new \$100 ceiling limit required by RCW 90.48.366.

Citation of Existing Rules Affected by this Order: Amending WAC 173-183-830(3), 173-183-840(2), 173-183-850(2), and 173-183-860(2).

Statutory Authority for Adoption: RCW 90.48.366, 90.56.050, and 90.48.035.

Adopted under notice filed as WSR 09-01-124 on December 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 4, Repealed 0.

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

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

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

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

Date Adopted: March 10, 2009.

Jay J. Manning

Director

AMENDATORY SECTION (Amending Order 03-03, filed 5/12/03, effective 6/12/03)

WAC 173-183-830 Calculation of damages for spills into marine and estuarine waters, except the Columbia River estuary. (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into marine and estuarine waters, except the estuarine waters of Columbia River. The value of the variables used in the formula shall be determined by:

(a) The OSC as enumerated in WAC 173-183-810(1);

(b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and

(c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(a).

(2) In making the determination of percent-coverage of habitat types, the RDA committee chair may assume that the habitat-type visible at low tide extends out to the 20 meter depth contour.

(3) Damages liability shall be calculated using the following formula:

Damages (\$) =

$$\text{gallons spilled} * \del{((\theta+))} \underline{0.208} * [(OIL_{AT} * SVS_{AT,j}) + (OIL_{MI} * SVS_{MI,j}) + (OIL_{PER} * SVS_{PER,j})]$$

where: gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;

SVS_{i,j} = spill vulnerability score (from WAC 173-183-400(3));

OIL_{AT} = Acute Toxicity Score for Oil (from WAC 173-183-340);

OIL_{MI} = Mechanical Injury Score for Oil (from WAC 173-183-340); and

OIL_{PER} = Persistence Score for Oil (from WAC 173-183-340).

i = acute toxicity, mechanical injury and persistence effect of oil
 j = the most sensitive season affected by the spill
 $((0.4) \underline{0.208})$ = multiplier to adjust the damages calculated to the $\$((1-50)) \underline{1-100}$ per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

WAC 173-183-840 Calculation of damages for spills into the Columbia River estuary. (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into the estuarine waters of Columbia River. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
 - (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
 - (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(b).
- (2) Damages liability shall be calculated using the following formula:

Damages (\$) =
 $\text{gallons spilled} * ((0.2) \underline{0.508}) * \text{SVS}_j * (\text{OIL}_{\text{AT}} + \text{OIL}_{\text{MI}} + \text{OIL}_{\text{PER}})$
 where: gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810
 SVS_j = spill vulnerability score (from WAC 173-183-500(3));
 j = the most sensitive season affected by the spill
 OIL_{AT} = Acute Toxicity Score for Oil (from WAC 173-183-360);
 OIL_{MI} = Mechanical Injury Score for Oil (from WAC 173-183-360); and
 OIL_{PER} = Persistence Score for Oil (from WAC 173-183-360).
 $((0.2) \underline{0.508})$ = multiplier to adjust the damages calculated to the $\$((1-50)) \underline{1-100}$ per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

AMENDATORY SECTION (Amending Order 03-03, filed 5/12/03, effective 6/12/03)

WAC 173-183-850 Calculation of damages for spills in freshwater streams, rivers, and lakes. (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into freshwater streams, rivers, and lakes. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
 - (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
 - (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(c).
- (2) Damages liability shall be calculated using the following formula:

Damages (\$) =
 $\text{gallons spilled} * ((0.08) \underline{0.162}) * \text{SVS} * (\text{OIL}_{\text{AT}} + \text{OIL}_{\text{MI}} + \text{OIL}_{\text{PER}})$
 where: gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;
 SVS = Spill vulnerability score [from WAC 173-183-600(3)];
 OIL_{AT} = Acute Toxicity Score for Oil [from WAC 173-183-340];
 OIL_{MI} = Mechanical Injury Score for Oil [from WAC 173-183-340]; and
 OIL_{PER} = Persistence Score for Oil [from WAC 173-183-340].
 $((0.08) \underline{0.162})$ = multiplier to adjust damages calculated to the $\$((1-50)) \underline{1-100}$ per gallon range;

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 03-03, filed 5/12/03, effective 6/12/03)

WAC 173-183-860 Calculation of damages for spills into freshwater wetlands. (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into freshwater wetlands. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
 - (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
 - (c) the RDA committee chair as enumerated in WAC 173-183-820 (1)(d).
- (2) Damages liability shall be calculated using the following formula:

Damages (\$) =

gallons spilled* ~~((0.84))~~ 1.620* SVS* (OIL_{AT}
+OIL_{MI} + OIL_{PER})

where: gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810;

SVS = Spill vulnerability score [from WAC 173-183-700(3)];

OIL_{AT} = Acute Toxicity Score for Oil [from WAC 173-183-340];

OIL_{MI} = Mechanical Injury Score for Oil [from WAC 173-183-340]; and

OIL_{PER} = Persistence Score for Oil [from WAC 173-183-340].

~~((0.84))~~ 1.620 = multiplier to adjust damages calculated to the ~~\$(1-50))~~ 1-100 per gallon range;

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 09-07-036

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 10, 2009, 2:48 p.m., effective April 10, 2009]

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

Purpose: The department is amending WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services; and WAC 388-513-1320 Determining institutional status for long-term care (LTC) services, as follows:

- DSHS is clarifying institutional status for person(s) under the age of eighteen receiving inpatient mental health treatment.
- DSHS is clarifying institutional status for person(s) age eighteen through twenty in a psychiatric facility.
- DSHS is clarifying WAC to match federal rules regarding institutional status.
- DSHS is adding information in WAC 388-513-1315 regarding excess home equity in primary residence, disclosure of annuity requirement, and request for LTC services for SSI recipients, per Deficit Reduction Act (DRA) requirements.
- DSHS is clarifying those not meeting citizenship requirements of medicaid are not eligible for waiver programs.
- DSHS is updating WAC references and clarifying language.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1315 and 388-513-1320.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and 74.09.575.

Other Authority: Deficit Reduction Act of 2005, 42 C.F.R. Section 435.

Adopted under notice filed as WSR 09-03-096 on January 21, 2009.

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 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: March 4, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-19-129, filed 9/19/07, effective 10/20/07)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for ~~((institutional))~~ medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) ~~((program and institutional or hospice services in a medical institution under the))~~ or medically needy (MN) programs. Also described are the eligibility requirements for these services under the general assistance (GA) program in subsection (12) and the alien emergency medical programs described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for waiver and nursing facility coverage; ~~((and))~~

(d) Not be subject to a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366;

(e) Not have equity interest greater than five hundred thousand dollars in their primary residence as described in WAC 388-513-1350; and

(f) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC;

(i) This is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350~~((1), unless subsection (4) applies))~~; or

(b) Be approved and receiving the general assistance expedited medicaid disability (GA-X) or general assistance aged (GA-A) or general assistance disabled (GA-D) described in WAC 388-505-0110(6); or

(c) Be eligible for ~~((the)) CN ((children's medical program as described in WAC 388-505-0230))~~ apple health for kids described in WAC 388-505-0210; or CN family medical described in WAC 388-505-0220; or family and children's institutional medical described in WAC 388-505-0230 through 388-505-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC ~~((388-505-0220))~~ 388-400-0005. Clients not meeting disability criteria described in WAC 388-475-0050 are not eligible for waiver services.

(3) The department allows a client to ~~((have))~~ reduce countable resources in excess of the standard. This is described in WAC 388-513-1350 ((when meeting the conditions of reducing excess resources described in WAC 388-513-1350)).

(4) To be eligible for waiver services, a client must ~~((also))~~ meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPEs, New Freedom, PACE, ~~((MMHP))~~ and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers; or

(c) WAC 388-515-1540 for the medically needy residential waiver (MNRW); or

(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW).

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 388-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN-P) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI related clients with income over the MNIL and at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

~~(e) ((Reside in a state contracted and licensed alternate living facility and not on waiver services and receives medical assistance described in WAC 388-513-1305 as they are paying the facility privately.~~

~~(f)) Be eligible for institutional CN if residing in a medical institution thirty days or more ((use institutional rules for eligibility when in a medical institution thirty days or more)).~~

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC ~~((388-505-0230))~~ 388-505-0210, 388-505-0255, or 388-505-0260; or

(b) Related to the SSI program as described in WAC ~~((388-478-0050(1)))~~ 388-475-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC 388-475-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more ~~((use institutional rules for eligibility when in a medical institution thirty days or more))~~ described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months ~~((for:~~

~~(a) Institutional services in a medical facility;~~

~~(b) Waiver services at home or in an alternate living facility; or~~

~~(c) Hospice services at home or in a medical facility)).~~

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395(6) for:

(a) Institutional services in a medical ~~((facility))~~ institution; or

(b) Hospice services in a medical ~~((facility))~~ institution.

(11) The department determines eligibility for nursing facility and hospice services under the alien emergency medical (AEM) program described in WAC 388-438-0110 for a client age nineteen or over who meets all other requirements for such services but does not meet citizenship requirements. Nursing facility and hospice services under the AEM program must be preapproved by the department's medical consultant.

(12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (9) through (11).

(13) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is ~~((less than))~~ under the age of twenty-one ((years old)) at the time of application ((and approval)); or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(14) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(15) ~~((The department considers the parents' income and resources available for a minor who is less than eighteen years old and is receiving or is expected to receive inpatient chemical dependency and/or inpatient mental health treatment))~~ If an individual under age twenty one is not eligible for medicaid under SSI related in WAC 388-475-0050 or general assistance (GA) described in WAC 388-448-0001 and 388-505-0110(6) consider eligibility under WAC 388-505-0255 or 388-505-0260.

(16) ~~((The department considers the parents' income and resources available only as contributed for a client who is less than twenty one years old and has attained institutional status as described in WAC 388-513-1320))~~ Noncitizen individuals under age nineteen can be considered for the apple health for kids program described in WAC 388-505-0210 if they are admitted to a medical institution for less than thirty days. Once an individual resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 388-505-0260.

(17) The department determines a client's ~~((participation in))~~ total responsibility to pay toward the cost of care for LTC services as ((described in WAC 388-513-1380 and 388-515-1505 for long-term care services under COPES, New Freedom, PACE, MMIP and WMIP or WAC 388-515-1510 for DDD waivers)) follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380:

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514;

(d) For clients receiving HCS MN waiver services see WAC 388-515-1540 or 388-515-1550; or

(e) For TANF related clients residing in a medical institution see WAC 388-505-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN-P medicaid. These groups are described in WAC 388-475-0880.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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.

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1320 Determining institutional status for long-term care (LTC) services. (1) Institutional status is an eligibility requirement for long-term care services (LTC) ((services:

~~(1) To attain institutional status, a client))~~ and institutional medical programs. To attain institutional status, you must:

(a) Be approved for and receiving home and community based waiver services or hospice services; or

(b) Reside or be likely to reside in a medical institution, institution for medical diseases (IMD) or inpatient psychiatric facility for a continuous period of:

(i) ~~((Ninety days for a child seventeen years of age or younger receiving inpatient chemical dependency and/or inpatient mental health treatment))~~ Thirty days if you are an adult eighteen and older; ((or))

(ii) Thirty days ~~((for:~~

~~(A) An SSI-related client;~~

~~(B) A child not described in subsection (1)(b)(i); or~~

~~(C) A client related to medical eligibility as described in WAC 388-513-1315 (10) or (11))~~ if you are a child seven-teen years of age or younger admitted to a medical institution; or

(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.

(2) ~~((A client's))~~ Once the department has determined that you meet institutional status, your status is not affected by ~~((a))~~:

(a) Transfers between medical facilities; or

(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.

(3) ~~((A client loses institutional status when the client:~~

~~(a) Is absent from the medical facility for at least thirty consecutive days; or~~

~~(b) Does not receive waiver or hospice services for at least thirty consecutive days))~~ If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status.

WSR 09-07-037

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 10, 2009, 2:49 p.m., effective April 10, 2009]

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

Purpose: The department is amending WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services, as follows:

- Regarding the personal needs allowance for individuals receiving a \$90 improved pension and those residing in a state veterans' home;
- Updating the language describing the standard shelter allocation. This standard increases every July based on the federal poverty level.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1380.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Other Authority: Deficit Reduction Act of 2005, 42 C.F.R. Section 435.

Adopted under notice filed as WSR 09-03-097 on January 21, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 0, Amended 1, Repealed 0.

Date Adopted: March 4, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-13-072, filed 6/16/08, effective 7/17/08)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC)

services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following clients who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in subsection (4)(a)(i) of this section who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a client living in a state veterans' home who does not receive a needs based veteran's pension;

~~((ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or)~~

~~((iii)) (iv) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.~~

~~((iv)) (v) Effective July 1, 2007 through June 30, 2008 fifty-five dollars and forty-five cents for all other clients in a medical institution. Effective July 1, 2008 this PNA increases to fifty-seven dollars and twenty-eight cents.~~

~~((v)) (vi) Current PNA and long-term care standards can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.~~

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) Income garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

WSR 09-07-038

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 10, 2009, 2:51 p.m., effective April 10, 2009]

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

Purpose: The department is adding language to these estate recovery rules which adds both rights and responsibilities for state registered domestic partners, recognizing the partnerships for DSHS medical programs, whether federally-matched or state-funded. There are no other changes to estate recovery in these revisions.

Citation of Existing Rules Affected by this Order: Amending WAC 388-527-2730, 388-527-2737, 388-527-2750, and 388-527-2820.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090.

Other Authority: Chapter 26.60 RCW, State registered domestic partnerships.

Adopted under notice filed as WSR 09-03-109 on January 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: Under WAC 388-527-2730 Definitions, the department fixed the following grammar errors in the definition of domestic partner:

"Domestic partner" means ~~two~~ an adult who meets the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who ~~have~~ has been issued a certificate of state registered domestic partnership by the Washington Secretary of State. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership."

A final cost-benefit analysis is available by contacting Mary Beth Ingram, DSHS/HRSA, P.O. Box 45534, Olympia, WA 98504-5534, phone (360) 725-1327, fax (360) 586-9727, e-mail ingramb@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 4, 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 4, Repealed 0.

Date Adopted: March 9, 2009.

Stephanie E. Schiller
for Stan Marshburn
Interim Secretary

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2730 Definitions. The following definitions apply to this chapter:

"Contract health service delivery area (CHSDA)" means the geographic area within which contract health services will be made available by the Indian Health Service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Sec. 136.21(d) and 136.22.

"Domestic partner" means an adult who meets the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership by the Washington Secretary of State. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership."

"Estate" means all property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under

chapter 11.62 RCW. The value of the estate will be reduced by any valid liability against the decedent's property at the time of death. An estate also includes:

(1) For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets as defined by RCW 11.02.-005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997 and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the recipient immediately before death.

"Heir" means the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.

"Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Lis pendens" means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.

"Long-term care services" means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services for clients of the home and community services division and division of developmental disabilities including, but not limited to, nursing facility care and home and community services.

"Medicaid" means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act.

"Medical assistance" means both medicaid and medical care services.

"Medicare Savings programs" means the programs described in WAC 388-517-0300 that help a client pay some of the costs that medicare does not cover.

"Property": Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:

(1) **"Personal property"** means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) (~~"Qualified individual" means an heir or an unmarried individual who, immediately prior to the client's death, was eighteen years of age or older, shared the same regular and permanent residence with the client and with~~

whom the client had an exclusive relationship of mutual support, caring, and commitment.

~~(3))~~ **"Real property"** means land and anything growing on, attached to, or erected thereon;

~~((4))~~ **(3) "Title property"** means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.

~~((5))~~ **(4) "Trust property"** means any type of property interest titled in, or held by, a trustee for the benefit of another person or entity.

"State-only funded long-term care" means the long-term care services that are financed with state funds only.

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2737 Deferring recovery. (1) For a client who died after June 30, 1994, the department defers recovery from the estate until:

(a) The death of the surviving spouse, if any; and

(b) There is no surviving child who is:

(i) ~~((Under twenty-one))~~ Twenty years of age(;) or younger; or

(ii) Blind or disabled as defined under ~~((chapter 388-511))~~ WAC 388-475-0050.

(2) The department may place a lien against property to evidence the department's right to recover after the deferral period specified in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2750 Delay of recovery for undue hardship. The department delays recovery under this section when the department determines that recovery would cause an undue hardship for ~~((a qualified individual(s)))~~ an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more ~~((qualified individuals))~~ heirs and income is limited; ~~((or))~~

(b) Recovery would deprive ~~((a qualified individual))~~ an heir of shelter and the ~~((qualified individual))~~ heir lacks the financial means to obtain and maintain alternative shelter; or

(c) The client is survived by a domestic partner.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the ~~((qualified individual))~~ heir inconvenience or restrict his or her lifestyle; or

(b) The undue hardship was created as a result of estate planning methods by which the ~~((qualified individual))~~ heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.

(3) When a delay in recovery is not granted, the department provides notice to the person who requested the delay of recovery. The department's notice includes information on

how to request an administrative hearing to contest the department's denial.

(4) When a delay of recovery is granted under subsection (1)(a) or (1)(b) of this section, the department may revoke the delay of recovery if the ~~((qualified individual(s)))~~ heir(s):

(a) Fails to supply timely information and resource declaration when requested by the department;

(b) Sells, transfers, or encumbers title to the property;

(c) Fails to reside full-time on the premises;

(d) Fails to pay property taxes and utilities when due;

(e) Fails to identify the state of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the department with documentation of the coverage status on an annual basis.

(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or

(g) Dies.

(5) When a delay of recovery is granted due to undue hardship, the department has the option to:

(a) Apply a lien; and/or

(b) Accept a payment plan.

(6) A person may request an administrative hearing to contest the department's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.

(7) A request for an administrative hearing under this section must:

(a) Be in writing;

(b) State the basis for contesting the department's denial of the request for a delay of recovery due to an undue hardship;

(c) Include a copy of the department's denial;

(d) Be signed by the requester and include the requester's address and telephone number; and

(e) Be served, as described in WAC 388-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the department sent the decision denying the request for a delay of recovery.

(8) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2820 Liens prior to death. (1) Subject to the requirements of 42 USC Section 1396p and the conditions of this section, the department is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental

retardation, or other medical institution as described in WAC 388-500-0005;

(b) The department determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing, in the client's home:

(i) The client's spouse or domestic partner;

(ii) The client's child who is ~~((under age twenty-one))~~ twenty years of age or younger, or is blind or permanently and totally disabled as defined in Title 42 USC Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such home and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

(2) If the client is discharged from the medical facility and returns home, the department dissolves the lien.

(3) Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;

(b) The department's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and

(d) The procedures to contest the department's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the department's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the department mailed the notice.

(7) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the department only files a lien against the client's property and other assets if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (3) of this section.

WSR 09-07-043

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 11, 2009, 8:12 a.m., effective April 11, 2009]

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

Purpose: This is a "housekeeping" amendment to rule revisions in 2008 regarding the national board bonus. This amendment clarifies the eligibility criteria regarding which schools are deemed challenging, high poverty schools for the 2009-10 school year and thereafter, for purpose of the challenging, high poverty school bonus.

Citation of Existing Rules Affected by this Order:
Amending WAC 392-140-973.

Statutory Authority for Adoption: RCW 28A.150.290
(1).

Adopted under notice filed as WSR 09-01-089 on December 16, 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 0, Repealed 0.

Date Adopted: March 10, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 08-17-013, filed 8/8/08, effective 9/8/08)

WAC 392-140-973 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Eligibility. Candidates who are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards; and

(2) Who are:

(a) Teachers and other certificated staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or

(b) Teachers and other certificated staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or

(c) Teachers and other certificated staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Beginning in the 2007-08 school year and thereafter, national board certified teachers who received the bonus as a teacher or other certificated instructional staff in Washington and become public school principals or vice-principals shall continue to receive the bonus for as long as they are principals or vice-principals and maintain the national board certification.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated staff shall be eligible for additional bonuses if the employee is in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) For the 2007-08 school year, challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced-price lunch program is at least 70 percent, as determined by any of the following sources:

(i) The October 2006 count by the child nutrition section of the office of superintendent of public instruction; or

(ii) The October 2006 count by the core student records system of the office of superintendent of public instruction.

(b) For the 2008-09 school year, challenging, high poverty schools are schools eligible by either:

(i) Subsection (3)(a) of this section; or

(ii) Schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(A) 70 percent for elementary schools;

(B) 60 percent for middle schools; or

(C) 50 percent for high schools; as determined by any of the following sources:

(D) The October 2007 count by the child nutrition section of the office of superintendent of public instruction; or

(E) The October 2007 count by the core student records system of the office of superintendent of public instruction. For purposes of the national board challenging, high poverty schools bonus, a building shall be categorized based upon the highest grades served as follows:

(I) A building whose highest grade served is 6th grade or lower shall be considered an elementary school;

(II) A building whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school; and

(III) A building whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school; provided, that, a building shall not be considered unless it serves greater than 20 students as of the October 2006 count, and greater than 30 students as of the October 2007 count, or

is the largest building in the district serving its designated category.

(c) For the 2009-10 school year and thereafter, challenging, high poverty schools are schools eligible by either:

(i) Eligibility in the prior year: or

(ii) Schools where, for ~~((either of))~~ the ~~((two))~~ prior year~~(s)~~, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

~~((+))~~ (A) 70 percent for elementary schools;

~~((+))~~ (B) 60 percent for middle schools; or

~~((+))~~ (C) 50 percent for high schools; as determined by the October count of the core student records system of the office of superintendent of public instruction.

(d) Teachers and other certificated staff that meet the qualifications for additional bonuses under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the additional bonuses in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of either October 1 of the current school year or the employee's employment contract date for the current school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

(e) Principals and vice-principals shall not be eligible for additional bonuses that are based on instructional assignments in challenging, high poverty schools.

WSR 09-07-044

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-29—Filed March 11, 2009, 7:23 a.m., effective April 11, 2009]

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

Purpose: These rules amend the audited financial statement regulations to (1) prohibit the commissioner from recognizing a person or firm as a qualified independent certified public accountant if the person or firm has entered into an indemnification agreement with respect to the audit; and (2) permit the agreement between an insurer and its qualified independent certified accountant to include an arbitration and/or mediation provision.

Citation of Existing Rules Affected by this Order: Amending WAC 284-07-110 and 284-07-150.

Statutory Authority for Adoption: RCW 48.02.060, 48.05.250, 48.44.050, 48.44.095, 48.46.080, 48.46.200, 48.125.090.

Adopted under notice filed as WSR 09-01-150 on December 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 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 2, Repealed 0.

Date Adopted: March 11, 2009.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2002-07, filed 10/23/02, effective 11/23/02)

WAC 284-07-110 Definitions. For the purposes of this regulation the following definitions shall apply:

(1) "Audited financial report" means and includes those items specified in WAC 284-07-130.

(2) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for Canadian and British companies, the terms mean a "Canadian-chartered or British-chartered accountant."

(3) "Indemnification" means an agreement of indemnity or a release of liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(4) "Insurer" has the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, and fraternal benefit societies registered under chapter 48.36A RCW.

~~((4))~~ (5) "NAIC" means National Association of Insurance Commissioners.

~~((5))~~ (6) "Policy holder" shall also mean subscriber.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-150 Qualifications of independent certified public accountant. (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant ~~((that))~~ if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively

referred to as an indemnification) with respect to the audit of the insurer.

(2) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the code of professional conduct of the state of Washington board of public accountancy, or similar applicable code.

(3) A qualified independent certified public accountant may enter into any agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under chapters 48.31 and 48.99 RCW, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

(a) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

(b) Premium volume of the insurer; and

(c) Number of jurisdictions in which the insurer transacts business.

The requirements of this subsection shall become effective two years after the enactment of this regulation.

~~((4))~~ (5) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

~~((5))~~ (6) The commissioner as provided in RCW 48.02.060 may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

WSR 09-07-048**PERMANENT RULES****BELLEVUE COMMUNITY COLLEGE**

[Filed March 11, 2009, 9:02 a.m., effective April 11, 2009]

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

Purpose: Amend chapter 132H-106 WAC to change the name of Bellevue Community College to Bellevue College.

Citation of Existing Rules Affected by this Order: Amending chapter 132H-106 WAC.

Statutory Authority for Adoption: RCW 28B.50.100 and 28B.50.140.

Adopted under notice filed as WSR 09-02-084 on January 7, 2009.

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

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

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

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

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

Date Adopted: March 11, 2009.

Lucinda A. Taylor
Rules Coordinator**Title 132H WAC****Bellevue (~~Community~~) College**AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-010 Board of trustees. The board of trustees is an agency of the state and derives its authority as described in (~~chapter 8, Laws of 1967 ex. Sess~~) RCW 28B.50.100 and RCW 28B.50.140. It shall be the responsibility of the board of trustees to establish policy and to evaluate the total college program. The board of trustees shall appoint a college president to administer the college and shall delegate to him/her the authority and responsibility for implementation of board policy.

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-020 Offices of the board of trustees. The board of trustees shall maintain an office at Bellevue (~~Community~~) College, 3000 Landerholm Circle S.E., Bellevue, Washington 98007-6484, where all records, minutes and the official college seal shall be kept.

Persons may obtain information from and submit written comments or requests to the secretary of the board who is located in this office.

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-040 Officers of the board. (~~Annually, at its June meeting~~) The board annually elects from its membership a chair and vice-chair to serve for the ensuing year. (~~In addition,~~) The president of Bellevue (~~Community~~) College or the president's designee serves as secretary to the board of trustees as specified by state law.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 111, Resolution No. 202, filed 6/17/92)

WAC 132H-106-050 Seal and name of the college. The board of trustees of Community College District VIII shall maintain an official seal for use upon any or all official documents of the board. The seal shall have inscribed upon it the name of the college which shall be: Bellevue (~~Community~~) College.

WSR 09-07-050**PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed March 11, 2009, 11:56 a.m., effective April 11, 2009]

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

Purpose: The rules revise/establish new hospital licensing requirements per passed 2005 legislation (HB 1533, SSB 5065, SSB 5492) requiring: (1) Notification by hospitals of unanticipated outcomes, (2) reporting restrictions or terminations of health care providers' licenses, and (3) inspections of hospitals every eighteen months. Rules also respond to governor's directive that hospitals prepare multi-drug resistant organisms surveillance plans to increase patient safety.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-320-025 On-site licensing survey, 246-320-045 Application for license—License expiration dates—Notice of decision—Adjudicative proceeding, 246-320-065 Exemptions, alternative methods, and interpretations, 246-320-085 Single license to cover two or more buildings—When permissible, 246-320-105 Criminal history, disclosure, and background inquiries, 246-320-125 Governance, 246-320-145 Leadership, 246-320-165 Management of human resources, 246-320-185 Medical staff, 246-320-205 Management of information, 246-320-225 Improving organizational performance, 246-320-245 Patient rights and organizational ethics, 246-320-265 Infection control program, 246-320-285 Pharmacy services, 246-320-305 Food and nutrition services, 246-320-325 Laboratory, imaging, and other diagnostic, treatment or therapeutic services, 246-320-345 Inpatient care services, 246-320-365 Specialized patient care services, 246-320-370 Emergency contraception, 246-320-385 Outpatient

care services, 246-320-405 Management of environment for care, 246-320-615 Pharmacy and 246-320-990 Fees; amending 246-320-001 Purpose and applicability of chapter and 246-320-010 Definitions; and repealing WAC 246-320-011 Department responsibilities—Licensing—Adjudicative proceeding, 246-320-016 Department responsibilities—On-site survey and complaint investigation, 246-320-021 Department responsibilities—General, 246-320-026 Department role—Exemptions, interpretations, alternative methods, 246-320-031 Criminal history, disclosure, and background inquiries—Department responsibility, 246-320-036 Department responsibility, refund initial license fee, 246-320-101 Application for license—Annual update of hospital information—License renewal—Right to contest a license decision, 246-320-106 Application for license, specialty hospital—Annual update of hospital information—License renewal—Right to contest a license decision, 246-320-111 Hospital responsibilities, 246-320-116 Specialty hospital responsibilities, 246-320-121 Requests for exemptions, interpretations, alternative methods, 246-320-126 Criminal history, disclosure, and background inquiries—Hospital responsibility, 246-320-131 Governance, 246-320-136 Leadership, 246-320-141 Patient rights and organizational ethics, 246-320-146 Adverse events, 246-320-151 Reportable events, 246-320-156 Management of human resources, 246-320-161 Medical staff, 246-320-166 Management of information, 246-320-171 Improving organizational performance, 246-320-176 Infection control program, 246-320-199 Fees, 246-320-201 Food and nutrition services, 246-320-206 Linen and laundry services, 246-320-211 Pharmaceutical services, 246-320-216 Laboratory, imaging, and other diagnostic, treatment or therapeutic services, 246-320-221 Safe patient handling, 246-320-226 Patient care services, 246-320-231 Patient care unit or area, 246-320-236 Surgical services, 246-320-241 Anesthesia services, 246-320-246 Recovery care, 246-320-251 Obstetrical services, 246-320-256 Neonatal and pediatric services, 246-320-261 Critical or intensive care services, 246-320-266 Alcohol and chemical dependency services, 246-320-271 Psychiatric services, 246-320-276 Long-term care services, 246-320-281 Emergency services, 246-320-286 Emergency contraception, 246-320-291 Dialysis services, and 246-320-296 Management of environment for care.

Statutory Authority for Adoption: Chapter 70.41 RCW and RCW 43.70.040.

Adopted under notice filed as WSR 08-20-139 on October 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-320-016 (1)(b), "Notify the hospital at least four weeks prior to the scheduled date of the on-site survey" was removed; this appears in RCW 70.41.045(4). References to an internet-based reporting system in WAC 246-320-146 were removed, funding is not available to contract out. A reference correction was made in WAC 246-320-176 (6)(b). Minor wording edits in WAC 246-320-231 (1)(b).

A final cost-benefit analysis is available by contacting John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@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 43, Amended 2, Repealed 23.

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 43, Amended 2, Repealed 23.

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 43, Amended 2, Repealed 23.

Date Adopted: March 11, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-001 Purpose and applicability of chapter. ~~((This chapter is adopted by the Washington state department of health to implement the provisions of chapter 70.41 RCW and establish minimum health and safety requirements for the operation, maintenance, and construction of acute care hospitals.~~

~~(1) Compliance with the regulations in this chapter does not constitute release from the requirements of applicable state and local codes and ordinances. Where regulations in this chapter exceed other codes and ordinances, the regulations in this chapter will apply.~~

~~(2) The department will review references to codes and regulations in this chapter, and:~~

~~(a) Update as necessary; and~~

~~(b) Adopt a revised list of referenced standards, if required.)~~ This chapter is adopted by the Washington state department of health to implement chapter 70.41 RCW and establish minimum health and safety requirements for the licensing, inspection, operation, maintenance, and construction of hospitals.

(1) Compliance with the regulations in this chapter does not constitute release from the requirements of applicable federal, state and local codes and ordinances. Where regulations in this chapter exceed other codes and ordinances, the regulations in this chapter will apply.

(2) The department will update or adopt references to codes and regulations in this chapter as necessary.

AMENDATORY SECTION (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

WAC 246-320-010 Definitions. For the purposes of this chapter and chapter 70.41 RCW, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

~~((1) "Abuse" means injury or sexual abuse of a patient under circumstances indicating the health, welfare, and safety of the patient is harmed. Person "legally responsible" will include a parent, guardian, or an individual to whom parental~~

or guardian responsibility is delegated (e.g., teachers, providers of residential care and treatment, and providers of day care):

(a) "Physical abuse" means damaging or potentially damaging nonaccidental acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

(2) "Agent," when used in a reference to a medical order or a procedure for a treatment, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(3) "Alcoholism" means an illness characterized by lack of control as to the consumption of alcoholic beverages, or the consumption of alcoholic beverages to the extent an individual's health is substantially impaired or endangered, or his or her social or economic function is substantially disrupted.

(4) "Alteration" means any change, addition, or modification to an existing hospital or a portion of an existing hospital.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities in addition to that for which the hospital is currently licensed.

(5) "Assessment" means the: (a) Systematic collection and review of patient-specific data; (b) process established by a hospital for obtaining appropriate and necessary information about each individual seeking entry into a health care setting or service; and (c) information to match an individual's need with the appropriate setting and intervention.

(6) "Authentication" means the process used to verify that an entry is complete, accurate, and final.

(7) "Child" means an individual under the age of eighteen years.

(8) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. The care is provided by multidisciplinary teams of highly experienced and skilled physicians, nurses, pharmacists or other allied health professionals who have the ability to interpret complex therapeutic and diagnostic information and access to highly sophisticated equipment.

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

(10) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in Directory of Dietetic Programs Accredited and Approved, American Dietetic Association, edition 100, 1980.

(11) "Double-checking" means verification of patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons legally qualified to administer such agent prior to administration of the agent.

(12) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official U.S. pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(13) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(14) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including, but not limited to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(15) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physician assistant to determine the nature and urgency of the person's medical need and the time and place care and treatment is to be given.

(16) "Family" means individuals important to and designated by a patient who need not be relatives.

(17) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

(18) "High risk infant" means an infant, regardless of gestational age or birth weight, whose extrauterine existence is compromised by a number of factors, prenatal, natal, or postnatal needing special medical or nursing care.

(19) "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 chapter does not include:

(a) Hotels, or similar places furnishing only food and lodging, or simply domiciliary care;

(b) Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(c) Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;

(d) Birthing centers, which come within the scope of chapter 18.46 RCW;

(e) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(f) 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.

(g) 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.

(20) "Individualized treatment plan" means a written statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

- (a) Treatment goals, with stipulated time frames;
- (b) Specific services to be utilized;
- (c) Designation of individuals responsible for specific service to be provided;
- (d) Discharge criteria with estimated time frames; and
- (e) Participation of the patient and the patient's designee as appropriate.

(21) "Infant" means a baby or very young child up to one year of age.

(22) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(23) "Licensed practical nurse," abbreviated LPN, means an individual licensed under provisions of chapter 18.78 RCW.

(24) "Maintenance" means the work of keeping something in suitable condition.

(25) "Medical staff" means physicians and may include other practitioners appointed by the governing authority to practice within the parameters of the governing authority and medical staff bylaws.

(26) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(27) "Multidisciplinary treatment team" means a group of individuals from the various disciplines and clinical services who assess, plan, implement, and evaluate treatment for patients.

(28) "Neglect" means mistreatment or maltreatment; an act or omission evincing; a serious disregard of consequences of a magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision necessary for patient level of development, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts of commission or omission which may result in emotional or behavioral problems, physical manifestations, and disordered development.

(29) "Neonate" or "newborn" means a newly born infant under twenty-eight days of age.

(30) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in

Directory of Residency Training Programs by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

(31) "New construction" means any of the following:

- (a) New facilities to be licensed as a hospital;
- (b) Alterations.

(32) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(33) "Operating room (OR)" means a room within the surgical department intended for invasive and noninvasive procedures requiring anesthesia.

(34) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services at the hospital.

(35) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(36) "Pharmacist" means an individual licensed by the state board of pharmacy to engage in the practice of pharmacy under the provisions of chapter 18.64 RCW as now or hereafter amended.

(37) "Pharmacy" means the central area in a hospital where drugs are stored and are issued to hospital departments or where prescriptions are filled.

(38) "Physician" means an individual licensed under provisions of chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(39) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(40) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition.

(41) "Protocols" and "standing order" mean written descriptions of actions and interventions for implementation by designated hospital personnel under defined circumstances and authenticated by a legally authorized person under hospital policy and procedure.

(42) "Psychiatric service" means the treatment of patients pertinent to the psychiatric diagnosis whether or not the hospital maintains a psychiatric unit.

(43) "Recovery unit" means a special physical and functional area for the segregation, concentration, and close or continuous nursing observation and care of patients for a period of less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures which may produce shock, respiratory obstruction or depression, or other serious states.

(44) "Registered nurse" means an individual licensed under the provisions of chapter 18.79 RCW and practicing in accordance with the rules and regulations promulgated thereunder.

(45) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, invol-

unitary confinement, an apparatus, or a drug given not required to treat a patient's medical symptoms.

(46) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(47) "Seclusion room" means a small, secure room specifically designed and organized for temporary placement, care, and observation of one patient and for an environment with minimal sensory stimuli, maximum security and protection, and visual observation of the patient by authorized personnel and staff. Doors of seclusion rooms are provided with staff-controlled locks.

(48) "Sexual assault" has the same meaning as in RCW 70.125.030.

(49) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(50) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:

(a) Incision, excision, or curettage of tissue or an organ;

(b) Suture or other repair of tissue or an organ including a closed as well as an open reduction of a fracture;

(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or

(d) An endoscopic examination with use of anesthetizing agents.

(51) "Surrogate decision maker" means an individual appointed to act on behalf of another. Surrogates make decisions only when an individual is without capacity or has given permission to involve others.

(52) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(53) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient.)

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral stress or injury.

(2) "Adverse health event" or "adverse event" means the list of *Serious Reportable Events* adopted by the National Quality Forum in 2002 (and updates in 2006), in its consensus report on serious reportable events in health care.

(3) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(4) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the

amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(5) "Alteration" means any change, addition, or modification to an existing hospital or a portion of an existing hospital.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities in addition to that for which the hospital is currently licensed.

(6) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into a health care setting or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(7) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(8) "Bed, bed space or bassinets" means the physical environment and equipment (both movable and stationary) designed and used for twenty-four hour or more care of a patient including level 2 and 3 bassinets. This does not include stretchers, exam tables, operating tables, well baby bassinets, labor bed, and labor-delivery-recovery beds.

(9) "Child" means an individual under the age of eighteen years.

(10) "Clinical evidence" means the same as original clinical evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; and

(e) Medical photographs.

(11) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. Care is provided by multidisciplinary teams of highly skilled physicians, nurses, pharmacists or other health professionals who interpret complex therapeutic and diagnostic information and have access to sophisticated equipment.

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

(13) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in *Directory of Dietetic Programs Accredited and Approved*, American Dietetic Association, edition 100, 1980.

(14) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(15) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official U.S. Pharmacopoeia or the official Homeopathic Pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(16) "Electrical receptacle outlet" means an outlet where one or more electrical receptacles are installed.

(17) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(18) "Emergency contraception" means any health care treatment approved by the Food and Drug Administration that prevents pregnancy, including, but not limited to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(19) "Emergency department" means the area of a hospital where unscheduled medical or surgical care is provided to patients who need care.

(20) "Emergency room" means a space where emergency services are delivered and set apart by floor-to-ceiling partitions on all sides with proper access to an exit access and with all openings provided with doors or windows.

(21) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(22) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(23) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physician

assistant to determine the nature and urgency of the person's medical need for treatment.

(24) "Family" means individuals designated by a patient who need not be relatives.

(25) "General hospital" means a hospital that provides general acute care services, including emergency services.

(26) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

(27) "High-risk infant" means an infant, regardless of age, whose existence is compromised, prenatal, natal, or postnatal factors needing special medical or nursing care.

(28) "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 chapter does not include:

(a) Hospice care centers which come within the scope of chapter 70.127 RCW;

(b) Hotels, or similar places, furnishing only food and lodging, or simply domiciliary care;

(c) Clinics or physicians' offices, where patients are not regularly kept as bed patients for twenty-four hours or more;

(d) Nursing homes, as defined in and which come within the scope of chapter 18.51 RCW;

(e) Birthing centers, which come within the scope of chapter 18.46 RCW;

(f) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(g) 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;

(h) 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.

(29) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(30) "Infant" means an individual not more than twelve months old.

(31) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument

or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(32) "Licensed practical nurse" means an individual licensed under provisions of chapter 18.79 RCW.

(33) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(34) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(35) "Medical staff" means physicians and other practitioners appointed by the governing authority.

(36) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(37) "Multidisciplinary treatment team" means a group of individuals from various disciplines and clinical services who assess, plan, implement, and evaluate treatment for patients.

(38) "Neglect" means mistreatment or maltreatment; a disregard of consequences or magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts which may result in emotional or behavioral problems, physical manifestations, and disorders.

(39) "Neonate" means a newly born infant under twenty-eight days of age.

(40) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in *Directory of Residency Training Programs* by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

(41) "New construction" means any of the following:

(a) New facilities to be licensed as a hospital;

(b) Renovation; or

(c) Alteration.

(42) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(43) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

(44) "Operating room (OR)" means a room intended for invasive and noninvasive surgical procedures.

(45) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(a) "Inpatient" means services that require admission to a hospital for twenty-four hours or more.

(b) "Outpatient" means services that do not require admission to a hospital for twenty-four hours or more.

(46) "Patient care areas" means all areas of the hospital where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(47) "Patient care unit or area" means a physical space of the hospital including rooms or areas containing beds or bed spaces, with available support ancillary, administrative, and services for patient.

(48) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(49) "Pharmacist" means an individual licensed by the state board of pharmacy chapter 18.64 RCW.

(50) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(51) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(52) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(53) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition.

(54) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated hospital staff under defined circumstances under hospital policy and procedure.

(55) "Psychiatric service" means the treatment of patients pertinent to a psychiatric diagnosis.

(56) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures.

(57) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(58) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(59) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(60) "Seclusion" means the involuntary confinement of a patient in a room or area where the patient is physically prevented from leaving.

(61) "Seclusion room" means a secure room designed and organized for temporary placement, care, and observation of one patient with minimal sensory stimuli, maximum security and protection, and visual and auditory observation by authorized personnel and staff. Doors of seclusion rooms have staff-controlled locks.

(62) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the items in (a) through (g) of this subsection.

(63) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10 point scale with 1 being the least and 10 being the most pain.

(64) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories:

(a) Patients with a cardiac condition;

(b) Patients with an orthopedic condition;

(c) Patients receiving a surgical procedure; and

(d) Any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(65) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(66) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:

(a) Incision, excision, or curettage of tissue;

(b) Suture or repair of tissue including a closed as well as an open reduction of a fracture;

(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or

(d) An endoscopic examination.

(67) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity as defined in RCW 7.70.065 or has given permission.

(68) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(69) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(70) "Unlicensed assistive personnel (UAP)" means individuals trained to function in an assistive role to nurses in the provision of patient care, as delegated by and under the supervision of the registered nurse. Typical activities performed by unlicensed assistive personnel include, but are not limited to: Taking vital signs; bathing, feeding, or dressing patients; assisting patient with transfer, ambulation, or toileting. Definition includes: nursing assistants; orderlies; patient care technicians/assistants; and graduate nurses (not yet licensed) who have completed unit orientation. Definition excludes: Unit secretaries or clerks; monitor technicians; therapy assistants; student nurses fulfilling educational requirements; and sitters who are not providing typical UAP activities.

(71) "Victim of sexual assault" means a person is alleged to have been sexually assaulted and who presents as a patient.

(72) "Vulnerable adult" means, as defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself; an adult with a developmental disability under RCW 71A.10.020; an adult with a legal guardian under chapter 11.88 RCW; an adult living in a long-term care facility (an adult family home, boarding home or nursing home); an adult living in their own or a family's home receiving services from an agency or contracted individual provider; or an adult self-directing their care under RCW 74.39.050. For the purposes of requesting background checks pursuant to RCW 43.43.-832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. For the purposes of this chapter, it shall also include hospitalized adults.

(73) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

NEW SECTION

WAC 246-320-011 Department responsibilities—Licensing—Adjudicative proceeding. This section identifies the actions and responsibilities of the department for licensing hospitals.

(1) Before issuing an initial license, the department will verify compliance with chapter 70.41 RCW and this chapter which includes, but is not limited to:

(a) Approval of construction documents;

(b) Receipt of a certificate of need as provided in chapter 70.38 RCW;

(c) Approval by the local jurisdiction of all local codes and ordinances and the permit to occupy;

(d) Approval of the initial license application;

(e) Receipt of the correct license fee;

(f) Compliance with the on-site survey conducted by the state fire marshal required in RCW 70.41.080; and

(g) Conduct an on-site licensing survey in accordance with WAC 246-320-016.

(2) The department may issue a license to include two or more buildings, if the applicant:

(a) Meets the requirements listed in subsection (1) of this section;

(b) Operates the buildings as an integrated system with:

(i) Governance by a single authority over all buildings or portions of buildings;

(ii) A single medical staff for all hospital facilities; and

(iii) Use all policies and procedures for all facilities and departments.

(c) Arranges for safe and appropriate transport of patients between all facilities and buildings.

(3) Before reissuing a license, the department will:

(a) Verify compliance with the on-site survey conducted by the state fire marshal required in RCW 70.41.080;

(b) Review and accept the annual hospital update information documentation;

(c) Assure receipt of the correct annual fee; and

(d) Reissue licenses as often as necessary each calendar year so that approximately one-third of the hospital licenses expire on the last day of the calendar year.

(4) The department may issue a provisional license to allow the operation of a hospital, if the department determines that the applicant or licensed hospital failed to comply with chapter 70.41 RCW or this chapter.

(5) The department may deny, suspend, modify, or revoke a license when it finds an applicant or hospital has failed or refused to comply with chapter 70.41 RCW or this chapter. The department's notice of a license denial, suspension, modification, or revocation will be consistent with RCW 43.70.115. The proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 or 246-10 WAC, this chapter governs.

NEW SECTION

WAC 246-320-016 Department responsibilities—On-site survey and complaint investigation. This section outlines the department's on-site survey and complaint investigation activities and roles.

(1) Surveys. The department will:

(a) Conduct on-site surveys of each hospital on average at least every eighteen months or more often using the health and safety standards in this chapter and chapter 70.41 RCW;

(b) Coordinate the on-site survey with other agencies, including local fire jurisdictions, state fire marshal, state pharmacy board, and report the survey findings to those agencies;

(c) Notify the hospital in writing of the survey findings following each on-site survey;

(d) Require each hospital to submit a corrective action plan addressing each deficient practice identified in the survey findings;

(e) Notify the hospital when the hospital submitted plan of correction adequately addresses the survey findings; and

(f) Accept on-site surveys conducted by the Joint Commission or American Osteopathic Association as meeting the eighteen-month survey requirement in accordance with RCW 70.41.122.

(2) Complaint investigations. The department will:

(a) Conduct an investigation of every complaint against a hospital that concerns patient well being;

(b) Notify the hospital in writing of state complaint investigation findings following each complaint investigation;

(c) Require each hospital to submit a corrective action plan addressing each deficient practice identified in the complaint investigation findings; and

(d) Notify the hospital when the hospital submitted plan of correction adequately addresses the complaint investigation findings.

(3) The department may:

(a) Direct a hospital on how to implement a corrective action plan based on the findings from an on-site survey or complaint investigation; or

(b) Contact a hospital to discuss the findings of the Joint Commission or American Osteopathic Association on-site accreditation survey.

NEW SECTION

WAC 246-320-021 Department responsibilities—General. This section outlines the department's responsibility to post information to the agency web site and time frames to respond to interpretations, exemptions and alternative methods.

The department will:

(1) Post to the agency web site a list of the most frequent problems identified during hospital surveys and complaint investigations in accordance with RCW 70.41.045.

(2) Respond within thirty calendar days to a hospital's request for an exemption or use of an alternative as provided for in WAC 246-320-026.

(3) Respond within thirty calendar days to a hospital's request for an interpretation as provided for in WAC 246-320-026.

(4) Maintain hospital provided information confidentially according to the Public Disclosure Act, chapters 42.17 and 42.56 RCW, RCW 70.41.150, 70.41.200, and 70.41.210.

NEW SECTION

WAC 246-320-026 Department role—Exemptions, interpretations, alternative methods. This section outlines the department's responsibilities and actions in response to requests for interpretations, exemptions and alternative methods.

(1) The department may exempt a hospital from complying with portions of this chapter when:

(a) The exemption will not change the purpose and intent of chapter 70.41 RCW or this chapter;

(b) Patient safety, health or well being is not threatened;

(c) Fire and life safety regulations, infection control standards or other codes or regulations would not be reduced; and

(d) Any structural integrity of the building would not occur.

(2) The department will write an interpretation of a rule after receiving complete information relevant to the interpretation.

(3) The department may approve a hospital to use alternative materials, designs, and methods if the documentation and supporting information:

(a) Meets the intent and purpose of these rules; and

(b) Is equivalent to the methods prescribed in this chapter.

(4) The department will keep copies of each exemption, alternative, or interpretation issued.

NEW SECTION

WAC 246-320-031 Criminal history, disclosure, and background inquiries—Department responsibility. This section outlines the department's responsibilities to review and use criminal history, disclosure and background information.

(1) The department will:

(a) Review hospital records required under WAC 246-320-126;

(b) Investigate allegations of noncompliance by hospitals with RCW 43.43.830 through 43.43.842; and

(c) Use information collected under this section only to determine hospital licensure or relicensure eligibility under RCW 43.43.842.

(2) The department may require the hospital to complete additional disclosure statements or background inquiries, if the department believes offenses specified under RCW 43.43.830 have occurred since the previous disclosure statement or background inquiry, for any person having unsupervised access to children, vulnerable adults, and developmentally disabled adults.

NEW SECTION

WAC 246-320-036 Department responsibility, refund initial license fee. This section outlines the department's actions regarding a request for refund of an initial licensing fee.

The department will, upon request of an applicant:

(1) Refund two-thirds of the initial fee, less a fifty dollar processing charge provided the department did not conduct an on-site survey or give technical assistance.

(2) Refund one-third of the initial fee, less a fifty dollar processing charge when the department conducted an on-site survey or gave technical assistance and did not issue a license.

(3) The department will not refund an initial license fee if:

(a) The department conducted more than one on-site visit;

(b) One year has passed since the department received an initial licensure application;

(c) One year has passed since the department received an initial application and the department has not issued the license because the applicant failed to complete requirements for licensure; or

(d) The amount to be refunded is one hundred dollars or less.

LICENSING

NEW SECTION

WAC 246-320-101 Application for license—Annual update of hospital information—License renewal—Right to contest a license decision. This section identifies the applicant or hospital actions and responsibilities for obtaining a license.

(1) Initial license. An applicant must submit an application packet and fee to the department at least sixty days before the intended opening date of the new hospital.

(2) Annual update. Before November 30 of each calendar year, a licensed hospital must submit to the department the hospital update documentation and fee.

(3) License renewal. Before November 30 of the year the license expires, a licensed hospital must submit to the department the hospital update documentation, fee and the

results of the most recent on-site survey conducted by the state fire marshal.

(4) An applicant or hospital has the right to contest a license decision by:

(a) Sending a written request for an adjudicative proceeding within twenty-eight days of receipt of the department's licensing decision showing proof of receipt with the office of the Adjudicative Service Unit, Department of Health, P.O. Box 47879, Olympia, WA 98504-7879; and

(b) Including as part of the written request:

(i) A specific statement of the issues and law involved;

(ii) The grounds for contesting the department decision;

and

(iii) A copy of the contested department decision.

(c) The adjudicative proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 or 246-10 WAC, this chapter governs.

NEW SECTION

WAC 246-320-106 Application for license, specialty hospital—Annual update of hospital information—License renewal—Right to contest a license decision. This section identifies the applicant or specialty hospital actions and responsibilities for obtaining a license.

(1) Initial license. An applicant must submit an application packet and fee to the department at least sixty days before the intended opening date of the specialty hospital.

(2) Annual update. Before November 30 of each calendar year, a licensed specialty hospital must submit to the hospital the specialty hospital update information and fee.

(3) License renewal. Before November 30 of the year the license expires, a licensed specialty hospital must submit to the department the hospital update documentation, fee and the results of the most recent on-site survey conducted by the state fire marshal.

(4) An applicant or specialty hospital has the right to contest a license decision by:

(a) Sending a written request for an adjudicative proceeding within twenty-eight days of receipt of the department's licensing decision showing proof of receipt with the office of the Adjudicative Service Unit, Department of Health, P.O. Box 47879, Olympia, WA 98504-7879; and

(b) Including as part of the written request:

(i) A specific statement of the issues and law involved;

(ii) The grounds for contesting the department decision;

and

(iii) A copy of the contested department decision.

(c) The adjudicative proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 and 246-10 WAC, this chapter governs.

NEW SECTION

WAC 246-320-111 Hospital responsibilities. This section identifies a hospital obligation, actions and responsibilities to comply with the hospital law and rules.

(1) Hospitals must:

(a) Comply with chapter 70.41 RCW and this chapter;

(b) Only set up inpatient beds within the licensed bed capacity approved by the department or the Medicare provider agreement; and

(c) Receive approval for additional inpatient beds as required in chapter 70.38 RCW before exceeding department approved bed capacity.

(2) A hospital accredited by the Joint Commission or American Osteopathic Association must:

(a) Notify the department of an accreditation survey within two business days following completion of the survey; and

(b) Notify the department in writing of the accreditation decision and any changes in accreditation status within thirty calendar days of receiving the accreditation report.

NEW SECTION

WAC 246-320-116 Specialty hospital responsibilities.

This section identifies a specialty hospital obligation, actions and responsibilities to comply with the hospital law and rules.

Specialty hospitals must:

(1) Comply with chapter 70.41 RCW and this chapter;

(2) Only set up inpatient beds within the licensed bed capacity approved by the department or the Medicare provider agreement;

(3) Receive approval for additional inpatient beds as required in chapter 70.38 RCW before exceeding department approved bed capacity;

(4) Provide appropriate discharge planning;

(5) Provide staff proficient in resuscitation and respiration maintenance twenty-four hours per day, seven days per week;

(6) Participate in the Medicare and Medicaid programs and provide at least the same percentage of services to Medicare and Medicaid beneficiaries, as a percent of gross revenues, as the lowest percentage of services provided to Medicare and Medicaid beneficiaries by a general hospital in the same health service area. The lowest percentage of services provided to Medicare and Medicaid beneficiaries shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of Medicare and Medicaid services of a hospital that serves primarily members of a particular health plan or government sponsor;

(7) Provide at least the same percentage of charity care, as a percent of gross revenues, as the lowest percentage of charity care provided by a general hospital in the same health service area. The lowest percentage of charity care shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of charity care of a hospital that serves primarily members of a particular health plan or government sponsor;

(8) Require any physician owner to:

(a) In accordance with chapter 19.68 RCW, disclose a financial interest in the specialty hospital and provide a list of alternative hospitals before referring a patient to the specialty hospital; and

(b) If the specialty hospital does not have an intensive care unit, notify the patient that if intensive care services are required, the patient must be transferred to another hospital;

(9) Provide emergency services twenty-four hours per day, seven days per week, in a designated area of the hospital, and comply with requirements for emergency facilities that are established by the department;

(10) Establish procedures to stabilize a patient with an emergency medical condition until the patient is transported or transferred to another hospital if emergency services cannot be provided at the specialty hospital to meet the needs of the patient in an emergency;

(11) Maintain a transfer agreement with a general hospital in the same health service area that establishes a process for patient transfers in a situation in which the specialty hospital cannot provide continuing care for a patient because of the specialty hospital's scope of services and for the transfer of patients; and

(12) Accept the transfer of patients from general hospitals when the patients require the category of care or treatment provided by the specialty hospital.

NEW SECTION

WAC 246-320-121 Requests for exemptions, interpretations, alternative methods. This section outlines a process to request an exemption, interpretation, or approval to use an alternative method. This section is not intended to prevent use of systems, materials, alternate design, or methods of construction as alternatives to those prescribed by this chapter.

(1) A hospital requesting exemption from this chapter must:

(a) Send a written request to the department;

(b) Include in the request:

(i) The specific section of this chapter to be exempted;

(ii) Explain the reasons for requesting the exemption;

and

(iii) When appropriate, provide documentation to support the request.

(2) A hospital or person requesting an interpretation of a rule in this chapter must:

(a) Send a written request to the department;

(b) Include in the request:

(i) The specific section of this chapter to be interpreted;

(ii) Explain the reason or circumstances for requesting the interpretation; and

(iii) Where or how the rule is being applied.

(c) Provide additional information when required by the department.

(3) A hospital requesting use of alternative materials, design, and methods must:

(a) Send a written request to the department; and

(b) Explain and support with technical documentation the reasons the department should consider the request.

(4) The hospital must keep and make available copies of each exemption, alternative, or interpretation received from the department.

NEW SECTION

WAC 246-320-126 Criminal history, disclosure, and background inquiries—Hospital responsibility. This section outlines the requirements for hospitals to conduct criminal history background inquiries for all medical staff, employees or prospective employees who have or may have unsupervised access to children, vulnerable adults, and developmentally disabled adults.

Hospitals must:

(1) Require a disclosure statement according to RCW 43.43.834 for each prospective employee, volunteer, contractor, student, and any other person associated with the licensed hospital with unsupervised access to:

- (a) Children under sixteen years of age;
- (b) Vulnerable adults as defined under RCW 43.43.830;

and

- (c) Developmentally disabled individuals;

(2) Require a Washington state patrol background inquiry according to RCW 43.43.834 for each prospective employee, volunteer, contractor, student, and any other person applying for association with the licensed hospital before allowing unsupervised access to:

- (a) Children under sixteen years of age;
- (b) Vulnerable adults as defined under RCW 43.43.830;

and

- (c) Developmentally disabled individuals.

NEW SECTION

WAC 246-320-131 Governance. This section provides organizational guidance and oversight responsibilities of hospital resources and staff to support safe patient care.

For the purposes of this section "practitioner" means pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic physicians' assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

The governing authority must:

(1) Establish and review governing authority policies including requirements for:

(a) Reporting practitioners according to RCW 70.41.-210;

(b) Informing patients of any unanticipated outcomes according to RCW 70.41.380;

(c) Establishing and approving a performance improvement plan;

(d) Providing organizational management and planning;

(e) Reporting adverse events and conducting root cause analyses according to RCW 70.56.020;

(f) Providing a patient and family grievance process including a time frame for resolving each grievance;

(g) Defining who can give and receive patient care orders that are consistent with professional licensing laws; and

(h) Providing communication and conflict resolution between the medical staff and the governing authority;

(2) Establish a process for selecting and periodically evaluating a chief executive officer or administrator;

(3) Appoint and approve a medical staff;

(4) Require written or electronic orders, authenticated by a legally authorized practitioner, for all drugs, intravenous solutions, blood, medical treatments, and nutrition; and

(5) Approve and periodically review bylaws, rules, and regulations adopted by the medical staff before they become effective.

NEW SECTION

WAC 246-320-136 Leadership. This section describes leadership's role in assuring care is provided consistently throughout the hospital and according to patient and community needs.

The hospital leaders must:

(1) Appoint or assign a nurse at the executive level to:

(a) Direct the nursing services; and

(b) Approve patient care policies, nursing practices and procedures;

(2) Establish hospital-wide patient care services appropriate for the patients served and available resources which includes:

(a) Approving department specific scope of services;

(b) Integrating and coordinating patient care services;

(c) Standardizing the uniform performance of patient care processes;

(d) Establishing a hospital-approved procedure for double checking certain drugs, biologicals, and agents by appropriately licensed personnel; and

(e) Ensuring immediate access and appropriate dosages for emergency drugs;

(3) Adopt and implement policies and procedures which define standards of care for each specialty service;

(4) Provide practitioner oversight for each specialty service with experience in those specialized services. Specialized services include, but are not limited to:

(a) Surgery;

(b) Anesthesia;

(c) Obstetrics;

(d) Neonatal;

(e) Pediatrics;

(f) Critical or intensive care;

(g) Alcohol or substance abuse;

(h) Psychiatric;

(i) Emergency; and

(j) Dialysis;

(5) Provide all patients access to safe and appropriate care;

(6) Adopt and implement policies and procedures addressing patient care and nursing practices;

(7) Require that individuals conducting business in the hospital comply with hospital policies and procedures;

(8) Establish and implement processes for:

(a) Gathering, assessing and acting on information regarding patient and family satisfaction with the services provided;

(b) Posting the complaint hotline notice according to RCW 70.41.330; and

(c) Providing patients written billing statements according to RCW 70.41.400;

(9) Plan, promote, and conduct organization-wide performance-improvement activities according to WAC 246-320-171;

(10) Adopt and implement policies and procedures concerning abandoned newborn babies and hospitals as a safe haven according to RCW 13.34.360;

(11) Adopt and implement policies and procedures to require that suspected abuse, assault, sexual assault or other possible crime is reported within forty-eight hours to local police or the appropriate law enforcement agency according to RCW 26.44.030.

NEW SECTION

WAC 246-320-141 Patient rights and organizational ethics. The purpose of this section is to improve patient care and outcomes by respecting every patient and maintaining ethical relationships with the public.

Hospitals must:

(1) Adopt and implement policies and procedures that define each patient's right to:

(a) Be treated and cared for with dignity and respect;

(b) Confidentiality, privacy, security, complaint resolution, spiritual care, and communication. If communication restrictions are necessary for patient care and safety, the hospital must document and explain the restrictions to the patient and family;

(c) Be protected from abuse and neglect;

(d) Access protective services;

(e) Complain about their care and treatment without fear of retribution or denial of care;

(f) Timely complaint resolution;

(g) Be involved in all aspects of their care including:

(i) Refusing care and treatment; and

(ii) Resolving problems with care decisions;

(h) Be informed of unanticipated outcomes according to RCW 70.41.380;

(i) Be informed and agree to their care;

(j) Family input in care decisions;

(k) Have advance directives and for the hospital to respect and follow those directives;

(l) Request no resuscitation or life-sustaining treatment;

(m) End of life care;

(n) Donate organs and other tissues according to RCW 68.50.500 and 68.50.560 including:

(i) Medical staff input; and

(ii) Direction by family or surrogate decision makers;

(2) Provide each patient a written statement of patient rights from subsection (1) of this section;

(3) Adopt and implement policies and procedures to identify patients who are potential organ and tissue donors;

(4) Adopt and implement policies and procedures to address research, investigation, and clinical trials including:

(a) How to authorize research;

(b) Require staff to follow informed consent laws; and

(c) Not hindering a patient's access to care if a patient refuses to participate.

NEW SECTION

WAC 246-320-146 Adverse health events and incident reporting system. The purpose of this section is to outline each hospital's responsibilities for reporting and addressing adverse events. In this section, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.

Hospitals must:

(1) Notify the department whenever any of the following adverse events as defined by the National Quality Forum, Serious Reportable Events in Health Care occur:

1. Surgery performed on the wrong body part;

2. Surgery performed on the wrong patient;

3. Wrong surgical procedure performed on a patient;

4. Unintended retention of a foreign object in a patient after surgery or other procedure;

5. Intraoperative or immediately postoperative death in an ASA Class 1 patient;

6. Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the health care facility;

7. Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended;

8. Patient death or serious disability associated with intra-vascular air embolism that occurs while being cared for in a health care facility;

9. Infant discharged to wrong person;

10. Patient death or serious disability associated with patient elopement (disappearance);

11. Patient suicide, or attempted suicide resulting in serious disability, while being cared for in a health care facility;

12. Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration);

13. Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products;

14. Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in the health care facility;

15. Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility;

16. Death or serious disability (kernicterus) associated with failure to identify and treat hyperbilirubinemia neonates;
 17. Stage 3 or 4 pressure ulcers acquired after admission to a health care facility;
 18. Patient death or serious disability due to spinal manipulative therapy;
 19. Patient death or serious disability associated with electric shock or electric cardioversion while being cared for in a health care facility;
 20. Any incident in which a line designed for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;
 21. Patient death or serious disability associated with a burn incurred from any source while being cared for in a health care facility;
 22. Patient death or serious disability associated with a fall while being cared for in a health care facility;
 23. Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility;
 24. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;
 25. Abduction of a patient of any age;
 26. Sexual assault on a patient within or on the grounds of a health care facility;
 27. Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care facility; and
 28. Artificial insemination with the wrong donor sperm or egg;
- (2) Notify the department within forty-eight hours of confirmation by the hospital when any adverse event has occurred using established procedures. The notice must include:
- (a) The hospital's name;
 - (b) The type of event identified in subsection (1) of this section;
 - (c) The date the event was confirmed; and
 - (d) Any additional contextual information the hospital chooses to provide;
- (3) Conduct a root cause analysis of each adverse event following the procedures and methods of:
- (a) The joint commission;
 - (b) The department of Veterans Affairs National Center for Patient Safety; or
 - (c) Another nationally recognized root cause analysis methodology found acceptable by the department;
 - (4) As part of the root cause analysis, include the following information:
 - (a) The number of patients, registered nurses, licensed practical nurses, and unlicensed assistive personnel present in the relevant patient care unit at the time the reported adverse event occurred;

- (b) The number of nursing personnel present at the time of the adverse event who have been supplied by temporary staffing agencies, including traveling nurses; and
- (c) The number of nursing personnel, if any, on the patient care unit working beyond their regularly scheduled number of hours or shifts at the time of the event and the number of consecutive hours worked by each such nursing personnel at the time of the adverse event;
- (5) Create and implement a corrective action plan for each adverse event consistent with the findings of the root cause analysis. Each corrective action plan must include:
 - (a) How each finding will be addressed and corrected;
 - (b) When each correction will be completed;
 - (c) Who is responsible to make the corrections;
 - (d) What action will be taken to prevent each finding from reoccurring; and
 - (e) A monitoring schedule for assessing the effectiveness of the corrective action plan including who is responsible for the monitoring schedule;
 - (6) If a hospital determines there is no need to create a corrective action plan for a particular adverse event, provide a written explanation of the reasons for not creating a corrective action plan;
 - (7) Complete and submit a root cause analysis within forty-five days, after confirming an adverse health event has occurred, to the department.

NEW SECTION

WAC 246-320-151 Reportable events. The purpose of this section is to outline each hospital's responsibility for reporting serious events that affect the operation and maintenance of the facility.

- (1) Hospitals must notify the department within forty-eight hours whenever any of the following events have occurred:
- (a) A failure or facility system malfunction such as the heating, ventilation, fire alarm, fire sprinkler, electrical, electronic information management, or water supply affecting patient diagnosis, treatment, or care within the facility; or
 - (b) A fire affecting patient diagnosis, treatment, or care within the facility.
- (2) Each notice to the department must include:
- (a) The hospital's name;
 - (b) The event type from subsection (1) of this section; and
 - (c) The date the event occurred.

NEW SECTION

WAC 246-320-156 Management of human resources. This section ensures that hospitals provide competent staff consistent with scope of services.

- Hospitals must:
- (1) Establish, review, and update written job descriptions for each job classification;
 - (2) Conduct periodic staff performance reviews;
 - (3) Assure qualified staff available to operate each department including a process for competency, skill assessment and development;
 - (4) Assure supervision of staff;

(5) Document verification of staff licensure, certification, or registration;

(6) Complete tuberculosis screening for new and current employees consistent with the *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities*, 2005. *Morbidity Mortality Weekly Report (MMWR)* Volume 54, December 30, 2005;

(7) Orient staff to their assigned work environment;

(8) Give infection control information to staff upon hire and annually which includes:

(a) Education on general infection control according to chapter 296-823 WAC bloodborne pathogens exposure control;

(b) Education specific to infection control for multidrug-resistant organisms; and

(c) General and specific infection control measures related to the patient care areas where staff work;

(9) Establish and implement an education plan that verifies or arranges for the training of staff on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.

NEW SECTION

WAC 246-320-161 Medical staff. The purpose of this section is to establish the development of a medical staff structure, consistent with clinical competence, to ensure a safe patient care environment.

The medical staff must:

(1) Adopt bylaws, rules, regulations, and organizational structure that address:

(a) Qualifications for membership;

(b) Verification of application data;

(c) Appointment and reappointment process;

(d) Length of appointment and reappointment;

(e) Granting of delineated clinical privileges;

(f) Provision for continuous patient care;

(g) Assessment of credentialed practitioner's performance;

(h) Due process;

(i) Reporting practitioners according to RCW 70.41.210; and

(j) Provide for medical staff communication and conflict resolution with the governing authority;

(2) Forward medical staff recommendations for membership and clinical privileges to the governing authority for action.

NEW SECTION

WAC 246-320-166 Management of information. The purpose of this section is to improve patient outcomes and hospital performance through obtaining, managing, and using information.

Hospitals must:

(1) Provide medical staff, employees and other authorized persons with access to patient information systems, resources, and services;

(2) Maintain confidentiality, security, and integrity of information;

(3) Initiate and maintain a medical record for every patient assessed or treated including a process to review records for completeness, accuracy, and timeliness;

(4) Create medical records that:

(a) Identify the patient;

(b) Have clinical data to support the diagnosis, course and results of treatment for the patient;

(c) Have signed consent documents;

(d) Promote continuity of care;

(e) Have accurately written, signed, dated, and timed entries;

(f) Indicate authentication after the record is transcribed;

(g) Are promptly filed, accessible, and retained according to RCW 70.41.190 and chapter 5.46 RCW; and

(h) Include verbal orders that are accepted and transcribed by qualified personnel;

(5) Establish a systematic method for identifying each medical record, identification of service area, filing, and retrieval of all patient's records; and

(6) Adopt and implement policies and procedures that address:

(a) Who has access to and release of confidential medical records according to chapter 70.02 RCW;

(b) Retention and preservation of medical records according to RCW 70.41.190;

(c) Transmittal of medical data to ensure continuity of care; and

(d) Exclusion of clinical evidence from the medical record.

NEW SECTION

WAC 246-320-171 Improving organizational performance. The purpose of this section is to ensure that performance improvement activities of staff, medical staff, and outside contractors result in continuous improvement of patient health outcomes. In this section "near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

Hospitals must:

(1) Have a hospital-wide approach to process design and performance measurement, assessment, and improving patient care services according to RCW 70.41.200 and include, but not be limited to:

(a) A written performance improvement plan that is periodically evaluated;

(b) Performance improvement activities which are interdisciplinary and include at least one member of the governing authority;

(c) Prioritize performance improvement activities;

(d) Implement and monitor actions taken to improve performance;

(e) Education programs dealing with performance improvement, patient safety, medication errors, injury prevention; and

(f) Review serious or unanticipated patient outcomes in a timely manner;

(2) Systematically collect, measure and assess data on processes and outcomes related to patient care and organizational functions;

(3) Collect, measure and assess data including, but not limited to:

(a) Operative, other invasive, and noninvasive procedures that place patients at risk;

(b) Infection rates, pathogen distributions and antimicrobial susceptibility profiles;

(c) Death;

(d) Medication use;

(e) Medication management or administration related to wrong medication, wrong dose, wrong time, near misses and any other medication errors and incidents;

(f) Injuries, falls; restraint use; negative health outcomes and incidents injurious to patients in the hospital;

(g) Adverse events listed in WAC 246-320-146;

(h) Discrepancies or patterns between preoperative and postoperative (including pathologic) diagnosis, including pathologic review of specimens removed during surgical or invasive procedures;

(i) Adverse drug reactions (as defined by the hospital);

(j) Confirmed transfusion reactions;

(k) Patient grievances, needs, expectations, and satisfaction; and

(l) Quality control and risk management activities.

NEW SECTION

WAC 246-320-176 Infection control program. The purpose of this section is to identify and reduce the risk of acquiring and transmitting infections and communicable diseases between patients, employees, medical staff, volunteers, and visitors.

Hospitals must:

(1) Develop, implement and maintain a written infection control and surveillance program;

(2) Designate staff to:

(a) Manage the activities of the infection control program;

(b) Assure the infection control program conforms with patient care and safety policies and procedures; and

(c) Provide consultation on the infection control program, policies and procedures throughout the entire facility;

(3) Ensure staff managing the infection control program have:

(a) A minimum of two years experience in a health related field; and

(b) Training in the principles and practices of infection control;

(4) Develop and implement infection control policies and procedures consistent with the guidelines of the Centers for Disease Control and Prevention (CDC) and other nationally recognized professional bodies or organizations;

(5) Assure the infection control policies and procedures address, but are not limited to the following:

(a) Routine surveillance, outbreak investigations and interventions including pathogen distributions and antimicrobial susceptibility profiles consistent with the 2006 CDC Healthcare Infection Control Practices Advisory Committee

Guideline, *Management of Multidrug-Resistant Organisms in Healthcare Settings*;

(b) Patient care practices in all clinical care areas;

(c) Receipt, use, disposal, processing, or reuse of equipment to prevent disease transmission;

(d) Preventing cross contamination of soiled and clean items during sorting, processing, transporting, and storage;

(e) Environmental management and housekeeping functions;

(f) Approving and properly using disinfectants, equipment, and sanitation procedures;

(g) Cleaning areas used for surgical procedures before, between, and after use;

(h) Hospital-wide daily and periodic cleaning;

(i) Occupational health consistent with current practice;

(j) Attire;

(k) Traffic patterns;

(l) Antisepsis;

(m) Handwashing;

(n) Scrub technique and surgical preparation;

(o) Biohazardous waste management according to applicable federal, state, and local regulations;

(p) Barrier and transmission precautions; and

(q) Pharmacy and therapeutics;

(6) Establish and implement a plan for:

(a) Reporting communicable diseases according to chapter 246-100 WAC; and

(b) Surveying and investigating communicable disease occurrences in the hospital consistent with WAC 246-320-171;

(7) Hospitals may develop and implement infection control policies and procedures specific to a patient care area.

NEW SECTION

WAC 246-320-199 Fees. This section establishes the license and annual use fees for hospitals.

(1) Applicants must:

(a) Send the department an initial license fee of one hundred thirteen dollars for each bed space within the authorized bed capacity for the hospital;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient care;

(c) Include level 2 and 3 bassinet spaces;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;

(e) Exclude all normal infant bassinets.

(2) Licensees shall:

(a) Send the department by November 30 of each year an annual use fee of one hundred thirteen dollars for each bed space within the authorized bed capacity of the hospital;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

- (c) Include level 2 and 3 bassinet spaces;
 - (d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:
 - (i) Physical plant requirements of this chapter are met without movable equipment; and
 - (ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;
 - (e) Exclude all normal infant bassinets; and
 - (f) Exclude beds banked as authorized by certificate of need under chapter 70.38 RCW.
- (3) A licensee shall send a late fee in the amount of one hundred dollars per day whenever the annual use fee is not paid by November 30. The total late fee will not exceed twelve hundred dollars.
- (4) An applicant may request a refund for initial licensure as follows:
- (a) Two-thirds of the initial fee paid after the department has received an application and not conducted an on-site survey or provided technical assistance; or
 - (b) One-third of the initial fee paid after the department has received an application and conducted either an on-site survey or provided technical assistance but not issued a license.

PATIENT CARE

NEW SECTION

WAC 246-320-201 Food and nutrition services. The purpose of this section is to assure patient nutritional needs are met in a planned and organized manner.

Hospitals must:

- (1) Designate an individual qualified by experience, education, or training to be responsible for managing the food and nutrition services;
- (2) Designate a registered dietitian responsible to develop and implement policies and procedures addressing nutritional care for patients;
- (3) Have a registered dietitian available to assess nutritional needs, based on patients' individual nutritional risk screen;
- (4) Develop and regularly update an interdisciplinary plan for nutritional therapy based on current standards for patients at nutritional risk. Monitor and document each patient's response to the nutritional therapy in the medical record;
- (5) Implement, document and monitor a system for providing nutritionally balanced meals that are planned in advance, and respect cultural diversity; and
- (6) Adopt and implement policies and procedures for food service according to chapter 246-215 WAC.

NEW SECTION

WAC 246-320-206 Linen and laundry services. The purpose of this section is to prevent the use of dirty or contaminated laundry or linens.

Hospitals must develop and implement a laundry and linen system that:

- (1) Meets the needs of the hospital and patients;

- (2) Assures linens and laundry are clean and free from contaminants and toxic residues;
- (3) Processes within industry standard pH ranges; and
- (4) Processes and stores according to the *Guidelines for Design and Construction of Health Care Facilities*, 2.1-6.4.

NEW SECTION

WAC 246-320-211 Pharmaceutical services. This section assures patient pharmaceutical needs are met in a planned and organized manner.

Hospitals must:

- (1) Meet the requirements in chapter 246-873 WAC; and
- (2) Establish and use a process for selecting medications based on evaluating their relative therapeutic merits, safety, and cost.

NEW SECTION

WAC 246-320-216 Laboratory, imaging, and other diagnostic, treatment or therapeutic services. The purpose of this section is to assure patients' diagnostic, treatment or therapy services are met in a planned and organized manner.

Hospitals must adopt and implement policies and procedures that:

- (1) Require pathology and clinical laboratory services on a timely basis;
- (2) Assure the laboratory services meet the requirements in chapter 246-338 WAC;
- (3) Assure imaging services are directed by an individual qualified by experience, education, or training and meet the requirements in chapter 246-220 WAC.

NEW SECTION

WAC 246-320-221 Safe patient handling. RCW 70.41.390 mandates hospitals establish and implement a safe patient handling program. The purpose of this section is to guide hospital management in developing and implementing that program.

The hospital must:

- (1) Develop and implement a safe patient handling policy that includes:
 - (a) A patient handling hazard assessment;
 - (b) An annual performance evaluation of the program;
 - (c) Procedures for hospital staff to follow who refuse to perform or be involved in patient handling or movement based upon exposing the staff or patient to an unacceptable risk of injury; and
 - (d) The types of equipment and devices used as part of the program;
- (2) Conduct annual staff training on all safe patient handling policies, procedures, equipment and devices; and
- (3) Not discipline a hospital employee who in good faith follows the procedure for refusing to perform or be involved in the patient handling.

NEW SECTION

WAC 246-320-226 Patient care services. This section guides the development of a plan for patient care. This is

accomplished by supervising staff, establishing, monitoring, and enforcing policies and procedures that define and outline the use of materials, resources, and promote the delivery of care.

Hospitals must:

(1) Provide personnel, space, equipment, reference materials, training, and supplies for the appropriate care and treatment of patients;

(2) Have a registered nurse available for consultation in the hospital at all times;

(3) Adopt, implement, review and revise patient care policies and procedures designed to guide staff that address:

(a) Criteria for patient admission to general and specialized service areas;

(b) Reliable method for personal identification of each patient;

(c) Conditions that require patient transfer within the facility, to specialized care areas and outside facilities;

(d) Patient safety measures;

(e) Staff access to patient care areas;

(f) Use of physical and chemical restraints or seclusion consistent with CFR 42.482;

(g) Use of preestablished patient care guidelines or protocols. When used, these must be documented in the medical record and be preapproved or authenticated by an authorized practitioner;

(h) Care and handling of patients whose condition require special medical or medical-legal consideration;

(i) Preparation and administration of blood and blood products; and

(j) Discharge planning;

(4) Have a system to plan and document care in an interdisciplinary manner, including:

(a) Development of an individualized patient plan of care, based on an initial assessment;

(b) Periodic review and revision of individualized plan of care based on patient reassessment; and

(c) Periodic assessment for risk of falls, skin condition, pressure ulcers, pain, medication use, therapeutic effects and side or adverse effects;

(5) Complete and document an initial assessment of each patient's physical condition, emotional, and social needs in the medical record. Initial assessment includes:

(a) Patient history and physical assessment including but not limited to falls, mental status and skin condition;

(b) Current needs;

(c) Need for discharge planning;

(d) Immunization status for pediatric patients;

(e) Physical examination, if within thirty days prior to admission, and updated as needed if patient status has changed;

(f) Ongoing specialized assessments depending on the patient's condition or needs, including:

(i) Nutritional status;

(ii) Functional status; and

(iii) Social, psychological, and physiological status;

(g) Reassessments according to plan of care and patient's condition; and

(h) Discharge plans when appropriate, coordinated with:

(i) Patient, family or caregiver; and

(ii) Receiving agency, when necessary.

NEW SECTION

WAC 246-320-231 Patient care unit or area. The purpose of this section is to guide the management of a patient area.

Hospitals must assure:

(1) Each patient room contains:

(a) A bed;

(b) A means for patient privacy; and

(c) A means to call for help or assistance;

(2) Each patient care unit has:

(a) A means for staff to clean their hands before giving care to a patient;

(b) Staff available at all times to provide care to patients; and

(c) A means for staff to record and maintain individual patient records;

(3) Staff respond to calls for help or assistance.

NEW SECTION

WAC 246-320-236 Surgical services. The purpose of this section is to guide the development and management of surgical services. Hospitals are not required to provide surgery and interventional care in order to be licensed.

If providing surgical services, hospitals must:

(1) Adopt and implement policies and procedures that:

(a) Identify areas where surgery and invasive procedures may be performed;

(b) Define staff access to areas where surgery and invasive procedures are performed;

(c) Identify practitioner's privileges for operating room staff; and

(d) Define staff qualifications and oversight;

(2) Use hospital policies and procedures which define standards of care;

(3) Implement a system to identify and indicate the correct surgical site prior to beginning a surgical procedure;

(4) Timely provide emergency equipment, supplies, and services to surgical and invasive areas;

(5) Provide separate refrigerated storage equipment with temperature alarms, when blood is stored in the surgical department; and

(6) Assure that a registered nurse qualified by training and experience functions as the circulating nurse in every operating room during surgical procedures.

NEW SECTION

WAC 246-320-241 Anesthesia services. The purpose of this section is to guide the management and care of patients receiving anesthesia. Hospitals are not required to provide anesthesia services in order to be licensed.

If providing anesthesia services, hospitals must:

(1) Adopt and implement policies and procedures that:

(a) Identify the types of anesthesia that may be used;

(b) Identify areas where each type of anesthesia may be used; and

(c) Define the staff qualifications and oversight for administering each type of anesthesia used in the hospital;

(2) Use hospital policies and procedures which define standards of care;

(3) Assure emergency equipment, supplies and services are immediately available in all areas where anesthesia is used.

NEW SECTION

WAC 246-320-246 Recovery care. The purpose of this section is to guide the management of patients recovering from anesthesia and sedation. Hospitals are not required to provide anesthesia recovery services in order to be licensed.

If providing recovery services, hospitals must:

(1) Adopt and implement policies and procedures that define the qualifications and oversight of staff delivering recovery services;

(2) Assure a physician or licensed independent practitioner capable of managing complications and providing cardiopulmonary resuscitation is immediately available for patients recovering from anesthesia; and

(3) Assure a registered nurse trained and current in advanced cardiac life support measures is immediately available for patients recovering from anesthesia.

NEW SECTION

WAC 246-320-251 Obstetrical services. The purpose of this section is to guide the management and care of patients receiving obstetrical care services. Hospitals are not required to provide obstetrical services in order to be licensed.

If providing obstetrical services hospitals must:

(1) Have the capability to perform cesarean sections twenty-four hours per day, or meet the following criteria when the hospital does not have twenty-four hour cesarean capability:

(a) Limit planned obstetrical admissions to "low risk" patients as defined in WAC 246-329-010(18) childbirth centers;

(b) Inform each obstetrical patient in writing, prior to the planned admission, of the limited obstetrical services as well as transportation and transfer agreements;

(c) Maintain current written agreements for staffed ambulance or air transport available twenty-four hours per day; and

(d) Maintain current written agreements with another hospital to admit transferred obstetrical patients;

(2) Define qualifications and oversight of staff delivering obstetrical care;

(3) Use hospital policies and procedures which define standards of care; and

(4) Ensure one registered nurse trained in neonatal resuscitation is in the hospital when infants are present.

NEW SECTION

WAC 246-320-256 Neonatal and pediatric services. The purpose of this section is to guide the management and care of patients receiving neonatal or pediatric care services.

Hospitals are not required to provide these services in order to be licensed.

If providing neonatal or pediatric care, hospitals must:

(1) Adopt and implement policies and procedures that:

(a) Identify the types of patients and level of care that may be used; and

(b) Define the qualifications and oversight of staff delivering neonatal or pediatric services;

(2) Use hospital policies and procedures which define standards of care;

(3) Assure one registered nurse or physician trained in infant and pediatric resuscitation is present in the hospital when infants or pediatric patients are receiving care;

(4) Assure laboratory, pharmacy, radiology, and respiratory care services appropriate for neonates, infants and pediatric patients are:

(a) Provided in a timely manner; and

(b) Available in the hospital at all times during assisted ventilation;

(5) When providing a level 2 or level 3 nursery service assure:

(a) Laboratory, pharmacy, radiology, and respiratory care services appropriate for neonates are available in the hospital at all times;

(b) An anesthesia practitioner, neonatologist, and a pharmacist available twenty-four hours a day; and

(c) One registered nurse or physician trained in neonate resuscitation is present in the hospital when a neonate is receiving care.

NEW SECTION

WAC 246-320-261 Critical or intensive care services.

The purpose of this section is to guide the management and care of patients receiving critical or intensive care services. Hospitals are not required to provide these services in order to be licensed.

If providing a critical care unit or services, hospitals must:

(1) Define the qualifications and oversight of staff delivering critical or intensive care services;

(2) Assure at least two licensed nurses skilled and trained in critical care, on duty and in the hospital at all times, when patients are present, and:

(a) Immediately available to provide care to admitted patients; and

(b) All registered nurses trained and current in cardiopulmonary resuscitation with:

(i) Training for the safe and effective use of specialized equipment and procedures in the particular area; and

(ii) At least one registered nurse having successfully completed an advanced cardiac life support training program;

(3) Assure laboratory, radiology, and respiratory care services available in a timely manner; and

(4) Use hospital policies and procedures which define standards of care.

NEW SECTION

WAC 246-320-266 Alcohol and chemical dependency services. The purpose of this section is to guide the manage-

ment and care of patients receiving alcohol and chemical dependency services. Hospitals are not required to provide these services in order to be licensed.

If providing alcoholism or chemical dependency services hospitals must:

(1) Adopt and implement policies and procedures on the development, use, and review of the individualized treatment plan, including participation by:

- (a) Multidisciplinary treatment team;
- (b) Patient; and
- (c) Family as appropriate;

(2) Define the qualifications and oversight of staff delivering alcohol and chemical dependency care services;

(3) Use hospital policies and procedures which define standards of practice;

(4) Assure patient privacy during interviewing, group and individual counseling, physical examinations, and social activities; and

(5) Provide services according to WAC 246-324-170.

NEW SECTION

WAC 246-320-271 Psychiatric services. The purpose of this section is to guide the management and care of patients receiving psychiatric services. Hospitals are not required to provide these services in order to be licensed.

If providing a psychiatric services, hospitals must:

(1) Adopt and implement policies and procedures on the development, use, and review of the individualized treatment plan, including participation by:

- (a) Multidisciplinary treatment team;
- (b) Patient; and
- (c) Family as appropriate;

(2) Define the qualifications and oversight of staff delivering psychiatric services;

(3) Use hospital policies and procedures which define standards of practice;

(4) Assure patient privacy during interviewing, group and individual counseling, physical examinations, and social activities;

(5) Provide services according to WAC 246-322-170;

(6) Designate and use separate sleeping rooms for children and adults;

(7) Provide or have access to at least one seclusion room; and

(8) Assure close observation of patients.

NEW SECTION

WAC 246-320-276 Long-term care services. The purpose of this section is to guide the management and care of patients receiving long-term care services. Hospitals are not required to provide these services in order to be licensed.

If providing long-term care services, hospitals must:

(1) Define the qualifications and oversight of staff delivering long-term care services;

(2) Develop and implement policies and procedures specific to the care and needs of patients receiving the long-term services;

(3) Use hospital policies and procedures which define standards of practice; and

(4) Provide an activities program designed to encourage each patient to maintain or attain normal activity and an optimal level of independence.

NEW SECTION

WAC 246-320-281 Emergency services. The purpose of this section is to guide the management and care of patients receiving emergency services. Hospitals are not required to provide these services in order to be licensed.

If providing emergency services, hospitals must:

(1) Adopt and implement policies and procedures, consistent with RCW 70.170.060, for every patient presenting to the emergency department with an emergency medical condition to include:

Transfer of a patient with an emergency medical condition or who is in active labor based on:

- (a) Patient request;
- (b) Inability to treat the patient due to facility capability;
- (c) Staff availability or bed availability; and
- (d) The ability of the receiving hospital to accept and care for the patient;

(2) Maintain the capacity to perform emergency triage and medical screening exam twenty-four hours per day;

(3) Define the qualifications and oversight of staff delivering emergency care services;

(4) Use hospital policies and procedures which define standards of care;

(5) Assure at least one registered nurse skilled and trained in emergency care services on duty and in the hospital at all times, who is:

- (a) Immediately available to provide care; and
- (b) Trained and current in advanced cardiac life support;
- (6) Post names and telephone numbers of medical and other staff on call;

(7) Assure communication with agencies and health care providers as indicated by patient condition; and

(8) Assure emergency equipment, supplies and services necessary to meet the needs of presenting patients are immediately available.

NEW SECTION

WAC 246-320-286 Emergency contraception. The purpose of this section is to ensure that all hospitals with emergency rooms provide emergency contraception as a treatment option to any woman who seeks treatment as a result of a sexual assault.

Every hospital that provides emergency care must:

(1) Develop and implement policies and procedures regarding the provision of twenty-four-hour/seven-days per week emergency care to victims of sexual assault;

(2) Provide the victim of sexual assault with medically and factually accurate and unbiased written and oral information about emergency contraception;

(3) Orally inform each victim in a language she understands of her option to be provided emergency contraception at the hospital; and

(4) Immediately provide emergency contraception, as defined in WAC 246-320-010, to each victim of sexual

assault if the victim requests it, and if the emergency contraception is not medically contraindicated.

NEW SECTION

WAC 246-320-291 Dialysis services. The purpose of this section is to guide the management and care of patients receiving dialysis services. Hospitals are not required to provide these services in order to be licensed.

If providing renal dialysis care, hospitals must:

(1) Adopt and implement policies and procedures consistent with CFR 42.405, End Stage Renal Disease Facilities for:

(a) Cleaning and sterilization procedures when dialyzers are reused;

(b) Water treatment, to ensure water quality; and

(c) Bacterial contamination and chemical purity water testing;

(2) Test each dialysis machine for bacterial contamination monthly or demonstrate a program establishing the effectiveness of disinfection methods at other intervals;

(3) Take measures to prevent contamination, including backflow prevention in accordance with the state plumbing code;

(4) Keep available any special dialyzing solutions required by a patient;

(5) Define the qualifications and oversight of staff delivering dialysis care;

(6) Require a contractor to meet the requirements in this section, whenever dialysis service is provided through a contract.

NEW SECTION

WAC 246-320-296 Management of environment for care. The purpose of this section is to manage environmental hazards and risks, prevent accidents and injuries, and maintain safe conditions for patients, visitors, and staff.

(1) Hospitals must have an environment of care management plan that addresses safety, security, hazardous materials and waste, emergency preparedness, fire safety, medical equipment, utility systems and physical environment.

(2) The hospital must designate a person responsible to develop, implement, monitor, and follow-up on all aspects of the management plan.

(3) Safety. The hospital must establish and implement a plan to:

(a) Maintain a physical environment free of hazards;

(b) Reduce the risk of injury to patients, staff, and visitors;

(c) Investigate and report safety related incidents;

(d) Correct or take steps to avoid reoccurrence of the incidents in the future;

(e) Develop and implement policies and procedures on safety related issues such as but not limited to physical hazards and injury prevention; and

(f) Educate and periodically review with staff, policies and procedures relating to safety and job-related hazards.

(4) Security. The hospital must:

(a) Establish and implement a plan to maintain a secure environment for patients, visitors, and staff, to include preventing abduction of patients;

(b) Educate staff on security procedures; and

(c) Train security staff to a level of skill and competency for their assigned responsibility.

(5) Hazardous materials and waste. The hospital must:

(a) Establish and implement a program to safely control hazardous materials and waste according to federal, state, and local regulations;

(b) Provide space and equipment for safe handling and storage of hazardous materials and waste;

(c) Investigate all hazardous material or waste spills, exposures, and other incidents, and report as required to appropriate authority; and

(d) Educate staff on policies and procedures relating to safe handling and control of hazardous materials and waste.

(6) Emergency preparedness. The hospital must:

(a) Establish and implement a disaster plan designed to address both internal and external disasters. The plan must be:

(i) Specific to the hospital;

(ii) Relevant to the geographic area;

(iii) Readily put into action, twenty-four hours a day, seven days a week; and

(iv) Reviewed and revised periodically;

(b) Ensure the disaster plan identifies:

(i) Who is responsible for each aspect of the plan; and

(ii) Essential and key personnel responding to a disaster;

(c) Include in the plan:

(i) A staff education and training component;

(ii) A process for testing each aspect of the plan; and

(iii) A component for debriefing and evaluation after each disaster, incident or drill.

(7) Fire safety. The hospital must:

(a) Establish and implement a plan to maintain a fire-safe environment that meets fire protection requirements established by the Washington state patrol, fire protection bureau;

(b) Investigate fire protection deficiencies, failures, and user errors; and

(c) Orient, educate, and conduct drills with staff on policies and procedures relating to fire prevention and emergencies.

(8) Medical equipment. The hospital must establish and implement a plan to:

(a) Complete a technical and engineering review to verify medical equipment will function safely within building support systems;

(b) Inventory all patient equipment and related technologies that require preventive maintenance;

(c) Perform and document preventive maintenance;

(d) Develop and implement a quality control program;

(e) Assure consistent service of equipment, independent of service vendors or methodology;

(f) Investigate, report, and evaluate procedures in response to equipment failures; and

(g) Educate staff on the proper and safe use of medical equipment.

(9) Utility systems. The hospital must establish and implement policies, procedures and a plan to:

- (a) Maintain a safe and comfortable environment;
- (b) Assess and minimize risks of utility system failures;
- (c) Ensure operational reliability of utility systems;
- (d) Investigate and evaluate utility systems problems, failures, or user errors and report incidents and corrective actions;
- (e) Perform and document preventive maintenance; and
- (f) Educate staff on utility management policies and procedures.
- (10) Physical environment. The hospital must provide:
 - (a) Storage;
 - (b) Plumbing with:
 - (i) A water supply providing hot and cold water under pressure which conforms to chapter 246-290 WAC;
 - (ii) Hot water supplied for bathing and handwashing not exceeding 120°F;
 - (iii) Cross connection controls meeting requirements of the state plumbing code;
 - (c) Ventilation to:
 - (i) Prevent objectionable odors and/or excessive condensation; and
 - (ii) With air pressure relationships as designed and approved by the department when constructed and maintained within industry standard tolerances;
 - (d) Clean interior surfaces and finishes; and
 - (e) Functional patient call system.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-320-025	On-site licensing survey.
WAC 246-320-045	Application for license— License expiration dates— Notice of decision—Adjudicative proceeding.
WAC 246-320-065	Exemptions, alternative methods, and interpretations.
WAC 246-320-085	Single license to cover two or more buildings—When permissible.
WAC 246-320-105	Criminal history, disclosure, and background inquiries.
WAC 246-320-125	Governance.
WAC 246-320-145	Leadership.
WAC 246-320-165	Management of human resources.
WAC 246-320-185	Medical staff.
WAC 246-320-205	Management of information.
WAC 246-320-225	Improving organizational performance.
WAC 246-320-245	Patient rights and organizational ethics.

WAC 246-320-265	Infection control program.
WAC 246-320-285	Pharmacy services.
WAC 246-320-305	Food and nutrition services.
WAC 246-320-325	Laboratory, imaging, and other diagnostic, treatment or therapeutic services.
WAC 246-320-345	Inpatient care services.
WAC 246-320-365	Specialized patient care services.
WAC 246-320-370	Emergency contraception.
WAC 246-320-385	Outpatient care services.
WAC 246-320-405	Management of environment for care.
WAC 246-320-615	Pharmacy.
WAC 246-320-990	Fees.

**WSR 09-07-051
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed March 11, 2009, 11:57 a.m., effective April 11, 2009]

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

Purpose: The rules establish the adverse health event and incident reporting system for psychiatric hospitals, as required by 2SHB 2292 (2006), SB 6457 and E2SHB 3123 (2008). The rules include a list of reportable adverse health events, how and when to report, the inclusion of contextual information and staffing levels at the time of the event, a timeline for reporting confirmed events, the form and content of a root cause analysis and the corrective action plan.

Statutory Authority for Adoption: Chapter 70.56 RCW.

Adopted under notice filed as WSR 08-22-090 on November 4, 2008.

Changes Other than Editing from Proposed to Adopted Version: References to an internet-based reporting system in WAC 246-322-260, which was to be contracted with an independent entity, were removed because funding is not available.

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 Mak-

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

Date Adopted: March 11, 2009.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-322-260 Adverse health events and incident reporting system. The purpose of this section is to outline each psychiatric hospital's responsibilities for reporting and addressing adverse events. In this section, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.

Psychiatric hospitals must:

(1) Notify the department whenever any of the following adverse events as defined by the National Quality Forum, *Serious Reportable Events in Health Care* occur:

1. Surgery performed on the wrong body part.
2. Surgery performed on the wrong patient.
3. Wrong surgical procedure performed on a patient.
4. Unintended retention of a foreign object in a patient after surgery or other procedure.
5. Intraoperative or immediately postoperative death in an ASA Class 1 patient.
6. Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the health care facility.
7. Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended.
8. Patient death or serious disability associated with intra-vascular air embolism that occurs while being cared for in a health care facility.
9. Infant discharged to wrong person.
10. Patient death or serious disability associated with patient elopement (disappearance).
11. Patient suicide, or attempted suicide resulting in serious disability, while being cared for in a health care facility.
12. Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration).
13. Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products.
14. Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in the health care facility.
15. Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility.
16. Patient death or serious disability (kernicterus) associated with failure to identify and treat hyperbilirubinemia neonates.
17. Stage 3 or 4 pressure ulcers acquired after admission to a health care facility.
18. Patient death or serious disability due to spinal manipulative therapy.
19. Patient death or serious disability associated with electric shock or electric cardioversion while being cared for in a health care facility.
20. Any incident in which a line designed for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances.
21. Patient death or serious disability associated with a burn incurred from any source while being cared for in a health care facility.
22. Patient death or serious disability associated with a fall while being cared for in a health care facility.
23. Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility.
24. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.
25. Abduction of a patient of any age.
26. Sexual assault on a patient within or on the grounds of a health care facility.
27. Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care facility.
28. Artificial insemination with the wrong donor sperm or egg.

(2) Notify the department within forty-eight hours of confirmation by the psychiatric hospital when any adverse event has occurred using established procedures. The notice must include:

- (a) The psychiatric hospital's name;
 - (b) The type of event identified in subsection (1) of this section;
 - (c) The date the event was confirmed; and
 - (d) Any additional contextual information the hospital chooses to provide.
- (3) Conduct a root cause analysis of each adverse event following the procedures and methods of:
- (a) The joint commission;
 - (b) The department of Veterans Affairs National Center for Patient Safety; or
 - (c) Another nationally recognized root cause analysis methodology found acceptable by the department;
- (4) As part of the root cause analysis, include the following information:
- (a) The number of patients, registered nurses, licensed practical nurses, and unlicensed assistive personnel present in the relevant patient care unit at the time the reported adverse event occurred;

(b) The number of nursing personnel present at the time of the adverse event who have been supplied by temporary staffing agencies including traveling nurses; and

(c) The number of nursing personnel, if any, on the patient care unit working beyond their regularly scheduled number of hours or shifts at the time of the event and the number of consecutive hours worked by each such nursing personnel at the time of the adverse event.

(5) Create and implement a corrective action plan for each adverse event consistent with the findings of the root cause analysis. Each corrective action plan must include:

(a) How each finding will be addressed and corrected;

(b) When each correction will be completed;

(c) Who is responsible to make the corrections;

(d) What action will be taken to prevent each finding from reoccurring; and

(e) A monitoring schedule for assessing the effectiveness of the corrective action plan including who is responsible for the monitoring schedule;

(6) If a psychiatric hospital determines there is no need to create a corrective action plan for a particular adverse event, provide a written explanation of the reasons for not creating a corrective action plan;

(7) Complete and submit a root cause analysis report, within forty-five days after confirming an adverse health event has occurred, to the department.

WSR 09-07-054

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 11, 2009, 12:24 p.m., effective April 11, 2009]

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

Purpose: The department is amending rules that describe eligibility requirements for the Basic Food program, allowable income deductions for Basic Food, and the process of determining eligibility and calculating monthly benefits for both state and federal benefits under the Washington Basic Food program.

The amendments under this filing ensure that these rules are consistent with the requirements of the Food and Nutrition Act of 2008, regulations under Title 7 of the Code of Federal Regulations, and administrative notices published by the United States Department of Agriculture, Food and Nutrition Service related to the supplemental nutrition assistance program (SNAP) or food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0040, 388-400-0045, 388-450-0162, and 388-450-0185.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: Food and Nutrition Act of 2008, Title 7 Part 273 of the Code of Federal Regulations.

Adopted under notice filed as WSR 09-03-100 on January 21, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 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 4, Repealed 0.

Date Adopted: March 10, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program? The Washington Basic Food program (Basic Food) is a nutrition program to help low-income individuals and families buy food. This rule is a summary of the rules for Basic Food.

(1) When you apply for Basic Food, we decide who is in your assistance unit (AU) based on the requirements under WAC 388-408-0034 and 388-408-0035.

(2) To be eligible for Basic Food benefits, your AU must meet the eligibility requirements of:

(a) The most current version of the Food ((Stamp Act of 1977)) and Nutrition Act of 2008:

(b) Federal regulations adopted by the U.S. Department of Agriculture, Food and Nutrition Services (FNS) related to the supplemental nutrition assistance program (SNAP); and

(c) Standards FNS publishes each year for income limits, resource limits, income deductions, and benefit amounts for SNAP.

(3) To be eligible for **federal** Basic Food benefits, each AU member must meet the citizenship or alien status requirements for federal benefits as described under WAC 388-424-0020.

(4) An AU member who is not eligible for federal benefits may be eligible for **state-funded** Basic Food benefits if they meet the requirements described under WAC 388-400-0045.

(5) To be eligible for **federal** or **state** Basic Food benefits, each AU member must:

(a) Be a resident of the state of Washington as required under WAC 388-468-0005;

(b) Meet the citizenship or alien status requirements of either WAC 388-424-0020 or 388-424-0025;

(c) Give us their Social Security number as required under WAC 388-476-0005;

(d) Give us proof of identity as required under WAC 388-490-0005;

(e) Participate in the ~~((food stamp))~~ Basic Food employment and training program ~~((FSE&T as))~~ (BFE&T) if required under chapter 388-444 WAC; and

(f) Meet the eligibility criteria for strikers as described under WAC 388-480-0001.

(6) To be eligible for Basic Food, your AU must:

(a) ~~((Have countable income at or below gross and net income standards as described under WAC 388-478-0060))~~ Have total monthly income before taxes and deductions at or under the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as part of your AU's gross monthly income;

(b) Have net income at or under the net monthly income standard under WAC 388-478-0060. We subtract deductions allowed under WAC 388-450-0185 to determine your AU's net monthly income.

(c) Have ~~((countable))~~ resources we must count under WAC 388-470-0055 that are at or below your AU's resource limit under WAC 388-470-0005 ~~((unless your AU is categorically eligible under WAC 388-414-0001));~~

~~((e))~~ (d) Report changes of circumstances as required under WAC 388-418-0005; and

~~((e))~~ (e) Complete a mid-certification review and provide proof of any changes if required under WAC 388-418-0011.

(7) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard, and have resources over the resource limit and still be eligible for benefits.

(8) If your AU has income at or under the gross income standard or is categorically eligible for Basic Food, we ~~((deduct certain expenses from your income under WAC 388-450-0185 before we calculate your Basic Food benefits))~~ determine if you are eligible for Basic Food and calculate your monthly benefits as described under WAC 388-450-0162.

~~((8))~~ (9) If an eligible person in your AU is elderly or disabled, some rules may help your AU to be eligible for Basic Food or to receive more Basic Food benefits. These include:

(a) Resources limits and excluding certain resources under chapter 388-470 WAC;

(b) An excess shelter deduction over the limit set for AUs without an elderly or disabled individual under WAC 388-450-0190;

(c) A deduction for out-of-pocket medical expenses for the elderly or disabled individual if they are over thirty-five dollars a month under WAC 388-450-0200; and

(d) Being exempt from the **gross monthly income** standard under WAC 388-478-0060.

~~((9))~~ (10) For Basic Food, **elderly** means a person who is age sixty or older;

~~((10))~~ (11) For Basic Food, **disabled** means a person who:

(a) Receives SSI;

(b) Receives disability payments or blindness payments under Title I, II, XIV, or XVI of the Social Security Act;

(c) Receives disability retirement benefits from a state, local or federal government agency because of a disability

considered permanent under section 221(i) of the Social Security Act;

(d) Receives disability benefits from the Railroad Retirement Act under sections 2 (a)(1)(iv) and (v) and:

(i) Meets Title XIX disability requirements; or

(ii) Is eligible for medicare.

(e) Receives disability-related medical assistance under Title XIX of the Social Security Act;

(f) Is a veteran and receives disability payments based on one hundred percent disability;

(g) Is a spouse of a veteran and:

(i) Either needs an attendant or is permanently housebound; or

(ii) Has a disability under section 221(i) of the Social Security Act and is eligible for death or pension payments under Title 38 of the USC.

~~((11))~~ (12) If a person in your ~~((AU))~~ household attends an institution of higher education and does not meet the requirements to be an eligible student under WAC 388-482-0005, we do not count this person as a member of your AU under WAC 388-408-0035.

~~((12))~~ (13) If your AU currently receives food benefits under WASHCAP or lives on or near an Indian reservation and receives benefits from a tribal food distribution program approved by Food and Nutrition Service (FNS), your AU is not eligible for food assistance benefits through the Washington Basic Food program.

~~((13))~~ (14) If ~~((an))~~ a person in your AU ~~((member))~~ is ineligible for any of the following reasons, we count the ineligible person's income as described under WAC 388-450-0140:

(a) Able-bodied adults without dependents who are no longer eligible under WAC 388-444-0030;

(b) Persons fleeing a felony prosecution, conviction, or confinement under WAC 388-442-0010;

(c) Persons who do not attest to citizenship or alien status as defined in WAC 388-424-0001;

(d) Persons who are ineligible aliens under WAC 388-424-0020;

(e) Persons disqualified for an intentional program violation under WAC 388-446-0015;

(f) Persons who do not provide a Social Security number when required under WAC 388-476-0005; or

(g) Persons who failed to meet work requirements under chapter 388-444 WAC.

AMENDATORY SECTION (Amending WSR 03-05-028, filed 2/10/03, effective 4/1/03)

WAC 388-400-0045 If I am not eligible for ~~((federally-funded))~~ federal benefits through Washington Basic Food program because of my alien status, can I receive state-funded Basic Food? (1) If you are not eligible for federally-funded Basic Food benefits because you do not meet the alien status requirements under WAC 388-424-0020, you may be eligible for state-funded Basic Food if you meet both of the following requirements:

(a) You are a Washington state resident; and

(b) You meet the immigrant eligibility requirements under WAC 388-424-0025.

(2) State-funded Basic Food follows the same eligibility rules as federally-funded Basic Food except for rules related to alien status. A summary of the rules for Basic Food is found in WAC 388-400-0040.

(3) Some assistance units (AUs) ~~((may receive a combined benefit of both state and federal Basic Food benefits. Your AU's maximum allotment of Basic Food benefits is found under WAC 388-478-0060))~~ include both people who are eligible for federal Basic Food benefits and those who are eligible for state-funded benefits. In these cases, we determine the federal and state portion of your Basic Food benefits by applying the following process to the monthly benefit calculation under WAC 388-450-0162:

(a) We calculate your AU's monthly benefits **as if** all the eligible persons in your AU could receive benefits under the federal program; and

(b) We then calculate the monthly benefits for the persons in your AU **who are** eligible for federal benefits.

<u>If step A is more than step B</u>	<u>If step B is more than step A</u>
<p>Your AU receives:</p> <ul style="list-style-type: none"> • <u>Federal benefits in the amount calculated using step (b); and</u> • <u>State-funded benefits for the difference between the amount calculated using step (a) and step (b).</u> 	<p>Your AU receives federal benefits in the amount calculated using step (b).</p>

AMENDATORY SECTION (Amending WSR 08-15-009, filed 7/3/08, effective 8/3/08)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and calculate the amount of my cash and Basic Food benefits? (1) Countable income is all income your assistance unit (AU) has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;

(c) For **Basic Food**, deductions allowed under WAC 388-450-0185; and

(d) ~~((Allocations))~~ Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your ~~((assistance unit))~~ AU under WAC 388-450-0095 through 388-450-0160.

(3) For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0030.

(b) You are not eligible for benefits when your ~~((assistance unit's))~~ AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your ~~((assistance unit's))~~ AU's countable income.

(4) For **Basic Food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) ~~((We compare your countable income to the monthly gross and net income standards under WAC 388-478-0060))~~ How we determine if your AU is income eligible for Basic Food:

(i) ~~((If your assistance unit is categorically eligible for Basic Food under WAC 388-414-0001, your assistance unit can have income over the gross or net income standard and still be eligible for benefits))~~ We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) ~~((All other assistance units must have income at or below the gross and net income standards as required))~~ We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060 ((to be eligible for benefits)).

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) All other AUs must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) ~~((Your benefit level is the maximum allotment in WAC 388-478-0060 minus thirty percent of your countable income))~~ How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

AMENDATORY SECTION (Amending WSR 08-24-051, filed 11/25/08, effective 12/26/08)

WAC 388-450-0185 What income deductions does the department ~~((count all of my income to determine my eligibility and benefits for Basic Food))~~ allow when determining if I am eligible for food benefits and the amount of

my monthly benefits? ((We subtract the following amounts from your assistance unit's (AU's) countable income before we determine your Basic Food benefit amount)) We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$144
2	\$144
3	\$144
4	\$147
5	\$172
6 or more	\$197

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

(a) For a person who is not in your AU; or

(b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

WSR 09-07-058
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 12, 2009, 8:43 a.m., effective April 12, 2009]

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

Purpose: When the professional educator standards board (PESB) took over rule authority for chapter 181-86 WAC, the title of this section did not get updated. Therefore a technical change is needed to replace state board of education (SBE) with PESB.

Citation of Existing Rules Affected by this Order: Amending chapter 181-86 WAC.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 08-19-045 on September 11, 2008.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Room 252, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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 0, Repealed 0.

Date Adopted: March 11, 2009.

David Brenna
Legislative and Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-155 Appeal procedure to ((SBE)) PESB. Any person whose certificate has been suspended or revoked by the superintendent of public instruction in accordance with the procedures of this chapter may appeal that decision to the professional educator standards board by filing a notice of appeal with the superintendent of public instruction or the secretary of the professional educator standards board within thirty calendar days of the date of mailing the decision of the superintendent of public instruction. Review by the professional educator standards board shall be conducted as follows:

(1) Review shall be conducted by the professional educator standards board at its next scheduled meeting following notice of appeal unless either the appellant or the superintendent of public instruction requests an extension of the review to the following next scheduled meeting.

(2) Review conducted by the professional educator standards board shall be confined to the record, except that in cases of alleged irregularities in procedures before the superintendent of public instruction, not shown in the record, testimony thereon shall be taken before the professional educator standards board.

(3) The record shall include written briefs submitted.

(4) Oral argument will be permitted if fifteen days advance notice is given to the secretary of the professional educator standards board.

(5) The professional educator standards board will be assisted in its deliberations and its final order by an assistant attorney general who has not been involved in any prior pro-

ceeding related to the previous administrative order by the superintendent of public instruction.

(6) The professional educator standards board may affirm the decision of the superintendent of public instruction, remand the matter for further proceedings, modify the decision, or reverse the decision.

(7) If the decision of the professional educator standards board is to modify or reverse the decision of the superintendent of public instruction or to remand the matter for further proceedings, the professional educator standards board shall state its reasons in a written order.

(8) The final order of the professional educator standards board shall be by written order, attested by the secretary of the professional educator standards board, and sent to the appellant by certified mail within ten calendar days of the final decision by the professional educator standards board. In addition, persons aggrieved by a final order shall be advised of their right to judicial review pursuant to RCW 34.05.570.

WSR 09-07-059
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 12, 2009, 8:54 a.m., effective April 12, 2009]

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

Purpose: This rule change removes outdated rules on the endorsements changed under chapter 28A.410 RCW. All certification endorsements no longer issued are removed from chapters 181-79A and 181-82 WAC and redefined by the professional educator standards board.

Citation of Existing Rules Affected by this Order: Repealing chapters 181-79A and 181-82 WAC.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 08-19-011 on September 4, 2008.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Room 252, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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 98.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 98.

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

Date Adopted: March 11, 2009.

David Brenna
Legislative and Policy Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-79A-299	Transition policies.
WAC 181-79A-300	Certificate endorsement.
WAC 181-79A-302	Authorized endorsement for teachers.
WAC 181-79A-304	Minimum preparation for endorsements for teachers.
WAC 181-79A-306	Subject area endorsement recommendations by colleges and universities.
WAC 181-79A-308	Endorsement by examination.
WAC 181-79A-310	Subject area endorsements through SPI.
WAC 181-79A-312	Award of college or university credit hours for experience.
WAC 181-79A-315	In-service in lieu of college and university credit hours.
WAC 181-79A-317	Evaluation of in-service in lieu of college and university credit hours by PEAC.
WAC 181-79A-320	Agriculture education—Subject area endorsements.
WAC 181-79A-322	Anthropology—Subject area endorsement.
WAC 181-79A-324	Art—Subject area endorsement.
WAC 181-79A-326	Bilingual education—Subject area endorsement.
WAC 181-79A-328	Biology—Subject area endorsement.
WAC 181-79A-330	Business education—Subject area endorsement.
WAC 181-79A-332	Chemistry—Subject area endorsement.
WAC 181-79A-333	Comparative religion—Subject area endorsement.
WAC 181-79A-334	Instructional technology (formerly computer science)—Subject area endorsement.

WAC 181-79A-336	Designated foreign language—Subject area endorsement.	WAC 181-79A-376	Choral music—Subject area endorsement.
WAC 181-79A-338	Drama—Subject area endorsement.	WAC 181-79A-378	Instrumental music—Subject area endorsement.
WAC 181-79A-340	Early childhood education, regular—Subject area endorsement.	WAC 181-79A-379	Philosophy—Subject area endorsement.
WAC 181-79A-342	Early childhood education, special education—Subject area endorsement.	WAC 181-79A-380	Physical education—Subject area endorsement.
WAC 181-79A-344	Earth science—Subject area endorsement.	WAC 181-79A-382	Physics—Subject area endorsement.
WAC 181-79A-346	Economics—Subject area endorsement.	WAC 181-79A-384	Political science—Subject area endorsement.
WAC 181-79A-348	Elementary education—Subject area endorsement.	WAC 181-79A-386	Psychology—Subject area endorsement.
WAC 181-79A-350	English—Subject area endorsement.	WAC 181-79A-388	Reading—Subject area endorsement.
WAC 181-79A-352	English as a second language—Subject area endorsement.	WAC 181-79A-390	Science—Broad subject area endorsement.
WAC 181-79A-354	English/language arts—Broad subject area endorsement.	WAC 181-79A-392	Sociology—Subject area endorsement.
WAC 181-79A-356	Geography—Subject area endorsement.	WAC 181-79A-394	Social studies—Broad subject area endorsement.
WAC 181-79A-358	Health—Subject area endorsement.	WAC 181-79A-396	Special education—Subject area endorsement.
WAC 181-79A-360	History—Subject area endorsement.	WAC 181-79A-398	Speech—Subject area endorsement.
WAC 181-79A-362	Family and consumer sciences education (formerly home and family life education)—Subject area endorsement.		
WAC 181-79A-364	Technology education (formerly industrial arts)—Subject area endorsement.		
WAC 181-79A-366	Marketing education—Subject area endorsement.		
WAC 181-79A-368	Journalism—Subject area endorsement.		
WAC 181-79A-370	Learning resources—Subject area endorsement.		
WAC 181-79A-372	Mathematics—Subject area endorsement.		
WAC 181-79A-374	Music—Broad subject area endorsement.		

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-82-202	Certificate endorsements.
WAC 181-82-204	Endorsement requirements.
WAC 181-82-210	Primary and supporting endorsements.
WAC 181-82-215	Implementation policies.
WAC 181-82-300	Bilingual education—All levels, (supporting).
WAC 181-82-303	Designated arts: Dance—All levels, primary.
WAC 181-82-304	Designated arts: Dance—All levels (supporting).
WAC 181-82-307	Designated arts: Drama—All levels, primary.
WAC 181-82-308	Designated arts: Drama—All levels, supporting.

WAC 181-82-310	Designated arts: Choral, instrumental, or general music—All levels, primary.	WAC 181-82-336	English/language arts—Secondary, primary.
WAC 181-82-311	Designated arts: Choral, instrumental, or general music—All levels, supporting.	WAC 181-82-338	English as a second language—All levels, primary.
WAC 181-82-312	Designated arts: Visual arts—All levels, primary.	WAC 181-82-339	English as a second language—All levels, supporting.
WAC 181-82-313	Designated arts: Visual arts—All levels, supporting.	WAC 181-82-340	Health/fitness—All levels, primary.
WAC 181-82-314	Designated science: Biology—Secondary, primary.	WAC 181-82-341	Health/fitness—All levels, supporting.
WAC 181-82-315	Designated science: Biology—Secondary, supporting.	WAC 181-82-342	History—Secondary, primary.
WAC 181-82-316	Designated science: Chemistry—Secondary, primary.	WAC 181-82-343	History—Secondary, supporting.
WAC 181-82-317	Designated science: Chemistry—Secondary, supporting.	WAC 181-82-344	Library media—All levels, primary.
WAC 181-82-318	Designated science: Earth science—Secondary, primary.	WAC 181-82-346	Library media—All levels, supporting.
WAC 181-82-319	Designated science: Earth science—Secondary, supporting.	WAC 181-82-348	Mathematics—Secondary, primary.
WAC 181-82-320	Designated science: Physics—Secondary, primary.	WAC 181-82-349	Mathematics—Secondary, supporting.
WAC 181-82-321	Designated science: Physics—Secondary, supporting.	WAC 181-82-350	Middle level, primary.
WAC 181-82-322	Designated career and technical education—Secondary, primary.	WAC 181-82-352	Reading—All levels, primary.
WAC 181-82-324	Designated world languages—All levels, primary.	WAC 181-82-354	Reading—All levels, supporting.
WAC 181-82-326	Designated world languages—All levels, supporting.	WAC 181-82-355	Science—Secondary, primary.
WAC 181-82-328	Early childhood education—Primary.	WAC 181-82-356	Social studies—Secondary, primary.
WAC 181-82-330	Early childhood education—Supporting.	WAC 181-82-360	Special education—All levels, primary.
WAC 181-82-331	Early childhood special education—Primary.		
WAC 181-82-332	Elementary education—Primary.		
WAC 181-82-334	English—Secondary, primary.		
WAC 181-82-335	English—Secondary, supporting.		

WSR 09-07-063**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed March 12, 2009, 2:18 p.m., effective April 12, 2009]

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

Purpose: To align rule with national standards and new system requirements; changing the file time assigned to records delivered by postal service; describing acceptable means of communication; and clarifying the only means to indicate that a debtor is a transmitting utility.

Citation of Existing Rules Affected by this Order: Amending WAC 308-390-102.

Statutory Authority for Adoption: RCW 62A.9A-526.

Other Authority: Chapters 60.68, 60.13, 9A.82 RCW.

Adopted under notice filed as WSR 09-04-079 on February 3, 2009.

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: March 12, 2009.

Nancy Skewis
Administrator

AMENDATORY SECTION (Amending WSR 04-15-100, filed 7/19/04, effective 8/19/04)

WAC 308-390-102 Means to deliver UCC records ~~(delivery)~~ and time of filing. UCC ~~(documents)~~ records may be tendered for filing at the filing office as follows:

(1) Personal delivery, at the filing office's street address between ~~((8:30))~~ 8:00 a.m. and ~~((4:30))~~ 5:00 p.m., Monday through Friday except state holidays. The file time for a UCC ~~(document)~~ record delivered by this method is when the UCC ~~(document)~~ record is ~~((received))~~ first examined by ~~((the))~~ a filing ~~((office-))~~ officer for processing, even though the UCC ~~(document)~~ record may not yet have been accepted for filing and subsequently may be rejected~~((3))~~.

(2) ~~((Express mail delivery, at the filing office's street address during regular business hours. The file time for a UCC document delivered by this method is 5:00 p.m. on the day of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business.))~~ Courier delivery at the filing office's street address. Delivery by courier is considered personal delivery under subsection (1) of this section and the same rules apply.

(3) Postal service delivery, to the filing office's mailing address. The file time for a UCC ~~(document)~~ record delivered by this method is ~~((5:00 p.m. on the day of delivery-))~~ when the UCC record is first examined by a filing officer for processing, even though the UCC ~~(document)~~ record may not yet have been accepted for filing and subsequently may be ~~((subsequently))~~ rejected~~((3))~~. ~~((A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business.))~~

(4) Electronic mail and telefacsimile delivery~~((to the filing office's e-mail address or the filing office's fax filing telephone number.))~~ are not accepted.

(5) Electronic filing. ~~((Financing statements))~~ UCC records may be ~~((entered on-line after July 1, 2001, as described in WAC 308-390-313 and 308-390-315))~~ transmitted electronically using the XML Format prescribed by the filing office. The time of filing of a ~~((financing statement delivered by direct on-line access or by web page data entry))~~ UCC record delivered by this method is the time ~~((that))~~ the filing office's information management system ~~((analyzes the relevant transmission.))~~ determines that all the required elements of the transmission have been received in ~~((a))~~ the required format~~((, and acknowledges acceptance to that system))~~.

(6) Direct web page data entry. UCC records may be delivered by on-line data entry using the filing office's web site on the internet. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(7) Means of communication. Regardless of the method of delivery, information in UCC records communicated to the filing office must be machine-readable and only in the form of characters included in the American National Standards Institute (ANSI) character set 0-255. Handwriting is not an acceptable means of completing any UCC form.

(8) Transmitting utility. The only means to indicate to the filing office that an initial financing statement is being filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of lapse date, is to check the appropriate box on a UCC1 Addendum filed with the initial financing statement or by transmitting the information in the proper field in an electronic filing of the initial financing statement.

WSR 09-07-070

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed March 13, 2009, 11:28 a.m., effective April 13, 2009]

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

Purpose: As part of the liquor control board's on-going rules review process, chapter 314-60 WAC has been reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-60-020, 314-60-030, 314-60-050, 314-60-060, 314-60-105, 314-60-120, 314-60-130 and 314-60-140; and amending WAC 314-60-010, 314-60-040, 314-60-070, 314-60-080, 314-60-090, 314-60-100, and 314-60-110.

Statutory Authority for Adoption: RCW 66.08.030, 34.05.220, 42.56.40 [42.56.040].

Adopted under notice filed as WSR 09-03-076 on January 15, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 314-60-100(2), a reference to RCW 42.56-070 was added to the language.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 8, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 8, Repealed 8.

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

Date Adopted: March 11, 2009.

Lorraine Lee
Chairman

AMENDATORY SECTION (Amending WSR 94-03-060, filed 1/14/94, effective 2/14/94)

WAC 314-60-010 Purpose—Washington state liquor control board. ~~((+))~~ The purposes of this chapter ~~((is))~~ are to ~~((comply with the provisions of chapter 42.17 RCW dealing with public records.~~

~~(2) The "Washington state liquor control board," pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor with the consent of the senate, for terms of six years that are staggered so that an appointment or reappointment is made every two years. The "Washington state liquor control board" shall sometimes hereinafter be referred to as the "board." Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor control board.)~~

(1) Describe the organization of the liquor control board (LCB):

(2) Ensure that LCB complies with laws governing the disclosure (release) of public records; and

(3) Explain how an individual or organization can obtain public records.

NEW SECTION

WAC 314-60-015 Agency description—Contact information—Public records officer. (1)(a) The board is an agency created to exercise the police power of the state in administering and enforcing all of the laws and regulations relating to alcoholic beverage control (Title 66 RCW). The board issues licenses to persons who handle liquor; collects taxes imposed on liquor; and distributes and sells spirituous liquor.

(b) The board is responsible for enforcing laws preventing access to tobacco products by persons under the age of eighteen years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

(2) The "Washington state liquor control board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor with the consent of the senate, for terms of six years that are staggered so that

an appointment or reappointment is made every two years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor control board.

(3) The board delegates certain administrative functions to an administrative director appointed by the board.

(4) The Washington state liquor control board is organized into six divisions:

- (a) The director's office;
- (b) Licensing and regulation;
- (c) Enforcement and education;
- (d) Administrative services;
- (e) Business enterprise; and
- (f) Human resources.

(5)(a) The administrative offices of the Washington state liquor control board are located at 3000 Pacific Avenue Southeast, Olympia, Washington 98504-3080.

(b) LCB staff is also located at:

- (i) The distribution center, 4401 East Marginal Way South, Seattle, Washington;
- (ii) State liquor stores in areas throughout the state; and
- (iii) Enforcement offices maintained in major cities throughout the state.

(c) LCB contracts with individuals to sell liquor on commission. These contract liquor stores are located in areas throughout the state.

(d) Exact locations of state liquor stores, contract liquor stores, enforcement offices, and contact number are located on the LCB home page at www.liq.wa.gov.

(6) Any person wishing to access LCB public records should contact the LCB's public records officer:

Public Records Officer
Liquor Control Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1714
Fax 360-664-9689
e-mail publicrecords@liq.wa.gov

Information is also available on the LCB web site at www.liq.wa.gov.

(7) The public records officer will oversee compliance with the act and the implementation of the LCB's rules and regulations regarding release of public records, coordinating the staff of the public records unit and the LCB employees in this regard, and generally coordinating compliance by the LCB with the public records disclosure requirements of chapter 42.56 RCW. The public records officer will provide the "fullest assistance" to requestors; create and maintain for use by the public and LCB officials an index to public records of the LCB; ensure that public records are protected from damage or disorganization; and to prevent public records requests from causing excessive interference with essential functions of the LCB.

AMENDATORY SECTION (Amending WSR 02-10-006, filed 4/19/02, effective 5/20/02)

WAC 314-60-040 Operations and procedure. The general course and method by which the operations of the

board are channeled and determined are illustrated by the following:

(1) An organizational chart is available from the board's public records office which illustrates the general structure (~~and composition~~) of the board's operations.

(2) Board procedures relating to hearings involving alleged violations of the liquor act and/or revised rules and regulations of the board are covered in chapter ~~((314-04))~~ 314-42 WAC (~~and in chapter 314-08 WAC Practice and procedure~~).

(a) General information pertaining to formal hearings is available from the board's public records office.

(b) Forms of notice of board action proposing to suspend a liquor license are available from the board's public records office.

(3) Pursuant to the requirements of the Open Public Meetings Act (chapter 42.30 RCW) all determinations and business of the board, except matters which are exempt from the act under RCW 42.30.140, or properly conducted in executive session, pursuant to RCW 42.30.110, will be made and conducted in meetings open to the public. The board holds regular meetings as published with the office of the code reviser per RCW ~~((43.30.075 [42.30.075]))~~ 42.30.075 and as published on the board's internet site at www.liq.wa.gov. Generally, the ~~((board's regular meetings are held on Wednesdays. It is the board's intent to hold its regular board meetings on the first and third Wednesdays of the month. Unless notice is otherwise given, meetings of the board will be held at its offices in the board room at 3000 Pacific Avenue Southeast, Olympia, Washington))~~ board will conduct business at regular meetings on Monday, Tuesday, and Wednesday of each week at a place and time selected by the board and published with the Washington State Register and posted on the liquor control board web site. Occasionally the board may deem it necessary to conduct business on a Thursday and/or Friday, during these occasions, stakeholder notification will occur. For scheduling purposes, it is the board's intent to schedule petitions, take public testimony, take rule making actions, and adopt resolutions at its regular Wednesday board meetings.

AMENDATORY SECTION (Amending Order 22, filed 4/17/73, effective 5/18/73)

WAC 314-60-070 (~~Office hours~~) **Availability of public records.** (1) **Hours for inspection of records.** Public records (~~shall be~~) are available for inspection and copying at the main office of the board during (~~its customary office~~) normal business hours (~~For the purpose of this chapter, the customary office hours shall be~~) of the LCB, Monday through Friday, from 8 a.m. to (noon and from 1 p.m. to) 4 p.m., (Monday through Friday,) excluding legal holidays.

(2) **Records index.** An index of public records is available for use by members of the public, including:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency.

(c) Administrative staff manuals and instructions to staff that affect a member of the public.

(d) Planning policies and goals, and interim and final planning decisions.

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others.

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) **Organization of records.** The LCB will maintain its records in a reasonably organized manner. The LCB will take reasonable actions to protect records from damage and disorganization. A requestor shall not take LCB records from LCB offices without the permission of the public records officer. A variety of records is available on the LCB web site at www.liq.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 94-03-060, filed 1/14/94, effective 2/14/94)

WAC 314-60-080 **Making requests for public records.** (~~In accordance with requirements of chapter 42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be obtained by members of the public at the main office of the board upon compliance with the following procedures:~~) An individual may request a public record orally or in writing. The board encourages that all public record requests be in writing and may be sent via e-mail.

(1) (~~A request may be made in writing:~~) A form prescribed by the board (~~shall be~~) is available at its main office. The written request or prescribed form shall be submitted or presented to the public records officer (~~or to any member of the board's staff, if the public records officer is not available, at the main office of the board during customary office hours~~). The request (~~shall~~) should include the following information:

(a) The name (~~and~~), organization, mailing address, telephone number, fax number, and e-mail address of the person requesting the record.

(b) The time of day and calendar date on which the request was received at the main office of the board.

(c) (~~The nature of the request:~~) A detailed description of the public record being requested.

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described.

(e) (~~If the requested matter is not identifiable by reference to the board's current index, an appropriate description of the record requested:~~) The address where copies of the

record are to be mailed, or that the requestor wants to examine the record at the LCB.

(2) (In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.) If the public records officer accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

(3) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Standard photocopies will be provided at fifteen cents per page. (See WAC 314-60-090.)

(4) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party (or when a request is made by or on behalf of an attorney for a party) the request shall be referred to the assistant attorney general assigned to the board for an appropriate response.

NEW SECTION

WAC 314-60-085 Processing public records requests. (1) The public records officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection and copying;

(b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the LCB believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is

not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the LCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the LCB's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the LCB may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) **Providing copies of records.** After inspection is complete, the public records officer shall make the requested copies or arrange for copying.

(7) **Providing records in installments.** When the request is for a large number of records, the public records officer will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer will indicate that the LCB has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the LCB has closed the request.

(10) **Later discovered documents.** If, after the LCB has informed the requestor that it has provided all available records, the LCB becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 314-60-087 Processing public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by WAC 314-60-090.

(3) **Customized access to data bases.** With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The LCB may charge a fee consistent with RCW 43.105.280 for such customized access.

AMENDATORY SECTION (Amending Order 22, filed 4/17/73, effective 5/18/73)

WAC 314-60-090 (~~Copying~~) Costs of providing copies of public records. (1) No fee shall be charged for the inspection of public records. (~~The board will impose a reasonable charge for providing copies of public records and for the use of the board's equipment to copy its public records, such charges will not exceed the amount necessary to reimburse the board for its actual costs incident to such copying.~~)

(2) After the first one hundred free copies, the board charges one or more of the following fees for copies of public records:

(a) Up to fifteen cents per page for black and white photocopies of a record;

(b) The actual cost of manuals, blueprints, and other non-printed materials such as CDs, audio tapes, or video tapes;

(c) Up to fifteen cents per page for scanning existing WSLCB paper or other nonelectronic records. There will be no charge for e-mailing electronic records to a requestor, unless a scanning fee applies; and

(d) The cost of postage, when items are mailed. (See RCW 42.56.070.)

AMENDATORY SECTION (Amending Order 56, filed 5/31/77, effective 7/1/77)

WAC 314-60-100 Exemptions. (1) (~~The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 314-60-080 is exempt under the provisions of chapter 42.17 RCW.~~)

(2) In addition, pursuant to chapter 42.17 RCW, the board reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.) The Public Records Act (chapter 42.56 RCW) provides that a number of types of documents are exempt from public

inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by WSLCB for inspection and copying:

(a) **Autopsy, post mortem or medical examiner reports.** Requests for these records should be referred to the agency which originated the record(s): Coroner's office, medical examiner's office, etc. (RCW 68.50.105)

(b) **Claim file information.** On any industrial insurance claim. (RCW 51.28.070)

(c) **Criminal history reports.** Concerning nonconviction data. Law enforcement agency reports should be referred to the agency that originated the report. (RCW 10.97.080)

(d) **Crime victims.** Files and information. (RCW 7.68.-140)

(e) **Individual purchases.** All records whatsoever of the board showing purchases of liquor by any individual or establishment. (RCW 66.16.090)

(f) **Medical records and data.** Medical records, drug records, accident victims and other persons to which LCB has access. (RCW 42.56.360(2) and chapter 70.02 RCW)

(g) **Social Security numbers.** (RCW 42.56.250(3) and 42 U.S.C. Section 405 (c)(2)(C)(vii)(1))

(h) **Trade secrets.** As defined in RCW 19.108.010, including blueprints, diagrams, drawings, formulas, photos, etc., requested to be held confidential by the affected person. Should be labeled "RESTRICTED TRADE INFORMATION." (RCW 39.10.470(2) and 49.17.200)

(i) Special order requests and records of purchases by any person or persons, including spirits, beer, and wine restaurant licensees. (See RCW 66.16.090.)

(j) Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.-206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)

(k) Financial or proprietary information supplied to the board by a licensed Washington liquor retailer containing the identity and amount of beer or wine purchased directly from a domestic winery, brewery, microbrewery, or a certificate of approval holder with a direct shipping to Washington retailer endorsement. (See RCW 66.24.210, 66.24.290, and 42.56.-270.)

(2) The WSLCB is prohibited by statute from disclosing lists of individuals for commercial purposes. (See RCW 42.56.070.)

(3) Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The LCB will not charge sales tax when it makes copies of public records.

AMENDATORY SECTION (Amending WSR 94-03-060, filed 1/14/94, effective 2/14/94)

WAC 314-60-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records ((~~officer or other~~)) staff member which constituted or accompanied the denial. Send your written petition for review to:

Public Records Officer, Public Records Unit
P.O. Box 43080
Olympia, Washington 98504-3080
360-664-1714
jdk@liq.wa.gov

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer ((~~or other staff member denying the request~~)) shall refer it to the ((~~board chairman, or in his absence, a member of the board~~)) administrative director. The ((~~board chairman or member, as the case may be,~~)) administrative director shall immediately consider the matter and either affirm or reverse such denial ((~~or call a special meeting of the board as soon as legally possible to review the denial~~)). ((~~In any case,~~)) The request shall be returned with a final decision, within two business days following the LCB's receipt of the request for review of the original denial, or within such other time as the LCB and the requestor mutually agree to.

(3) ((~~Administrative remedies shall not be considered exhausted until the board has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever first occurs.~~)) If the LCB denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 314-60-020 Definitions—Public records—Writing.
- WAC 314-60-030 Description of central and field organization of Washington state liquor control board.
- WAC 314-60-050 Public records available.
- WAC 314-60-060 Public records officer.
- WAC 314-60-105 General guidelines—Exempt records.
- WAC 314-60-120 Protection of public records.

WAC 314-60-130

Records index.

WAC 314-60-140

Communications and submissions relating to public records.

WSR 09-07-075
PERMANENT RULES
DEPARTMENT OF LICENSING
 (Vehicle Services Division)
 (Prorate and Fuel Tax Administration)

[Filed March 16, 2009, 10:55 a.m., effective April 16, 2009]

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

Purpose: Changes in this rule are in accordance with Executive Order 97-02 regulatory improvement and the Executive Order 05-03 on plain talk. The rule has been changed so it is easier to understand as well as removed any redundancy or obsolete language.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-77-092, 308-77-093, 308-77-097, 308-77-101, 308-77-107 and 308-77-170; and amending WAC 308-77-005, 308-77-015, 308-77-025, 308-77-035, 308-77-04401, 308-77-075, 308-77-085, 308-77-099, 308-77-103, 308-77-104, 308-77-106, 308-77-109, 308-77-112, 308-77-114, 308-77-116, 308-77-155, 308-77-240, 308-77-265, 308-77-280, and 308-77-290.

Statutory Authority for Adoption: RCW 82.38.260.

Adopted under notice filed as WSR 09-01-076 on December 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 21, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 24, 2009.

Mykel D. Gable
 Assistant Director
 Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-005 Definitions. (1) "Special fuel" as defined in RCW 82.38.020(23) includes diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor

vehicle on the highways except fuel that is subject to the tax imposed by chapter 82.36 RCW.

(2) "Biodiesel" a nonpetroleum-based diesel fuel consisting of short chain alkyl (methyl or ethyl) esters, made by transesterification of vegetable oil or animal fat (tallow), which can be used alone, or blended with conventional petrodiesel in unmodified diesel-engine vehicles.

(3) "Publicly owned fire fighting equipment" means equipment owned and used ((exclusively)) for fire fighting by any agency or political subdivision of the state of Washington and will include fire engines, aid cars, ambulances, and vehicles used to transport fire fighting personnel.

~~((3)) "Farmer" means any person engaged in the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (except forestry or forestry operations), the raising of livestock, bees, fur bearing animals, or poultry, and any practices performed on a farm as an incident to or in conjunction with such farming operations.~~

(4) "Logging company" means any person engaged in the business of cutting timber.

~~(5) "Construction company" means any person, firm, partnership or corporation who or which is engaged in the business of a contractor.~~

~~(6) "Contractor" means any person in the pursuit of an independent business that undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, improvement attached to real estate, including the installation of carpeting and/or floor covering, the erection of scaffolding, roofing and siding.~~

~~(7)) (4) "Export" means to obtain special fuel in this state for sale or distribution outside this state. To be considered an "export" and qualify for exemption from the special fuel tax, special fuel obtained outside the bulk transfer terminal system must be physically off-loaded in the destination state, province, or foreign country ((and)). The exporter must be licensed or registered, if required, in the state, province, or country of destination.~~

~~((8)) "Special fuel supplier" means a person who is licensed as a supplier under chapter 82.38 RCW and must hold a federal certificate of registry issued under the Internal Revenue Code authorizing the person to enter into federal tax free transactions on special fuel in the bulk transfer terminal system.~~

~~(9)) (5) "Invoice" means any document, paper or electronic, evidencing the transfer of ownership of special fuel.~~

(6) "Net gallons" a standard gallon unit of petroleum of 231 cubic inches at 60 degrees Fahrenheit (U.S. petroleum gallon).

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-015 Incidental use((#)) or exemptions.

(1) **When is ((fuel used during)) the incidental operation of a nonlicensed vehicle exempt the special fuel tax?** Fuel is exempt the special fuel tax if the vehicle is not licensed or required to be licensed under chapter 46.16 or 46.87 RCW

and is operated between two pieces of private property for a distance not exceeding fifteen miles. The movement of the vehicle must be incidental to the primary use of the vehicle.

~~(2) ((Are there any circumstances in which)) **When is off highway fuel use ((is considered)) taxable?** If fuel is used in ((the operation of a motor vehicle in)) a continuous trip, which is partly on and partly off the highway, the tax applies to all the fuel used ((including the fuel used in the operation off the highway)) when the total distance traveled off the highway does not exceed one mile.~~

~~A continuous trip ((means a vehicular movement involving)) involves the use of a highway for the transportation of persons or property from one place to another, or, in ((the instance of)) a round trip, from the ((point of)) origin ((of the movement)) to the ((point of)) destination and return to the ((point of)) origin.~~

~~(3) **Are cash sales to qualified foreign ((diplomatic)) diplomats and consular missions tax exempt?** ((Tax exempt sales of special fuel may be made to qualified foreign diplomatic, consular missions and their qualified personnel if the diplomatic, consular missions, and qualified personnel maintain tax exempt credit card accounts. Special fuel purchased by cash is not tax exempt.~~

~~(4) **What is required for a licensee to issue a credit card to qualified foreign government personnel?** Application must be accompanied by Form DSP-99A, issued by the Office of Foreign Missions, United States Department of State, and approved by that office.)) No, only credit card purchases are exempt.~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

~~**WAC 308-77-025 ((Issuance of license.)) **Special fuel permits. ((1) If I have separate businesses at different locations or more than one fleet of vehicles, can I obtain more than one license?** Yes. Fuel tax licensees who conduct business at separate locations or operate more than one fleet of vehicles may request a license for each separate business location and/or fleet.**~~

~~(2)) **When is a special fuel ((tax trip)) permit required?** If you are not an International Fuel Tax Agreement (IFTA) licensee, you must purchase a special fuel ((tax)) permit ((must be purchased)) when entering this state if the commercial vehicle being operated has:~~

~~((a)) (1) Two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or~~

~~((b)) (2) Three or more axles regardless of weight; or~~

~~((c)) (3) Is a combination of vehicles, when the combined gross vehicle weight or registered gross vehicle weight exceeds twenty-six thousand pounds.~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-035 Cancellation, suspension, or revocation of special fuel license((e))s((t)). ((1) Under what circumstances will my special fuel license be canceled? A license may be canceled by the department under the following circumstances:

(a) Upon written request of the licensee. The cancellation will become effective within sixty days from receipt of the written request.

(b) Upon investigation and sixty days' notice to the licensee if the department determines the licensee is no longer engaged in the sale or distribution of special fuel for a period of six consecutive months prior to the cancellation.

(c) Upon failure to file a new or additional surety bond or to make deposits in accordance with RCW 82.38.130, or when the surety bond issuer requests to be released or discharged.

(d) Upon failure to file a new or additional surety bond or to deposit additional securities within thirty days after being requested to do so by the department.

~~(2) How do I request to have my license canceled? A written request for cancellation and any required tax returns up to the date of cancellation must be forwarded to the department with a remittance of any tax, penalty and interest due.~~

~~(3) Under what circumstances may my license be suspended or revoked? A license suspension or revocation is initiated by the department for cause as defined in chapter 82.38 RCW.~~

~~(4)) What happens when my license is canceled, suspended, or revoked? The department will notify all special fuel ((suppliers, importers, exporters, blenders and distributors)) licensees, except for IFTA, of the change in license status.~~

AMENDATORY SECTION (Amending WSR 02-02-010, filed 12/20/01, effective 1/20/02)

WAC 308-77-04401 Waiving of bond requirements.

(1) **Can the department waive the requirement to maintain a fuel tax bond?** Yes((-), if the department ((may waive the bonding requirement of a licensed distributor if, upon determination by the department,)) determines that the licensed distributor has sufficient financial ((instruments)) assets to ((extinguish)) cover any Washington state fuel tax liability, including penalties and interest((- incurred while acting as a licensed distributor)).

(2) **What is considered a financial ((instrument)) asset?** ((For purposes of this rule, a financial instrument is either:))

(a) A line of credit with a financial institution or supplier covering the cost of product and fuel tax liability ((incurred by the distributor:)); or

(b) ((Lawful money of the)) United States dollars, ((or)) bonds, or other obligations of the United States, the state, or any county of the state, deposited with the state treasurer.

(3) **How can I qualify to have my bonding requirement waived?** ((You may qualify to have your bonding requirement waived upon:))

(a) By filing a notarized statement with the department stating that your line((s)) of credit with your financial institution((s)) and your fuel supplier((s)) is at a sufficient amount to include product cost and state fuel taxes. You must ((indicate)) list the name of the financial institution((s)), the account number((s)) and dollar value of your line((s)) of credit, and the name((s)) of your

fuel supplier((s)). You must authorize the department to access this information with your financial institution((s)) and supplier((s)) ~~(for verification purposes);~~ or

(b) Depositing in a financial institution an amount equal to the estimated monthly fuel tax payments and assigning this deposit to the department((-) as security for performance under chapter 82.38 RCW; and

(c) Providing the department with ((documentation;)) satisfactory ((to the department,)) documentation indicating that the supplier((s)) will not allow the licensed distributor to incur a liability, including fuel tax, in excess of the line((s)) of credit((- if applicable)).

(4) **What if the department denies my request for a waiver of the bond requirement?** You can appeal this decision as provided in chapters 82.38 RCW and 308-77 WAC.

(5) **What if I no longer maintain a line of credit or financial ((instrument)) asset?** You must provide a surety bond to the department in the amount required by chapter 82.38 RCW, with a coverage ((commencement date)) beginning on or before the date the line of credit or financial ((instrument was extinguished)) asset became insufficient.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-075 Payment due dates for special fuel taxes not paid by electronic funds. ~~((+)) What if ((the)) my payment due date falls on a Saturday, Sunday, or state legal holiday ((and payment is by electronic funds transfer))?~~ ((If you are paying your special fuel tax by electronic funds transfer, you must transfer the funds by the state business day immediately preceding the due date. (-)) Payment is due on the next state business day. For example, if the payment due date falls on Saturday, ~~((you must transfer the funds by Friday.))~~

~~(2) What if my payment is not made by electronic funds transfer?~~ If you are not paying your special fuel tax by electronic funds transfer, then payment is due on the next state business day. ~~((For example, if the payment due date falls on Saturday, you must submit payment by Monday.))~~ the payment must be postmarked by Monday.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-085 Minimum ((tax)) payment((-) or refund. (1) What is the minimum ((tax)) payment or refund for licensed accounts? ((Each tax return that declares a tax liability of ten dollars or less need not make remittance; conversely, a refund of ten dollars or less will not be issued. A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action:)) Ten dollars or less will not be owed or refunded.

(2) What is the minimum refund for unlicensed refund claims? Claims for less than twenty dollars will not be refunded.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-099 Invoices issued by licensees. (1) **When is an invoice issued?** Every licensee (~~(shall)~~) must issue an invoice at the time of sale. If an electronic invoice is issued, a paper copy of the invoice (~~(or other documentation containing)~~) is required (~~(information must be produced if required by the department or)~~) to support a refund claim.

(2) **What information (~~(must appear on each)~~) is required on an invoice?** (~~(Each invoice must include the following information:)~~)

- (a) The name and address of the seller;
- (b) The name, address, and special fuel tax license number, if applicable, of the purchaser;
- (c) The date of delivery (~~(of)~~) month, day, and year(~~(s)~~);
- (d) The location of the point of shipment. Alphanumeric codes are allowed if the definition(~~(s of the alphanumeric codes)~~) keys are provided to the department;
- (e) The physical address of the fuel delivery or exchange, if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are allowed if the definition(~~(s of the alphanumeric codes)~~) keys are provided to the department;
- (f) In the case of a delivery (~~(onto)~~) into a federally recognized Indian reservation or onto Indian country, the invoice must identify the state (~~(within the contiguous United States, Hawaii, Alaska, District of Columbia)~~), U.S. possession, or Canadian Province in which the delivery took place;
- (g) Name of carrier transporting fuel;
- (h) Name of product sold;
- (i) The number of U.S. gallons of product sold (~~(must indicate)~~) in net or gross gallons(~~(s)~~);
- (j) The price per gallon and total amount charged; and
- (k) A statement on the invoice indicating (~~(whether)~~) if the fuel has been sold without the Washington state fuel tax.

(3) **What happens if a purchaser's invoice is lost or destroyed?** (~~(If an invoice is lost or destroyed,)~~) The seller (~~(shall)~~) can issue a duplicate or copy containing all information (~~(that appeared)~~) on the original invoice, if requested by the purchaser. The copies (~~(shall)~~) must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

~~((5) **What documentation does a licensed supplier, importer or blender need in order to support taxable special fuel consumed for their own use?** Fuel used in motor vehicles or for other taxable purposes by a licensed supplier, importer or blender shall be supported by records covering the total fuel used during the reporting period.~~

~~(6) **What documentation does a distributor need in order to claim a refund for nontaxable use of special fuel?** If special fuel is used for a purpose subject to tax refund, the distributor must have supporting invoices or records indicating the use of the special fuel and the type(s) of equipment it is used in-)~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-103 Mitigation of penalties and interest. (1) (~~(Under)~~) **What (~~(circumstances may a)~~) fee, penalty (~~(and)~~) or interest may be mitigated or reduced?** The department (~~(, in its discretion,)~~) may mitigate (~~(, extinguish, and/or adjust)~~) fees, penalties, dyed special fuel penalties, (~~(and/)~~) or interest (~~(arising from late or missing fuel tax returns, unpaid or underpaid taxes, lack of complete records to support reported fuel usage, license revocation penalties, assessments, lack of complete records, and/or the unlawful use of dyed special fuel)~~) from:

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage;
- License reinstatement fees;
- Assessments; or
- Unlawful use of dyed special fuel.

(2) **How will the department (~~(determine whether fees, penalties and/or interest should be mitigated)~~) make the decision?** The department may review records, account history, or other information (~~(in arriving at its decision to mitigate)~~).

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-104 Filing of refund claims for nonlicensees. (1) **How do I apply for a refund?** (~~(Any person claiming a refund of the special fuel tax must make application to the department and be issued a refund permit number-)~~) Contact the department for a refund permit application and instructions.

(2) (~~(When)~~) **What time period can I file for a refund claim?** (~~(A refund claim may be filed at any time not to exceed a thirteen-month time limit from the date of purchase. If you claim a refund for fuel purchased in any month of a claimed period, you may not claim additional purchases for that month on another claim. The department will use the postmark date to determine the eligibility of the claim.)~~) You must file within thirteen months of the fuel purchase date. The department will use the postmark date to determine the thirteen-month time frame. We will not accept multiple refund claims for the same month. For example, if you have made a claim for purchases in June you cannot claim additional purchases for June on another claim form.

(3) **What do I need to send (~~(in my invoices)~~) with (~~(the)~~) my refund claim (~~(request)~~)?** (~~(If your refund claim request is one hundred dollars or less, you do not have to send your purchase invoices with your refund claim unless required by the department. If your refund claim request is more than one hundred dollars, purchase invoices are required. If electronic invoices were issued to the claimant, paper copies of the invoices or other documentation containing required information must be submitted with the refund claim-)~~) You must send in your fuel purchase invoices, schedules, and other documents listed on the refund claim form. If electronic invoices were issued, you must provide paper copies.

(4) **How ~~((shall))~~ do I account for my inventory ~~((on my refund claim form))~~?** Any fuel on hand ~~((by physical measurement))~~ at the end of the claim period, should be ~~((indicated on the claim))~~ reported as ending inventory ~~((and should be reported as a beginning inventory on the next refund claim form. Credit for the inventory will be allowed on the next claim if it is filed within thirteen months from the filing date of the claim that established the inventory. All invoices for the total fuel purchased must be submitted with each claim unless the amount of the claim is one hundred dollars or less)).~~ This figure should be reported as the beginning inventory on your next claim form.

(5) **~~((As))~~ What does a licensed distributor ~~((do I need to))~~ send ~~((in supporting summary schedules and invoices with my))~~ with their refund claim ~~((request))~~?** ~~((Yes.))~~ Summary schedules must be provided ~~((by the distributor. Invoices may be requested by the))~~ and the department may request invoices.

(6) **~~((Who may))~~ The following can sign a refund claim form** ~~((? The following persons may sign a refund claim form))~~:

- (a) Individuals - permit holder;
- (b) Partnership - any one of the partners;
- (c) Business firm or corporation - owner, corporate officer or other authorized agent.

(7) **Can invoices ~~((be in))~~ have a different name than what is on the claim form?** ~~No~~ ~~((invoices made out in other names will not be accepted)).~~

(8) **Can I request that my refund be assigned to another person?** Yes, if we receive a letter ~~((of assignment is attached, signed by the person to whom the invoice was issued, designating the payee))~~ stating whom you would like the claim assigned to.

(9) **How long will it take until I receive my refund?** ~~((Properly completed refund claims will be processed and mailed))~~ Within thirty business days ~~((of date of receipt))~~ after we receive a properly completed claim.

(10) **How long do I maintain my refund records?** Keep them for five years after submitting your claim.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-106 Use tax for refunds. (1) **Is use tax deducted from my refund claim?** Yes, ~~((the use tax may be deducted from your fuel tax refund amount as imposed by))~~ unless you are exempt from the use tax in chapter 82.12 RCW.

(2) **How is use tax computed?** ~~((The claimant may))~~ You can choose to:

- Calculate the use tax amount using the actual use tax rate ~~((s))~~ and actual cost per gallon; or
- Have the department ~~((will))~~ calculate the use tax amount using an average use tax rate and ~~((average))~~ price per gallon.

Either method chosen ~~((by the claimant))~~ must be used for each refund claim submitted during ~~((a))~~ the calendar year, unless there has been a change in the department's estimated average fuel cost during that period. ~~((If computed by the department, the department will use an estimate of the~~

~~statewide average fuel cost and an estimated use tax rate. The statewide average cost and use tax rate will be reviewed every six months and adjusted as necessary. If there is any dispute over the method of calculation, the taxpayer will be required to use actual cost of the fuel and use tax rate(s).))~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-109 Invoice requirements for refund to nonlicensees and IFTA licensees. (1) **What ~~((are the))~~ is a valid invoice ~~((requirements))~~?** ~~((The seller of special fuel is required to issue to each purchaser separate invoices for each purchase of fuel. However,))~~ A separate invoice must be issued for each fuel purchase. A single invoice ~~((covering))~~ may list multiple deliveries of fuel purchases made during a ~~((period of time not to exceed one))~~ calendar month ~~((may constitute a separate invoice as required by this subsection. Provided, That each delivery is individually listed on the invoice or on an accompanying statement in accordance with the requirements of this subsection for single deliveries)).~~

(2) **~~((What))~~ The following information must be included on the invoice** ~~((? Each invoice must contain the following information))~~:

- (a) Name and address of the seller;
- (b) ~~((Kind of))~~ The type of fuel and number of gallons purchased;
- (c) Complete date of sale ~~((including month, day, and year))~~;
- (d) Price per gallon; and
- (e) Total amount of sale.

(3) **~~((Will))~~ The department will not accept invoices with altered, corrected, or erased information** ~~((? Invoices which indicate alterations, corrections or erasures shall be voided and will not be accepted. Any person who alters any part of an invoice that will tend to give the claimant an illegal gain may have the entire claim invalidated and the director may suspend any further claims for refund for a period of one year. If an electronic invoice was issued, then a paper copy of the electronic invoice or other documentation containing required information must be submitted)).~~

(4) **What happens if ~~((an invoice is lost or destroyed))~~ the seller issues an electronic invoice?** ~~((If an invoice is lost or destroyed, the seller may issue a duplicate or copy containing the invoice number, date of sale, gallonage, price and amount, and any information that appeared on the first invoice. The copies shall be plainly marked "copy" or "duplicate.")~~ A paper copy must be submitted with your refund claim.

(5) **What happens if I ~~((issued))~~ get an incorrect invoice ~~((to the purchaser))~~?** The seller ~~((s of fuel must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice. Only one invoice shall be issued for any one delivery))~~ must issue a new invoice marked "correction" and reference the original.

(6) **What happens if I lose or destroy my invoice?** The seller may issue a copy. The copies must be plainly marked "copy" or "duplicate."

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-112 Power take-off (PTO) use. (1) **What is ~~((power take-off))~~ PTO use?** It is fuel used in a motor vehicle engine to operate auxiliary equipment ~~((provided that))~~. The fuel ~~((used is))~~ must be supplied from the propulsion tank of the motor vehicle.

(2) **What is not considered auxiliary equipment?** Equipment ~~((that is considered an integral part of the operation of the vehicle,))~~ such as air conditioning, power steering, generator, etc., that is considered an integral part of the operation of the vehicle.

(3) **What formula does the department use in determining ~~((power take-off))~~ PTO usage?** ~~((For special fuel used in operating a power take-off unit on any of the vehicles listed herein when direct measurement is not feasible,))~~ The tax exemption is calculated ~~((at the rate specified))~~ as a percentage of the total Washington taxable fuel ~~((used by the vehicles))~~:

Cement mixer	25%
Fire trucks (private)	25%
Mobile cranes	25%
Garbage trucks (with load compactor)	25%
Sewer cleaning truck/jet vactor	25%
Super suckers	25%
Line truck with digger/derrick or aerial lift	20%
Log truck with self loader	20%
Refrigeration trucks	20%
Sweeper trucks (must be motor vehicle)	20%
Boom truck/block boom	15%
Bulk feed truck	15%
Dump trailers	15%
Dump trucks	15%
Hot asphalt distribution truck	15%
Leaf truck	15%
Lime spreader	15%
Pneumatic tank truck	15%
Salt spreader on dump truck	15%
Seeder truck	15%
Semiwrecker	15%
Service truck with jack hammer/drill	15%
Snow plow	15%
Spray truck	15%
Tank transport	15%
Tank trucks	15%
Truck with PTO hydraulic winch	15%
Wrecker	15%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
Others	7.5%

(4) **What if my fuel consumption is greater than the percentages indicated above?** If ~~((a claimant))~~ you can provide satisfactory documentation and records to show that the fuel consumed by the ~~((power take-off))~~ PTO is greater than the percentages indicated, the department may grant the higher percentage on a case-by-case basis.

(5) **What documents must accompany the refund claims?** All claims must be accompanied by valid purchase invoices to cover the total gallons of special fuel purchased, except that invoices for special fuel used in fuel oil delivery trucks or when measured by a metering device need only be equal to or greater than the gallons claimed as refundable. A support schedule for Washington ~~((power take-off))~~ PTO and power pumping credits ~~((shall))~~ must accompany each claim for refund.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-114 Unauthorized use of dyed diesel.

(1) **Is there any dye concentration in diesel fuel ~~((for which))~~ that the department cannot assess penalties for unlawful use?** No. The department may assess on any ~~((dyed diesel fuel))~~ dye concentration found in licensed vehicles, vehicles required to be licensed, or in bulk storage tanks used to fuel licensed or required to be licensed vehicles.

(2) **Who ~~((may the department assess))~~ can be assessed a penalty for unlawful use of dyed diesel?** ~~((The department may assess:))~~

- (a) The operator of the vehicle; ~~((and/or))~~
- (b) The registered owner ~~((s))~~ of the vehicle; ~~((and/or))~~
- (c) Any ~~((other))~~ person ~~((or entity))~~ responsible for the operation, maintenance, or fueling of the vehicle.

(3) **If dyed diesel is discovered in the fuel supply tank ~~((s))~~ of a vehicle ~~((s))~~, when must the fuel be removed ~~((from the involved vehicle(s)))~~?** ~~((The))~~ Dyed diesel fuel must be removed from the vehicle ~~((s))~~ within twenty-four hours from the time of discovery. ~~((Additional violations on))~~ Detection of dyed diesel in the same vehicle ~~((s))~~ ~~((-detected))~~ after the twenty-four-hour period will be considered as a separate violation ~~((s))~~.

(4) **~~((May the department assess))~~ Will I be assessed dyed diesel penalties on the fuel in bulk storage tank ~~((s))~~?** Yes, if ~~((the department determines that))~~ any dyed diesel fuel from the bulk storage tank ~~((s))~~ has been used for unlawful purposes ~~((in any vehicle(s). Fuel remaining in the bulk storage fuel tank(s) will be considered for on highway use)).~~

(5) **How is the dyed diesel fuel in a bulk storage tank ~~((s))~~ assessed?** ~~((Once dyed diesel fuel from bulk storage has been used for unlawful purposes, an))~~ The assessment ~~((will be))~~ is based on the capacity or estimated quantity of dyed diesel fuel in the bulk storage tank ~~((s))~~ without regard to how this fuel will be used.

(6) **What if I refuse the department or authorized representative ~~((is denied))~~ access to inspect the ~~((fuel in diesel))~~ vehicle ~~((s))~~ or bulk storage tank ~~((s))~~?** The penalty in RCW 82.38.170(13) will be ~~((applied to))~~ calculated on the capacity of the bulk storage tank ~~((s))~~.

and~~((or to))~~ the number of vehicles subject to the refusal. ~~((All licenses issued under this chapter may be subject to cancellation and/or revocation under RCW 82.38.120(9) and 82.38.130.))~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-116 Records. (1) What special fuel records must be kept? ~~((+))~~ Every person licensed or required to be licensed ~~((shall))~~ must maintain a complete monthly stock summary of the gallons of special fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary ~~((shall))~~ must be supported by:

(a) Physical inventories of bulk storage plants taken at the close of each calendar month.

(b) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(c) A record of fuel receipts ~~((together with))~~, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.

(d) A record of fuel disbursements ~~((together with))~~, invoices, bills of lading and other documents relative to the disbursement of fuel.

(2) ~~((What records must a licensed dyed special fuel user keep?~~ The recordkeeping requirements of this section also apply to dyed special fuel:

(a) ~~Purchased and used by licensed dyed special fuel users; and~~

(b) ~~Authorized for use on the highway.))~~ **If I am a licensed dyed fuel user or someone who is required to be licensed, do I keep the same records?** Yes.

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

WAC 308-77-155 On board computers or recording devices. Can I use on board computers or recording devices to record mileage? Yes, ~~((the use of on board computers or recording devices for the production of mileage records required by RCW 82.32.140 shall be governed by the requirements or procedures adopted by the International Fuel Tax Agreement (IFTA)))~~ with prior approval by the department.

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

WAC 308-77-240 Refund records ~~((for refund claims)).~~ ~~((+))~~ What records ~~((does the department require each claimant to retain?))~~ do I need to keep to claim a refund of fuel taxes?

• All special fuel receipts ~~((;))~~;

• The gallons of fuel used in each ~~((type))~~ piece of equipment ~~((;))~~, both refundable and nonrefundable ~~((;))~~, other uses, loss and gain, and inventory on hand. ~~The records must indicate the date of receipt or disbursements and identify the equipment into which the fuel is delivered or the purpose for which the fuel is used.))~~

• Fuel inventory in bulk storage;

• Detailed fuel records for all withdrawals from bulk storage;

• Fuel purchased in small containers (ten gallons or less) for nonhighway use must show the type of equipment being used, i.e., boats, tractors, power saws, etc.

Each claimant must also keep on highway and off highway mileage records for each licensed vehicle.

~~((If the claimant maintains electronic invoices, paper copies of these invoices must be produced, upon request of the department. Failure of the claimant to maintain the required records or to comply with the department's request for examination of the records will waive all rights to a refund.~~

~~(2) What additional records must be maintained to support a refund claim for fuel withdrawn from bulk storage? Fuel purchased and delivered into bulk storage must have detailed withdrawal records that account for taxable and nontaxable use.))~~

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

WAC 308-77-265 Tax exempt losses. (1) ~~((What is considered a tax exempt loss?~~ Special fuel lost or destroyed in this state while being transported in the equipment of a licensee or in the equipment of a common or contract carrier for a licensee will be considered as a taxable distribution. Credit for or a refund of the special fuel tax paid may be taken when the licensee or the common or contract carrier furnishes acceptable proof of the exact quantity of fuel lost provided the documents in support of the loss are submitted to the department for approval as provided in RCW 82.38.180.

~~((2)))~~ What is acceptable proof of loss for a credit or refund of fuel tax paid? ~~((Acceptable proof of loss will consist of the following:))~~

(a) ~~((An affidavit))~~ A notarized affidavit by a person having ~~((direct))~~ actual knowledge of the circumstances of the loss ~~((;))~~ explaining the origin and destination of the shipment, the circumstances surrounding the ~~((loss;))~~ quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedure ~~((;))s~~ ~~((;))~~ used in the determination of the quantity of fuel lost; or

(b) A signed statement by a federal ~~((or jurisdictional))~~, state, local or provincial official who has authority to investigate ~~((and/or deal with))~~ fuel ~~((losses or a witness to the))~~ loss; and

(c) A bill of lading or other shipping document ~~((;))s~~ ~~((;))~~; and

(d) A statement by the licensee establishing ownership of the fuel at time of loss.

~~((3)))~~ (2) Are deductions for losses from bulk storage allowed? Yes, special fuel that has been proven lost or destroyed, prior to distribution from a licensee's bulk storage ~~((plant, is allowed as a deduction))~~ facility outside of the bulk transfer terminal system may be considered a tax exempt loss.

~~((4)))~~ (3) How long ~~((shall))~~ do I retain my evidence substantiating my loss? ~~((Documentary evidence substantiating my loss must be retained for a minimum of three years from the date of the loss.))~~

ating losses shall be retained by the licensee for)) Five years from date of claim.

~~((5))~~ **(4) May I claim a deduction for ((unproven losses)) stolen fuel?** No(~~(unproven losses will be considered as a distribution and subject to the fuel tax.~~

(6) Am I liable for fuel taxes if one of my employees or agents cause a loss of fuel? Yes, charges for losses made by employees or agents of the licensee who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be substantiated by proof acceptable to the department).

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

WAC 308-77-280 Natural gas, propane((—))decal as evidence of payment of annual license fees. (1) **Do I pay fuel tax when I purchase natural gas or liquefied petroleum gas (propane) for my licensed vehicle?** No, once you have licensed your vehicle as being powered by natural gas or propane, you will pay an annual license fee in lieu of the fuel tax.

(2) **What proof is required to purchase natural gas or propane for my vehicle?** A decal will be issued that must be displayed on your vehicle that allows the purchase of natural gas or propane. This decal must be displayed in ~~((a conspicuous place))~~ plain view on the vehicle near the fuel supply tank.

(3) **What if my vehicle operates with both motor fuel gasoline and natural gas or propane?** You will pay fuel tax on the gasoline as well as purchasing a decal.

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

WAC 308-77-290 Dishonored checks. (1) **What will happen if my check ((becomes)) is dishonored?** ~~((A dishonored check represents failure to pay special fuel taxes, fees and/or penalties and interest when due, and the department will enforce such special fuel licensing and taxing laws as are necessary to recover the unpaid taxes and fees when they become due and payable.~~

~~(2) **What form of payment does the department require for dishonored checks?** Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official check, or money order.~~

~~(3))~~ The department will take collection action to recover any amounts owing and require all subsequent payments to be made in guaranteed funds, such as cash, cashier's check, or money order.

(2) **Are there any additional fees charged for a dishonored check ((DHC))?** Yes, a handling fee ~~((shall be assessed))~~ will be charged by the department for each dishonored check ~~((dishonored by the financial institution)).~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-77-092	Refund for bad debt loss (other than a special fuel supplier).
WAC 308-77-093	Delinquent account notification process.
WAC 308-77-097	IFTA recordkeeping requirements.
WAC 308-77-101	Tax exempt sales.
WAC 308-77-107	Interest assessment on refund claims.
WAC 308-77-170	Metric measurement.

WSR 09-07-076

PERMANENT RULES

DEPARTMENT OF LICENSING

(Vehicle Services Division)

(Prorate and Fuel Tax Administration)

[Filed March 16, 2009, 10:58 a.m., effective April 16, 2009]

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

Purpose: Changes in this rule are in accordance with Executive Order 97-02 regulatory improvement and the Executive Order 05-03 on plain talk. The rule has been changed so it is easier to understand as well as removed any redundancy or obsolete language.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-72-830, 308-72-845, 308-72-855, 308-72-885 and 308-72-900; and amending WAC 308-72-50901, 308-72-720, 308-72-800, 308-72-805, 308-72-810, 308-72-815, 308-72-820, 308-72-835, 308-72-840, 308-72-850, 308-72-860, 308-72-865, 308-72-870, 308-72-880, 308-72-890, 308-72-895, 308-72-905, 308-72-910, 308-72-915, 308-72-920, and 308-72-925.

Statutory Authority for Adoption: RCW 82.36.435.

Adopted under notice filed as WSR 09-01-074 on December 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 21, Repealed 5; Pilot Rule Mak-

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

Date Adopted: February 24, 2009.

Mykel D. Gable
Assistant Director
Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 02-02-010, filed 12/20/01, effective 1/20/02)

WAC 308-72-50901 Waiving of bond requirement.

(1) **Can the department waive the requirement to maintain a fuel tax bond?** Yes((-)), if the department ((may waive the bonding requirement of a licensed distributor if, upon determination by the department, the licensed distributor)) determines that the licensed distributor has sufficient financial ((instruments to extinguish)) assets to cover any Washington state fuel tax liability, including penalties and interest((- incurred while acting as a licensed distributor)).

(2) **What is considered a financial ((instrument)) asset?** ((For purposes of this rule, a financial instrument is either:))

(a) A line of credit with a financial institution or supplier covering the cost of product and fuel tax liability ((incurred by the distributor)); or

(b) ((Lawful money of the)) United States dollars, ((or)) bonds, or other obligations of the United States, the state, or any county of the state, deposited with the state treasurer.

(3) **How can I qualify to have my bonding requirement waived?** ((You may qualify to have your bonding requirement waived upon:))

(a) By filing a notarized statement with the department stating that your line((s)) of credit with your financial institution((s)) and your fuel supplier((s)) is at a sufficient amount to include product cost and state fuel taxes. You must ((indicate)) list the name of the financial institution((s)), the account number((s)) and dollar value of your line((s)) of credit, and the name((s)) of your fuel supplier((s)). You must authorize the department to access this information with your financial institution((s)) and supplier((s)) for verification purposes); or

(b) Depositing in a financial institution an amount equal to the estimated monthly fuel tax payments and assigning this deposit to the department as security for performance under chapter 82.36 RCW; and

(c) Providing the department with satisfactory documentation((- satisfactory to the department,)) indicating that the supplier((s)) will not allow the licensed distributor to incur a liability, including fuel tax, in excess of the line((s)) of credit((- if applicable)).

(4) **What if the department denies my request for a waiver of the bond requirement?** You can appeal this decision as provided in chapters 82.36 RCW and 308-72 WAC.

(5) **What if I no longer maintain a line of credit or financial ((instrument)) asset?** You must provide a surety bond to the department in the amount required by chapter 82.36 RCW, with a coverage ((commencement date)) beginning on or before the date the line of credit or financial ((instrument was extinguished)) asset became insufficient.

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

WAC 308-72-720 Dishonored checks. (1) **What will happen if my check ((becomes)) is dishonored?** ((A dishonored check represents failure to pay motor vehicle fuel taxes, fees and/or penalties and interest when due, and)) The department will ((enforce such motor fuel licensing and taxing laws as are necessary)) take collection action to recover ((the unpaid taxes and fees when they become due and payable)) any amounts owing and require all subsequent payments to be made in guaranteed funds, such as cash, cashier's check, or money order.

(2) ((~~What form of payment does the department require for dishonored checks?~~) Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official check, or money order.

(3)) **Are there any additional fees charged for a dishonored check ((DHC))?** Yes, a handling fee ((shall be assessed by the department for each check dishonored by the financial institution)) will be charged by the department for each dishonored check.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-800 Definitions. (1) "Gasoline" means finished gasoline and gasoline blendstocks as defined in Code of Federal Regulations (CFR) 48.481((-1(e)(3))). Finished gasoline means all products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as motor fuel. The product must have an octane rating of 75 or more.

(2) "Export" means to obtain motor vehicle fuel in this state for sale or distribution outside this state. To be considered an "export" and qualify for exemption from the motor vehicle fuel tax, motor vehicle fuel obtained outside the bulk transfer terminal system must be physically off-loaded in the destination state, province, or foreign country. The exporter must be licensed or registered, if required, in that state, province, or country of destination.

(3) "Motor vehicle fuel" means any product ((commonly or commercially)) sold as gasoline ((as defined in CFR 48.481-1(e)(3))) and fuel ethanol. The blending of any product((s)) or chemical((s)) with gasoline or any other inflammable liquid and the resultant product is sold or used for the propulsion of motor vehicles ((shall)) will be considered a motor vehicle fuel subject to the provisions of chapter 82.36 RCW.

(4) ((~~"Motor vehicle fuel supplier" means a person who is licensed as a supplier under chapter 82.36 RCW, and must hold a federal certificate of registry issued under the Internal Revenue Code authorizing the person to enter into federal tax free transactions on motor vehicle fuel in the bulk transfer terminal system.~~)

(5)) "Invoice" means any document, paper or electronic, evidencing the transfer of ownership of motor vehicle fuel.

(5) "Net gallons" a standard gallon unit of petroleum of 231 cubic inches at 60 degrees Fahrenheit (U.S. petroleum gallon).

(6) "Ethanol" means an anhydrous denatured aliphatic alcohol intended for gasoline blending.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-805 Payment due dates for motor vehicle fuel taxes not paid by electronic funds. ~~((+))~~ **What if ~~(the)~~ my payment due date falls on a Saturday, Sunday or state legal holiday ~~(and payment is by electronic funds transfer)~~?** ~~((If you are paying your motor vehicle fuel tax by electronic funds transfer, you must transfer the funds by))~~ Payment is due on the next state business day (immediately preceding the due date). ~~((For example, if the payment due date falls on Saturday, (you must transfer the funds by Friday))~~ the payment must be postmarked by Monday. ~~((~~

~~(2) **What if my payment is not made by electronic funds transfer?** If you are not paying your motor vehicle fuel tax by electronic funds transfer, then payment is due on the next state business day. (For example, if the payment due date falls on Saturday, the payment must be postmarked by Monday.))~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-810 Collateral requirements in lieu of surety bond~~((f))s((g)).~~ (1) **What other forms of collateral will the department accept in lieu of a surety bond?** The department will accept certificates of deposit ~~((of lawful money of the))~~ in United States dollars in any of the following forms:

(a) Automatically renewable certificate~~((f))s((g))~~ of deposit insured by the federal deposit insurance corporation, made in the name of the licensee or applicant for the license, payable to or assigned to the Washington state treasurer; or

(b) Certificate~~((f))s((g))~~ of deposit or share account issued by a savings and loan association insured by the federal savings and loan insurance corporation. Evidence of the insured account, in the form of either a certificate of deposit or passbook, must be filed with the department along with a properly executed assignment form whereby the fund on deposit is assigned to the Washington state treasurer; or

(c) Certificate~~((f))s((g))~~ of deposit or share account, issued by a credit union doing business in the state of Washington and insured by the Washington credit union share guaranty association. Evidence of the insured account, in the form of either a certificate of deposit or passbook, must be filed with the department along with a properly executed assignment form whereby the fund on deposit is assigned to the Washington state treasurer; or

(d) Cash deposits ~~((are acceptable)),~~ however interest will not accrue.

(2) **Do I earn interest on my certificates of deposit?** Yes, ~~((the certificate and/or))~~ the assignment forms ~~((shall))~~ will contain the provision that interest earned will be payable to the depositor.

(3) **How is an assignment canceled?** Assignments may only be canceled upon written authorization of the department.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-815 Cancellation, suspension, or revocation of motor vehicle fuel license~~((f))s((g)).~~ ~~((+))~~ **Under what circumstances will my license be canceled?** Pursuant to RCW 82.36.190, a license may be canceled by the department under the following circumstances:

(a) Upon written request of the licensee, the cancellation will become effective within sixty days from receipt of the written request.

(b) Upon investigation and sixty days' notice to the licensee if the department determines the licensee is no longer engaged in the sale or distribution of motor vehicle fuel for a period of six consecutive months prior to the cancellation.

(c) Upon failure to file a new surety bond or to make deposits (cash) in accordance with RCW 82.36.060, or when the surety bond issuer requests to be released or discharged.

(d) Upon failure to file new or additional surety bond or to deposit additional securities within thirty days after being requested to do so by the department.

~~(2) **How do I request to have my license canceled?** A written request for cancellation and any required tax returns up to the date of cancellation must be forwarded to the department with a remittance of any tax, penalty and interest due.~~

~~(3) **Under what circumstances may my license be suspended or revoked?** A license suspension or revocation is initiated by the department for cause as defined in RCW 82.36.190.~~

~~(4) **What happens when my license is canceled, suspended, or revoked?** The department will notify all motor vehicle fuel ~~((suppliers, importers, exporters, blenders and distributors))~~ licensees of the change in license status.~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-820 ~~((Tax exempt transactions.))~~ Sales to qualified foreign diplomatic and consular missions. ~~((+))~~ **When are export transactions?** Are cash sales to qualified foreign diplomatic and consular missions tax exempt? ~~((Exemption of the motor vehicle fuel tax may be claimed under the following circumstances:~~

(a) ~~Fuel owned by the exporter and delivered by the exporter to a customer at a point outside the state by means of equipment owned and operated or controlled by the licensee.~~

(b) ~~By a licensee for transportation to a destination outside the state under a bill of lading or a shipping contract that definitely establishes that the licensee claiming the export actually and, in fact, retains title to, and control over, said fuel until actual delivery to its destination out of the state of Washington.~~

~~(2) **When are sales to the United States armed forces and National Guard tax exempt?** A licensed supplier is authorized to remove motor vehicle fuel from the bulk trans-~~

fer terminal system without the imposition of the tax when the motor vehicle fuel is delivered:

(a) To the United States armed forces or National Guard under a bill of lading for the express purpose of exportation from the state by the armed forces or National Guard.

(b) Into the fuel tanks of ships operated by the United States armed forces or National Guard and bearing armed forces or National Guard identification names or numbers.

(c) Into the storage facilities of the United States armed forces or National Guard maintained exclusively for the purpose of fueling ships.

~~(3) Are sales to qualified foreign diplomatic and consular missions tax exempt? Tax exempt sales of motor vehicle fuel may be made to qualified foreign diplomatic, consular missions and their qualified personnel if the diplomatic, consular missions and qualified personnel maintain tax exempt credit card accounts. Motor vehicle fuel purchased by cash is not tax exempt.~~

~~(4) What is required for a licensee to issue a credit card to qualified foreign government personnel? Application must be accompanied by Form DSP 99A, issued by the Office of Foreign Missions, United States Department of State, and approved by that office.)) No, only credit card purchases are exempt.~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-835 Tax exempt losses. (1) ~~What is ((considered a tax exempt)) acceptable proof of loss for a credit or refund of fuel tax paid? ((Credit for or a refund of the motor vehicle fuel tax paid may be taken when the licensee or the common or contract carrier furnishes acceptable proof of the exact quantity of fuel lost if documents in support of the loss are submitted to the department for approval as provided in RCW 82.36.370.~~

~~(2) What is acceptable proof of loss? Acceptable proof of loss shall consist of:))~~

(a) A notarized affidavit by a person having actual knowledge of the circumstances of the loss, explaining the origin and destination of the shipment, the circumstances surrounding the quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedure((f))s((g)) used in the determination of the quantity of fuel lost; or

(b) A signed statement by a federal, state, local or provincial official who has authority to investigate ((and/or deal with)) fuel losses; ((or witness to the loss;)) and

(c) A bill of lading or other shipping document((f))s((g)); and

(d) A statement by the licensee establishing ownership of the fuel at time of loss.

~~((3)) (2) Are deductions for losses from bulk storage allowed? Yes, motor vehicle fuel that has been proven lost or destroyed, prior to distribution from a licensee's bulk storage facility outside of the bulk transfer terminal system((is allowed as a deduction as provided in RCW 82.36.370)) may be considered a tax exempt loss.~~

~~((4)) (3) How long ((shall)) do I retain my evidence substantiating my loss? ((Documentary evidence substanti-~~

ating losses shall be retained by the licensee for)) Five years from date of claim.

~~((5)) (4) May I claim a deduction for ((unproved losses)) stolen fuel? No((, unproved losses will be considered as distribution and subject to fuel tax.~~

~~(6) Am I liable for fuel taxes when one of my employees or agents causes a loss of fuel? Yes, charges for losses made by employees or agents of the licensee who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be accounted for and supported by proof.))~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-840 Delinquent account notification process. (1) ~~What ((steps must be taken when a licensed motor vehicle fuel distributor does not pay a licensed motor vehicle fuel supplier the motor vehicle fuel tax when due)) happens when a licensed distributor does not pay fuel taxes to the licensed supplier on time?~~

~~((a) When a licensed distributor does not pay a licensed supplier the motor vehicle fuel taxes that are due, the supplier must notify the department no later than twenty calendar days from the date the fuel tax was due to the supplier. If that twentieth day falls on a Saturday, Sunday, or legal holiday, the supplier must notify the department on the next business day.~~

~~(b) The supplier must complete the form that has been developed by the department for this purpose or timely provide written notification to the department. Receipt of written notification constitutes evidence that the distributor has failed to pay the motor vehicle fuel taxes owed.)) The supplier must notify the department in writing no later than twenty calendar days from the date the fuel tax was due. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the supplier must notify the department on the next business day.~~

(2) ~~What ((action)) will the department ((take)) do when notified ((by the supplier)) of the distributor's failure to pay? ((The department will)) Suspend the distributor's license ((for nonpayment of motor vehicle fuel tax due the supplier)) and notify all suppliers ((of the suspension in the following ways:~~

~~(a) Posting notification of the suspension on the department's web site;~~

~~(b) Transmission of the notification via electronic mail or facsimile; and~~

~~(c) Mailing of the notification via U.S. mail.))~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-850 Records. What motor vehicle fuel records must be kept? Every person licensed or required to be licensed ((shall)) must maintain a complete monthly stock summary of the gallons of motor vehicle fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary ((shall)) must be supported by:

(1) Physical inventories of bulk storage plants taken at the close of each calendar month.

(2) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(3) A record of fuel receipts ~~((together with))~~, invoices, bills of lading, transfer documents, yield reports and other documents relative to the acquisition of fuel.

(4) A record of fuel disbursements ~~((together with))~~, invoices, bills of lading and other documents relative to the disbursements of fuel.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-860 Investigatory power. What ~~((investigatory))~~ power(s) does the department have for investigations? For the purpose of any investigation or proceeding under this chapter ~~((and chapter 82.36 RCW))~~, the director or any designated officer may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require ~~((the production of))~~ any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry to be produced for inspection and copying.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-865 Invoices issued by licensees. (1) When is an invoice issued? Every licensee ~~((shall))~~ must issue an invoice at the time of sale. If an electronic invoice is issued, a paper copy of the invoice ~~((or other documentation containing))~~ is required ~~((information must be produced if required by the department or))~~ to support a refund claim.

(2) What information ~~((must appear))~~ is required on ~~((each))~~ an invoice? ~~((Each invoice must include the following information:))~~

- (a) The name and address of the seller;
- (b) The name, address, and motor vehicle fuel tax license number, if applicable, of the purchaser;
- (c) The date of delivery ~~((f))~~, month, day, and year~~((g))~~;
- (d) The location of the point of shipment. Alphanumeric codes are allowed if the definition~~((s of the alphanumeric codes))~~ keys are provided to the department;
- (e) The physical address of the fuel delivery or exchange if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are allowed if the definition~~((s of the alphanumeric codes))~~ keys are provided to the department;
- (f) In the case of a delivery into a federally recognized Indian reservation or onto Indian country, the invoice must identify the state, U.S. possession, or Canadian Province in which the delivery took place;

- ~~((g))~~ (h) Name of carrier transporting fuel;
- ~~((g))~~ ~~((h))~~ (i) Name of product sold;
- ~~((h))~~ ~~((i))~~ (j) The number of U.S. gallons of product sold ~~((must indicate))~~ in net or gross gallons~~((g))~~;
- ~~((i))~~ ~~((j))~~ (k) The price per gallon and total amount charged; and
- ~~((j))~~ ~~((k))~~ (l) A statement on the invoice indicating ~~((whether))~~ if the fuel has been sold without the Washington state fuel tax~~((s))~~;

~~((k))~~ ~~((l))~~ (m) In the case of a delivery onto a federally recognized Indian reservation or onto Indian country, the invoice must

identify the state within the contiguous United States, Hawaii, Alaska, District of Columbia, U.S. possession, or Canadian Province in which the delivery took place).

(3) What happens if a purchaser's invoice is lost or destroyed? ~~((If an invoice is lost or destroyed))~~ The seller ~~((shall))~~ can issue a duplicate or copy containing all information ~~((that appeared))~~ on the original invoice, if requested by the purchaser. The copies ~~((shall))~~ must be plainly marked "copy" or "duplicate."

(4) What happens if an incorrect invoice is issued to the purchaser? The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

~~((5))~~ **What documentation does a licensed supplier, importer or blender need in order to support taxable motor vehicle fuel consumed for their own use?** Fuel used in motor vehicles or for other taxable purposes by a licensed supplier, importer or blender shall be supported by records covering the total fuel used during the reporting period.

~~((6))~~ **What documentation does a distributor need in order to claim a refund for nontaxable use of motor vehicle fuel?** If motor vehicle fuel is used for a purpose subject to tax refund, the distributor must have supporting invoices or records indicating the use of the motor vehicle fuel and the type(s) of equipment it is used in.)

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-870 Minimum ~~((tax))~~ payment~~((s))~~ or refund. (1) What is the minimum ~~((tax))~~ payment or refund for licensed accounts? ~~((Each tax return that declares a tax liability of ten dollars or less need not make remittance; conversely, a refund of))~~ Ten dollars or less will not be ~~((issued))~~ owed or refunded. ~~((A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action:))~~

(2) What is the minimum refund for unlicensed refund claims? Claims for less than twenty dollars will not be refunded.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-880 Filing of refund claims for nonlicensees. (1) How do I apply for a refund? ~~((Any person claiming a refund of the motor vehicle fuel tax must make application to the department and be issued a refund permit number:))~~ Contact the department for a refund permit application and instructions.

~~((2))~~ ~~((When can I file a refund claim?))~~ A refund claim may be filed at any time not to exceed a thirteen-month time limit from the date) **What time period can I file for a refund?** You must file within thirteen months of the fuel purchase date. ~~((If you claim a refund for fuel purchased in any month of a claimed period, you may not claim additional purchases for that month on another claim:))~~ The department will use the postmark date to determine the ~~((eligibility of the claim))~~ thirteen-month time frame. We will not accept multiple refund claims for the same month. For example, if you

have made a claim for purchases in June you cannot claim additional purchases for June on another claim form.

(3) **What do I need to send (in my invoices) with (the) my refund claim (request)?** (If your refund claim request is one hundred dollars or less, you do not have to send your) You must send in your fuel purchase invoices (with your refund claim unless required by the department. If your refund claim request is more than one hundred dollars, purchase invoices are required. If electronic invoices were issued to the claimant, paper copies of the invoices or other documentation containing required information must be submitted with the refund claim), schedules, and other documents listed on the refund claim form. If electronic invoices were issued, you must provide paper copies.

(4) **How (shall) do I account for my inventory (on my refund claim form)?** Any fuel on hand ((f)), by physical measurement((g)), at the end of the claim period should be ((indicated on the claim as ending inventory and should be)) reported as ((a beginning inventory on the next refund claim form. Credit for the inventory will be allowed on the next claim if it is filed within thirteen months from the filing date of the claim that established the inventory. All invoices for the total fuel purchased must be submitted with each claim unless the amount of the claim is one hundred dollars or less)) ending inventory. This figure should be reported as the beginning inventory on your next claim form.

(5) **(As) What does a licensed distributor (do I need to) send (in supporting summary schedules and invoices) with (my) their refund claim (request)?** ((Yes.)) Summary schedules must be provided (by the distributor. Invoices may be requested by the department) and the department may request invoices.

(6) **(Who may) The following can sign a refund claim form(?** The following persons may sign a refund claim form):

- (a) Individuals - permit holder;
- (b) Partnership - any one of the partners;
- (c) Business firm or corporation - owner, corporate officer or other authorized agent.

(7) **Can invoices (be in) have a different name than what is on the claim form?** No((, invoices made out in other names will not be accepted)).

(8) **Can I request that my refund be assigned to another person?** Yes, if we receive a letter ((of assignment is attached, signed by the person to)) stating whom you would like the ((invoice was issued, designating the payee)) claim assigned to.

(9) **How long will it take until I receive my refund?** ((Properly completed refund claims will be processed and mailed)) Within thirty business days ((of date of receipt)) after we receive a properly completed claim.

(10) **How long do I maintain my refund records?** Keep them for five years after submitting your claim.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-890 Invoice requirements for refunds to nonlicensees. (1) **What ((are the)) is a valid invoice ((requirements))?** ((The seller of motor vehicle fuel is

required to issue to each purchaser)) A separate invoice((s)) must be issued for each fuel purchase ((of fuel)). ((However,)) A single invoice ((covering)) may list multiple deliveries of fuel purchases made during a ((period of time not to exceed one calendar month may constitute a separate invoice as required by this subsection. Provided, That each delivery is individually listed on the invoice or on an accompanying statement in accordance with the requirements of this subsection for single deliveries)) calendar month.

(2) **(What) The following information must be included on the invoice(?** Each invoice must contain the following information):

- (a) The name and address of the seller;
- (b) ((Kind of) The type of fuel and number of gallons purchased;
- (c) Complete date of sale ((f))including month, day, and year((g));
- (d) Price per gallon; and
- (e) Total amount of sale.

(3) **(Will) The department will not accept invoices with altered, corrected or erased information(?** Invoices that indicate alterations, corrections or erasures shall be voided and will not be accepted. Any person who alters any part of an invoice that will tend to give the claimant an illegal gain may have the entire claim invalidated and the director may suspend any further claims for refund for a period of one year. If an electronic invoice was issued, then a paper copy of the electronic invoice or other documentation containing required information must be submitted).

(4) **What happens if ((an invoice is lost or destroyed) the seller issues an electronic invoice?** ((If an invoice is lost or destroyed, the seller may issue a duplicate or copy containing the invoice number, date of sale, gallonage, price and amount, and any information that appeared on the first invoice. The copies shall be plainly marked "copy" or "duplicate.") A paper copy must be submitted with your refund claim.

(5) **What happens if I ((issued) get an incorrect invoice ((to the purchaser))?** The seller((s of fuel shall)) must issue a ((corrected) new invoice ((to the purchaser)) marked "correction" and reference the original.

((The invoice must clearly indicate that it is a corrected invoice and reference the original invoice. Only one invoice shall be issued for any one delivery.))

(6) **What happens if I lose or destroy my invoice?** The seller may issue a copy. The copies must be plainly marked "copy" or "duplicate."

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-895 Refund records. ((+)) What records ((does the department require to be retained by each claimant)) do I need to keep to claim a refund of fuel taxes? ((Each claimant shall retain records that reflect all motor vehicle fuel receipts, the gallons of fuel used in each type of equipment (both refundable and nonrefundable), other uses, loss and gain, and inventory on hand. The records must indicate the date of receipt or disbursements and iden-

tify the equipment into which the fuel is delivered or the purpose for which the fuel is used.

Failure of the claimant to maintain the required records or to accede to a demand for examination of them constitutes a waiver of all rights to the refund. If the claimant maintains electronic invoices, paper copies of these invoices or other documentation containing required information must be produced, upon demand of the department.

(2) ~~What records must be maintained to support a refund claim for each of the following uses?~~

~~(a) Use of fuel from bulk storage. Fuel purchased and delivered into bulk storage for taxable and nontaxable use must be accounted for by detail withdrawal records to show the manner in which used.~~

~~(b) Use of fuel from other than bulk storage. Fuel purchased in small containers, ten gallons or less, for nonhighway use should be identified by the purchaser on the purchase invoice, i.e., boats, tractors, power saws, etc.))~~

- All fuel receipts;
- The gallons of fuel used in each piece of equipment, both refundable and nonrefundable;
- Fuel inventory in bulk storage;
- Detailed fuel records for all withdrawals from bulk storage;
- Fuel purchased in small containers (ten gallon or less) for nonhighway use must show the type of equipment being used; i.e., boats, tractors, power saws, etc.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-905 Power take-off (PTO) use. (1) **What is ~~((power take-off))~~ PTO use?** It is fuel used in a motor vehicle engine to operate auxiliary equipment ~~((provided that)),~~ The fuel ~~((used is))~~ must be supplied from the propulsion tank of the motor vehicle.

(2) **What is not considered auxiliary equipment?** Equipment ~~((that is considered an integral part of the operation of the vehicle,))~~ such as air conditioning, power steering, generator, etc., that is considered an integral part of the operation of the vehicle.

(3) **What formula does the department use in determining ~~((power take-off))~~ PTO usage ~~((for fuel and heating oil pumping))?~~**

~~((a) For gasoline used in pumping fuel oil or heating oil by means of a power take-off unit on a delivery truck at the rate of three-fourths of one gallon for each one thousand gallons of fuel or heating oil delivered. Fuel oil delivery truck operators must maintain records which show the total gallons of fuel oil or heating oil pumped by each vehicle for which refund is claimed together with supporting documentation.~~

~~(b) For gasoline used in operating a power take-off unit on any of the vehicles listed herein when direct measurement is not feasible,))~~ The tax exemption is calculated ~~((at the rate specified))~~ as a percentage of the total Washington taxable fuel ~~((used by the vehicles)):~~

Cement mixer	25%
Fire trucks (private)	25%
Mobile cranes	25%

Garbage trucks (with load compactor)	25%
Sewer cleaning truck/jet vactor	25%
Super suckers	25%
Line truck with digger/derrick or aerial lift	20%
Log truck with self loader	20%
Refrigeration trucks	20%
Sweeper trucks (must be motor vehicle)	20%
Boom truck/block boom	15%
Bulk feed truck	15%
Dump trailers	15%
Dump trucks	15%
Hot asphalt distribution truck	15%
Leaf truck	15%
Lime spreader	15%
Pneumatic tank truck	15%
Salt spreader on dump truck	15%
Seeder truck	15%
Semiwrecker	15%
Service truck with jack hammer/drill	15%
Snow plow	15%
Spray truck	15%
Tank transport	15%
Tank trucks	15%
Truck with PTO hydraulic winch	15%
Wrecker	15%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
Others	7.5%

(4) **What if my fuel consumption is greater than the percentages indicated above?** If ~~((a claimant))~~ you can provide satisfactory documentation and records to show that the fuel consumed by the ~~((power take-off))~~ PTO is greater than the percentages indicated, the department may grant the higher percentage on a case-by-case basis.

(5) **What documents must accompany the refund claims?** All claims must be accompanied by valid purchase invoices to cover the total gallons of gasoline purchased, except that invoices for gasoline used in fuel oil delivery trucks or when measured by a metering device need only be equal to or greater than the gallons claimed as refundable. A support schedule for Washington ~~((power take-off))~~ PTO and power pumping credits ~~((shall))~~ must accompany each claim for refund.

(6) What records do I need to keep? All individual vehicle mileage and fuel records that reflect total mileage, total fuel, Washington taxable mileage, and Washington taxable fuel by vehicle.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-910 On-board computers or recording devices. Can I use on-board computers or recording

devices to record mileage? Yes, ~~((the use of on board computers or recording devices for the production of mileage records required by the International Fuel Tax Agreement (IFTA) shall be governed by the requirements or procedures adopted by the International Fuel Tax Agreement (IFTA)) with prior approval by the department.~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-915 Special rules and requirements for fuel tax refunds. ~~((1) Can I claim a refund for motor vehicle fuel used in my recreational snowmobile? No. Motor vehicle fuel tax refunds are prohibited by RCW 46.10.160(2).~~

~~((2) Can I claim a refund for motor vehicle fuel used in my unlicensed recreational off road vehicles, all terrain vehicles and snowmobiles? No, any recreational use of off road vehicles, all terrain vehicles and snowmobiles, although considered a nonhighway use of fuel, shall not be claimed for refund of the motor vehicle fuel tax paid.~~

~~((3)) Can I claim a refund for motor vehicle fuel used in my unlicensed off road vehicles, all terrain vehicles and snowmobiles? Yes, only if the motor vehicle fuel is used for nonrecreational purposes such as farming, logging, and construction. Off-road vehicles, all terrain vehicles and snowmobiles are defined in RCW 46.09.020, 46.10.010 (3) and (2) ~~((respectively))~~.~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-920 Use tax for refunds. (1) ~~((Will)) Is use tax ~~((be))~~ deducted from my refund claim? Yes, ~~((use tax may be deducted from your fuel tax refund amount as imposed by)) unless you are exempt from the use tax in chapter 82.12 RCW.~~~~

(2) **How is use tax computed?** ~~((The claimant may))~~ You can choose to:

- Calculate the use tax amount using the actual use tax rate ~~((f))s((g))~~ and actual cost per gallon; or
- Have the department ~~((will))~~ calculate the use tax amount using an average use tax rate and ~~((average))~~ price per gallon.

Either method chosen ~~((by the claimant))~~ must be used for each refund claim submitted during ~~((a))~~ the calendar year, unless there has been a change in the department's estimated average fuel cost during that period. ~~((If computed by the department, the department will use an estimate of the statewide average fuel cost and an estimated use tax rate. The statewide average cost and use tax rate will be reviewed every six months and adjusted as necessary. If there is any dispute over the method of calculation, the taxpayer will be required to use actual cost of the fuel and use tax rate(s).))~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

WAC 308-72-925 Mitigation of penalties and interest. (1) ~~((Under))~~ What ~~((circumstances may a))~~ fee, penalty ~~((and))~~ or interest may be mitigated or reduced? The

department ~~((, in its discretion,))~~ may mitigate ~~((, extinguish and/or adjust))~~ fees, penalties ~~((and))~~ or interest ~~((arising from late or missing fuel tax returns, unpaid or underpaid taxes, lack of complete records to support reported fuel usage, or license revocation penalties, assessments, and/or lack of complete records))~~ from:

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage; or
- Assessments.

(2) **How will the department ~~((determine whether fees, penalties and/or interest should be mitigated))~~ make the decision?** The department may review records, account history, or other information ~~((in arriving at its decision to mitigate)).~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-72-830	Tax exempt sales.
WAC 308-72-845	Refund for bad debt loss (other than a motor fuel supplier).
WAC 308-72-855	IFTA records.
WAC 308-72-885	Interest assessment on refund claims.
WAC 308-72-900	Refunds to dealer delivering fuel exclusively for marine use.

WSR 09-07-077

PERMANENT RULES

DEPARTMENT OF LICENSING

(Vehicle Services Division)

(Prorate and Fuel Tax Administration)

[Filed March 16, 2009, 11:02 a.m., effective April 16, 2009]

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

Purpose: Changes in this rule are in accordance with Executive Order 97-02 regulatory improvement and the Executive Order 05-03 on plain talk. The rule has been changed so it is easier to understand as well as removed any redundancy or obsolete language.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-78-050; and amending WAC 308-78-010, 308-78-020, 308-78-030, 308-78-035, 308-78-040, 308-78-045, 308-78-046, 308-78-070, 308-78-075, 308-78-080, 308-78-090, and 308-78-100.

Statutory Authority for Adoption: RCW 82.42.040.

Adopted under notice filed as WSR 09-01-075 on December 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 12, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 24, 2009.

Mykel D. Gable
Assistant Director
Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 04-06-001, filed 2/18/04, effective 3/20/04)

WAC 308-78-010 Definitions. (1) (~~"Aircraft fuel" includes any combustible gas or liquid, which is normally defined as motor vehicle fuel under chapter 82.36 RCW and chapter 308-72 WAC or a special fuel under chapter 82.38 RCW and chapter 308-78 WAC when used to propel an aircraft.~~

(2)) "User" means any person other than a distributor who is certified to acquire aircraft fuel without payment of the aircraft fuel tax at time of acquisition.

((3)) "~~Local service commuter" means an air taxi operator who operates at least five round trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.~~

(4)) (2) "Private, nonstate funded airfield" means an airport not eligible to receive state funding under chapter 47.68 RCW.

((5)) "~~Department" means the department of licensing.~~

(6)) (3) "Emergency medical air transport entities" means entities that own or lease, and operate aircraft used solely for air ambulance services.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-020 Bond requirements and collection. (1) **Are bonds required for aircraft fuel distributors?** Yes, every aircraft fuel distributor must be bonded as provided in chapter 82.36 RCW and(~~the~~) chapter 82.42 RCW.

(2) **Can the department collect on bonds for unpaid aircraft fuel taxes?** Yes, the department may execute bonds on file under the provisions of chapters 82.36 and 82.42 RCW for unpaid aircraft fuel taxes.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-030 Required reports. (1) What reports are required by the department for aircraft fuel tax and when are they due? Every licensed distributor of aircraft fuel (~~shall~~) will submit signed tax returns and schedules to the department, on or before the 25th day of each month, or as required by the department. Forms (~~shall~~) will be furnished or approved by the department.

(2) **What if the payment due date falls on a Saturday, Sunday, or state legal holiday?** Payment is due by the state business day immediately preceding the due date. ((~~For~~) For example, if the payment due date falls on Saturday, you must transfer the funds by Friday.(~~3~~))

(3) **Is a report due if I have no activity for the month?** Yes, a report (~~shall~~) must be filed with the department for each calendar month (~~even when no aircraft fuel was sold or used~~)).

(4) **Can tax return information be made available to other government agencies?** Yes, the department routinely furnishes copies of schedules to government agencies or foreign jurisdictions.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-035 Minimum (~~tax~~) payment(~~s~~) or refund. (1) What is the minimum (~~tax~~) payment or refund for licensed accounts? (~~Each tax return that declares a tax liability of ten dollars or less need not make remittance; conversely, a refund of ten dollars or less will not be allowed. A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action.~~) Ten dollars or less will not be owed or refunded.

(2) **What is the minimum refund for unlicensed refund claims?** Claims for less than twenty dollars will not be refunded.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-040 Tax exempt sales by licensed distributors. When may a licensed distributor sell aircraft fuel without collecting the aircraft fuel tax? (~~A licensed distributor may sell aircraft fuel without collecting the aircraft fuel tax.~~) When delivery is made by the distributor to any of the following:

- (1) A destination outside the state;
- (2) United States or foreign government agencies;
- (3) Directly into the aircraft fuel tanks of equipment operated by air carriers, supplemental air carriers, and foreign flag carriers operating under (~~part 121 of~~) the Federal Aviation Regulations, and local service commuters;
- (4) Another licensed distributor;
- (5) To a purchaser who delivers the fuel for export under RCW 82.42.030 or 82.42.070; or
- (6) Into the bulk storage tank of a certified user.

AMENDATORY SECTION (Amending WSR 04-06-001, filed 2/18/04, effective 3/20/04)

WAC 308-78-045 Tax exempt use and circumstances. ~~(1) What are the conditions under which a refund of aircraft fuel tax can be claimed? ((Refund of the aircraft fuel tax paid may be claimed for the following uses or circumstances:~~

~~((1)) (a) Operation of aircraft by air carriers, supplemental air carriers, and foreign flag carriers, operating under ((part 121 of)) the Federal Aviation Administration Regulations, and local service commuters.~~

~~((2)) (b) Testing and experimental purposes in the manufacture or remanufacture of aircraft and for flight operations or experimental testing following manufacture, repair prior to delivery to a customer, or experimental testing of another aircraft.~~

~~((3)) (c) Aircraft crew training in Washington state for certified air carriers.~~

~~((4)) (d) When applying pesticides, herbicides, or other agricultural chemicals under conditions defined in RCW 82.42.020.~~

~~((5)) (e) Exportation of fuel from this state for use outside this state under the same conditions as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW.~~

~~((6)) (f) Use of fuel in nonhighway equipment, other than aircraft, as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW.~~

~~((7)) (g) Sales to the United States or foreign government agencies by a distributor who has paid the aircraft fuel tax. The distributor ((shall)) will file an exemption certificate provided by the department. This certificate ((shall)) will contain an assignment to the distributor of the purchaser's right to a refund.~~

~~((8)) (h) Users of aircraft fuel placed into helicopters or the wing tanks of aircraft that are used solely for air ambulance services are eligible for a refund of the aircraft fuel tax. ((For purposes of the tax exemption,)) Aircraft fuel ((placed into the wing tanks of aircraft or placed into helicopters and)) consumed during training activities directly related to providing air ambulance services is considered to be exempt from the aircraft fuel tax.~~

(2) What records must be kept when claiming an exemption of aircraft fuel tax? Each person must keep records of each flight or series of flights for which tax exempt use is claimed. Records will include:

- (a) Flight or block time of each flight or series of flights;
- (b) Type of aircraft;
- (c) Purpose of each flight or series of flights;
- (d) Dates; and
- (e) Gallons consumed for each flight or series of flights.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-046 Tax exempt losses. (1) **What is ((considered a tax exempt)) acceptable proof of loss for a credit or refund of fuel tax paid?** ((You may claim an

exemption if fuel is destroyed through fire, lightning, flood, wind storm, explosion, accident, or other casualty.

~~(2) **May I claim an exemption for losses due to leakage?** Yes, if the verified leakage is five hundred gallons or more.~~

~~(3) **May I claim an exemption for losses of aircraft fuel due to evaporation, shrinkage, or unknown causes?** No, aircraft fuel losses due to evaporation, shrinkage, or unknown causes are not permitted.~~

~~(4) **What is acceptable proof of loss?** Acceptable proof of loss will consist of the following:~~

~~(a) An affidavit by a person having direct knowledge of the circumstances of the loss, explaining the circumstances surrounding the loss, quantity of fuel lost, fuel salvaged, disposition of salvaged fuel, and procedures used in determining the quantity of fuel lost;~~

~~(b) A signed statement by a federal or jurisdictional official who has authority to investigate fuel losses, or a witness to the loss;~~

~~(c) A bill of lading or shipping document;~~

~~(d) A statement by the licensee establishing ownership of the fuel at the time of loss.~~

~~(5)) (a) A notarized affidavit by a person having actual knowledge of the circumstances of the loss, explaining the origin and destination of the shipment, the circumstances surrounding the quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedures used in the determination of the quantity of fuel lost; or~~

~~(b) A signed statement by a federal, state, local or provincial official who has authority to investigate fuel loss; and~~

~~(c) A bill of lading or other shipping documents; and~~

~~(d) A statement by the licensee establishing ownership of the fuel at time of loss.~~

~~(2) **Are deductions for losses from bulk storage allowed?** Yes, aircraft fuel that has been proven lost or destroyed prior to distribution from a licensee's bulk storage facility outside of the bulk transfer terminal system may be considered a tax exempt loss.~~

~~(3) **How long ((must)) do I retain my evidence substantiating ((the)) my loss?** ((Documentary evidence substantiating losses shall be retained by the licensee for)) Five years from date of claim.~~

~~((6) **Am I liable for fuel taxes if one of my employees or agents causes a loss of fuel?** Yes, charges for losses made by employees or agents who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be substantiated by proof acceptable to the department.) (4) **May I claim a deduction from stolen fuel?** No.~~

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-070 Records. (1) ~~**What records must a distributor, certified user, or consumer of aircraft fuel maintain?**~~ The following records must be maintained:

~~(a) Physical inventories of bulk storage facilities and mobile storage facilities taken at the close of each calendar month;~~

(b) A record of fuel receipts together with invoices, bills of lading, transfer documents, and other documents relative to the acquisition of fuel;

(c) A record of fuel disbursements supported by sales invoices and other documents relative to the disbursements of fuel;

(d) A withdrawal record covering their own total usage during the month. The withdrawal record shall contain the date of withdrawal, the location of the storage facility from which the fuel was withdrawn, the type or grade of fuel, and the number of gallons withdrawn;

(e) Each person claiming an exemption from the aircraft fuel tax shall keep records of each flight or series of flights for which tax exempt use is claimed. Such records shall include:

- (i) Flight or block time of each flight or series of flights;
- (ii) Type of aircraft;
- (iii) Purpose of each flight or series of flights;
- (iv) Dates;

(v) Gallons consumed for each flight or series of flights.) **What aircraft fuel records must be kept?** Every person licensed or required to be licensed must maintain a complete monthly stock summary of the gallons of aircraft fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary must be supported by:

(a) Physical inventories of bulk storage plants taken at the close of each calendar month.

(b) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(c) A record of fuel receipts, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.

(d) A record of fuel disbursements, invoices, bills of lading and other documents relative to the disbursement of fuel.

(2) **How long must I retain my records?** Records ~~((shall))~~ will be maintained and kept for a period of not less than five years in their original form. The department may make such examinations of the records, facilities, equipment, and aircraft of distributors, certified users and consumers of aircraft fuel as necessary in carrying out the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-075 Invoices issued by licensees. (1) **When is an invoice issued?** Every licensee ~~((shall))~~ must issue an invoice at the time of sale ~~((distribution or use))~~. If an electronic invoice is issued, a paper copy of the invoice ~~((must be produced if))~~ is required ~~((by the department or))~~ to support a refund claim.

(2) **What information ~~((must appear))~~ is required on ~~((each))~~ an invoice?** ~~((Each invoice must include the following information:))~~

(a) The name and address of the seller;

(b) The name, address, and aircraft fuel tax number, if applicable, of the purchaser for all deliveries other than those made directly into the aircraft fuel tanks of unlicensed exempt carriers;

(c) The date of delivery ~~((of))~~, month, day, and year~~((s))~~;

(d) The location of the point of shipment. Alphanumeric codes are not allowed;

(e) The physical address of the fuel delivery~~((s))~~ or exchange if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are not allowed;

(f) In the case of a delivery onto a federally recognized Indian reservation or into Indian country, the invoice must identify the state, U.S. possession, or Canadian Province in which the delivery took place;

~~((g))~~ (g) Name of carrier transporting fuel;

~~((g))~~ (h) Name of product sold;

~~((h))~~ (i) The number of U.S. gallons of product sold in net or gross ~~((number of U.S.))~~ gallons ~~((of product sold))~~;

~~((i))~~ (j) The price per gallon and the total amount charged; and

~~((j))~~ (k) A statement on the invoice indicating ~~((whether))~~ if the fuel has been sold ~~((with or))~~ without the Washington state fuel tax~~((s))~~;

(k) In the case of a delivery onto a federally recognized Indian reservation or onto Indian country, the invoice must identify the state within the contiguous United States, Hawaii, Alaska, District of Columbia, U.S. possession, or Canadian Province in which the delivery took place).

(3) **What happens if ~~((am))~~ a purchaser's invoice is lost or destroyed?** ~~((If an invoice is lost or destroyed,))~~ The seller ~~((shall))~~ can issue a duplicate or copy containing all information ~~((that appeared))~~ on the original invoice, if requested by the purchaser. The copies ~~((shall))~~ must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must ~~((retrieve the incorrect invoice and))~~ issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-080 Filing of refund~~((s))~~ claims for nonlicensees. (1) **~~((What do I have to do to claim))~~ How do I apply for a refund for aircraft fuel?** ~~((In order to claim a refund for aircraft fuel tax, you shall file a claim upon forms provided by the department in the same manner and under the same conditions as provided for refund of motor vehicle fuel in RCW 82.36.310.))~~ Contact the department for a refund permit application and instructions.

(2) **~~((Is there a time limit to claim an aircraft fuel tax refund?))~~ Yes, claims for refund may not be filed later than)) **What time period can I file for a refund?** You must file within thirteen months ~~((from the date))~~ of the fuel purchase ~~((of such aircraft fuel under the same conditions as provided for motor vehicle fuel in RCW 82.36.330))~~ date. The department will use the postmark date to determine the thirteen-month time frame. We will not accept multiple refund claims for the same month. For example, if you have made a claim for purchases in June you cannot claim additional purchases for June on another claim form.**

(3) ~~((Can the department verify the validity of refund claims? Yes, the department may examine the books and records of the claimant in order to establish the validity of any claim for refund under the same conditions as provided for motor vehicle fuel in RCW 82.36.340.))~~ **What do I need to send with my refund claim?** You must send in your fuel purchase invoices, schedules, and other documents listed on the refund claim form. If electronic invoices were issued, you must provide paper copies.

(4) **How do I account for my inventory?** Any fuel on hand, by physical measurement, at the end of the claim period should be reported as ending inventory. This figure should be reported as the beginning inventory on your next claim form.

(5) **What does a licensed distributor send with their refund claim?** Summary schedules must be provided and the department may request invoices.

(6) **The following can sign a refund claim form:**

- (a) Individuals - permit holder;
- (b) Partnership - any one of the partners;
- (c) Business firm or corporation - owner, corporate officer or other authorized agent.

(7) **Can invoices have a different name than what is on the claim form?** No.

(8) **Can I request that my refund be assigned to another person?** Yes, if we receive a letter stating whom you would like the claim assigned to.

(9) **How long will it take until I receive my refund?** Within thirty business days after we receive a properly completed claim.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

WAC 308-78-090 Mitigation of penalties and ~~((for))~~ interest. (1) ~~((Under))~~ **What ~~((circumstances may))~~ fee, ~~((a))~~ penalty ~~((and))~~ or interest may be mitigated or reduced?** The department may mitigate ~~((, extinguish and/or adjust))~~ fees, penalties, ~~((and))~~ or interest ~~((arising))~~ from:

- Late or missing fuel tax returns ~~((;))~~;
- Unpaid or underpaid taxes ~~((, lack of complete))~~;
- Incomplete records ~~((, license revocation penalties and))~~ to support reported fuel usage; or
- Assessments.

(2) **How will the department ~~((determine whether fees, penalties and/or interest will be mitigated))~~ make the decision?** The department ~~((will))~~ may review records, account history, or other information ~~((in arriving at its decision.))~~

(3) **What happens if I do not pay my tax assessment on time?** You will be assessed additional penalties and/or interest).

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

WAC 308-78-100 Dishonored checks. (1) **What will happen if my check ~~((becomes))~~ is dishonored?** ~~((A dishonored check represents failure to pay aircraft fuel taxes, fees and/or penalties and interest when due, and))~~ The department will ~~((enforce such aircraft fuel licensing and taxing~~

laws as are necessary to recover the unpaid taxes and fees when they become due and payable.

(2) ~~**What form of payment does the department require for dishonored checks?**~~ Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official) **take collection action to recover any amounts owing and require all subsequent payments to be made in guaranteed funds, such as cash, cashier's check, or money order.**

~~((3))~~ (2) **Are there any additional fees charged for a dishonored check ~~((DHC))~~?** Yes, a handling fee ~~((shall))~~ will be ~~((assessed))~~ charged by the department for each dishonored check ~~((dishonored by the financial institution)).~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-78-050

Supporting documents for tax exempt transactions.

WSR 09-07-080 PERMANENT RULES COLUMBIA RIVER GORGE COMMISSION

[Filed March 16, 2009, 2:11 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: These changes clarify that the commission's consideration of applications to amend the management plan and revise urban area boundaries is a discretionary action, and specify that the commission will determine, as part of its work planning, how many of these types of applications it will accept for review.

Citation of Existing Rules Affected by this Order: Amending 350-40-020, 350-40-040, 350-50-020, and 350-50-060.

Adopted under notice filed as WSR 09-03-058 on January 13, 2009.

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 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: March 10, 2009.

Nancy A. Andring
Rules Coordinator

Amendatory Section

350-40-020. Authority.

(1) Consideration of requests to revise urban area boundaries is a discretionary action authorized by section 4(f) of the Act. The Act does not entitle a county, or any person or entity, to have the Commission review a request to revise any urban area boundary. The Commission may make "minor revisions" to the boundaries of an Urban Area [Scenic Area Act, Section 4(f)]. ~~Such revisions must comply with procedural requirements and criteria in the Scenic Area Act.~~

(2) Three procedural requirements are included in Section 4(f)(1) of the Scenic Area Act:

(a) Requests to revise an Urban Area boundary are submitted to the Commission by a county government;

(b) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and

(c) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve a revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

(3) Section 4(f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(a) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

(b) Revision of Urban Area boundaries is consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

(c) Revision of Urban Area boundaries will result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(d) Revision of Urban Area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

Amendatory Section

350-40-040. Processing of Application.

~~Each application to revise the boundaries of an Urban Area is reviewed according to the priorities established by the Commission in the Management Plan [see Part IV, Chapter 1, section Revision of Urban Area Boundaries, Policy 5]. Within priority categories established in the Management Plan, applications are reviewed in the order received. Applications for revision of urban area boundaries shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of urban area boundary~~

revision applications it will process during the biennium and may set its limit at zero.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

Amendatory Section

350-50-020. Authority.

(1) Consideration of amendments to the Management Plan is a discretionary action authorized by section 6(h) of the Act. The Act does not entitle any person or entity to have the Commission review an application to amend the Management Plan. The Commission ~~shall~~ may adopt an amendment to the Management Plan only if it is consistent with the purposes and standards of the Scenic Area Act, the provisions in section 6(h) of the Act, and this rule.

(2) The Act only allows the Commission to adopt a plan amendment:

(a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and

(b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

Amendatory Section

350-50-060. Processing of Application.

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process during the biennium and may set its limit at zero. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall maintain requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) For legislative amendments, the Executive Director shall hold a pre-application conference as provided in 350-50-045. Following the pre-application conference, the Exec-

utive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

WSR 09-07-085
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed March 17, 2009, 10:36 a.m., effective April 17, 2009]

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

Purpose: As a part of the liquor control board's on-going rules review process, chapter 314-62 WAC has been reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order: Amending WAC 314-62-010 and 314-62-020.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 09-03-076 on January 15, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: March 11, 2009.

Lorraine Lee
Chairman

AMENDATORY SECTION (Amending Order 81, Resolution No. 90, filed 9/23/81)

WAC 314-62-010 Liquor law pamphlets. Pursuant to RCW 66.08.030 (~~as amended by section 1, chapter 115, Laws of 1977 ex. sess.~~), pamphlets containing ~~((the))~~ state liquor laws (Title 66 RCW and other liquor related statutes) and the revised rules and regulations of the board ~~((shall))~~ will be made publicly available ~~((through the board's Central Office Services Division, 1025 East Union Avenue, Olympia, Washington 98504, for distribution, upon request, to any member of the public. An updating service covering amendments to the Liquor Act and the revised rules and regulations of the board shall also be available for such distribution. Charges shall be made for these items as directed by the board from time to time to cover the costs of printing and handling.~~

~~Provided, however, That copies of the liquor laws and regulations and the update service shall be provided without charge as follows: (1) To the secretary of the senate for use of senate committees, fifteen copies; (2) to the chief clerk of the house for use of house committees, twenty copies; (3) to~~

~~the state library, two copies; (4) to the state law library, two copies; (5) to licensees of the board, one copy each; (6) to recognized news reporting services maintaining permanent offices at the capitol, one copy each. One copy shall also be provided without charge, upon request, to legislators, governmental and nonprofit organizations, academic research students, libraries, and alcoholism information and treatment centers))~~ on the agency web site.

AMENDATORY SECTION (Amending Order 81, Resolution No. 90, filed 9/23/81)

WAC 314-62-020 Annual reports. ~~((Pursuant to RCW 66.08.028,))~~ The board makes annual reports ~~((to the governor))~~ covering the administration and enforcement of the Liquor Act during the preceding fiscal year. Copies of this report ~~((shall))~~ will be publicly available ~~((through the board's Central Office Services Division, 1025 East Union Avenue, Olympia, Washington 98504, for distribution, upon request, to any member of the public. A charge as directed by the board from time to time to cover the costs of printing and handling shall be made for each copy of this report. Provided, however, That copies of the annual report shall be provided without charge as follows: (1) To the secretary of the senate for use of senate committees, fifteen copies; (2) to the chief clerk of the house for use of house committees, twenty copies; (3) to the state library, two copies; (4) to the state law library, two copies; (5) to licensed agents of suppliers of liquor with whom the board does business, one copy each; (6) to recognized news reporting services maintaining permanent offices at the capitol, one copy each. One copy of the annual report shall also be provided without charge, upon request, to legislators, governmental and nonprofit organizations, academic research students, libraries, and alcoholism information and treatment centers))~~ on the agency web site.

WSR 09-07-086

PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 17, 2009, 11:00 a.m., effective April 17, 2009]

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

Purpose: Legislation passed approving expansion of the premium-based children's healthcare for children in households with incomes up to and including 300% of FPL. The program name is changed from "children's healthcare for children" to "apple health for kids." This rule will increase the number of children who qualify for healthcare coverage.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-418-0025, 388-478-0075, 388-505-0210, 388-505-0211, 388-542-0010, 388-542-0020, 388-542-0050, and 388-542-0300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090.

Other Authority: 2008 session law, RCW 74.09.402 and 74.09.470.

Adopted under notice filed as WSR 08-21-105 on October 16, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-416-0015:

(10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);

(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through (4) and (6) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

~~(12) ((There is no retroactive eligibility for)) Coverage under premium-based programs included in apple health for kids coverage as described in WAC 388-505-0210 and chapter 388-542 WAC((If creditable coverage exists at the time of application, the certification period)) begins no sooner than the month after creditable coverage ends.~~

WAC 388-505-0210:

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006 ~~((1) or (4), or are ineligible due to the five year ban as described in WAC 388-424-0006(3))~~, are eligible for state-funded CN coverage ~~((under children's healthcare programs))~~ when they meet the following criteria:

WAC 388-542-0300:

(2)(iv) The family's total out-of-pocket maximum cost for employer-sponsored dependent coverage is two and one-half percent or more of the family's countable monthly income;

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 9, 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 9, Repealed 0.

Date Adopted: March 12, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-416-0015 Certification periods for categorically needy (CN) scope of care medical assistance pro-

grams. (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out-of-state, failing to pay a required premium(s), incarceration or death.

(6) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

(7) For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or

(b) Completed eligibility review.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

(10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);

(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through (4) and (6) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

(11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

(12) ~~((There is no retroactive eligibility for))~~ Coverage under premium-based ((children's healthcare)) programs included in apple health for kids as described in WAC 388-505-0210 and chapter 388-542 WAC ~~((If creditable coverage exists at the time of application, the certification period))~~ begins no sooner than the month after creditable coverage ends.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-418-0025 Effect of changes on medical program eligibility. (1) You continue to be eligible for medical assistance until the department determines your ineligibility or eligibility for another medical program. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

- (a) A CN Medicaid program;
- (b) A ~~((children's healthcare))~~ program included in apple health for kids; or
- (c) Any of the following cash grants:
 - (i) TANF;
 - (ii) SSI; or
 - (iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

- (a) Earned income; or
 - (b) Collection of child or spousal support.
- (4) A change in income during a certification period does affect eligibility for all medical programs except:
- (a) Pregnant women's medical programs;
 - (b) ~~((Children's healthcare programs,))~~ A program included in apple health for kids, except as specified in subsection (5); or
 - (c) The first six months of the medical extension benefits.
- (5) For a child receiving ~~((benefits))~~ premium-based coverage under ((the premium-based children's healthcare programs)) a program included in apple health for kids as described in WAC 388-505-0210 and chapter 388-542 WAC, the department must redetermine eligibility for ~~((a))~~ nonpremium-based ((medical program)) coverage when the family reports:
- (a) Family income has decreased to less than two hundred percent federal poverty level (FPL);
 - (b) The child becomes pregnant;
 - (c) A change in family size; or
 - (d) The child receives SSI.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following medical programs change on the first day of April every year based on the new FPL:

- (a) Pregnant women's program up to one hundred eighty-five percent of FPL;
 - (b) ~~((Children's healthcare programs))~~ A program included in apple health for kids up to two hundred percent of FPL;
 - (c) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and
 - (d) Premium-based coverage under ~~((the children's healthcare programs))~~ a program included in apple health for kids over two hundred percent of FPL, but not over ~~((two hundred fifty))~~ three hundred percent of FPL.
- (2) The department uses the FPL income standards to determine:
- (a) The mandatory or optional Medicaid status of an individual; and
 - (b) Premium amount, if any, for a child.
- (3) There are no resource limits for the programs under this section.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-505-0210 Children's healthcare programs. Funding for children's healthcare coverage may come through Title XIX (medicaid) ~~((or))~~, Title XXI ~~((for the Social Security Act))~~ ~~((or))~~ SCHIP ~~((or))~~, or through state-funded programs. There are no resource limits for children's ~~((medical))~~ healthcare programs ~~((, but children must meet the eligibility criteria below to qualify for these programs))~~. Children's healthcare programs that fall under the apple health for kids umbrella are described in subsections (1) through (4) below.

- (1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:
- (a) The child's mother was eligible for and receiving medical assistance at the time of the child's birth; and
 - (b) The child remains with the mother and resides in the state.
- (2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and 388-424-0006 ~~((1) and (4))~~ are eligible for federally matched CN coverage ~~((under children's healthcare programs))~~ when they meet the following criteria:
- (a) State residence as described in chapter 388-468 WAC;
 - (b) A Social Security number or application as described in chapter 388-476 WAC;
 - (c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are eligible for SSI-related CN or MN coverage.

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006 ~~((1) or (4), or are ineligible due to the five-year ban as described in WAC 388-424-0006(3))~~, are eligible for state-funded CN coverage ~~((under children's healthcare programs))~~ when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen are eligible for premium-based CN coverage ~~((under children's healthcare programs))~~ as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over ~~((two hundred fifty))~~ three hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premiums as described in WAC 388-505-0211

(5) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c); ~~((and))~~

(b) ~~((They))~~ Are ineligible for other federal Medicaid programs; and

(c) Meet their spenddown obligation as described in WAC 388-519-0100 and 388-519-0110.

(6) Children under the age of twenty-one who reside or expect to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, or psychiatric facility may be eligible for ~~((medical))~~ healthcare coverage. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care."

(7) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, are eligible for federally matched CN Medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(8) Children who receive subsidized adoption services are eligible for federally matched CN Medicaid coverage.

(9) Children under age of nineteen may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; or

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(10) Children who are ineligible for other ~~((children's healthcare))~~ programs ~~((due to citizenship or immigrant status requirements))~~ included in apple health for kids may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) They have a documented emergent medical condition as defined in WAC 388-500-0005;

(b) They meet the other AEM program requirements as described in WAC 388-438-0110; and

(c) They have income that exceeds ~~((children's healthcare program standards))~~ three hundred percent FPL; or

(d) They are disqualified from receiving premium-based ~~((children's healthcare))~~ coverage as described in subsection (4) of this section because of creditable coverage or nonpayment of premiums.

(11) Except for a client described in subsection (6), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any children's healthcare program(s).

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-505-0211 Premium requirements for premium-based ~~((children's healthcare programs))~~ healthcare coverage under programs included in apple health for kids. (1) For the purposes of this chapter, "**premium**" means an amount paid for ~~((medical))~~ healthcare coverage under programs included in apple health for kids.

(2) Payment of a premium is required as a condition of eligibility for premium-based ~~((children's healthcare))~~ coverage under programs included in apple health for kids, as described in WAC 388-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

(4) The premium amount for the assistance unit is based on the net ~~((available))~~ countable income as described in WAC ~~((388-450-0005))~~ 388-450-0210 and the number of children in the assistance unit. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.

(5) The premium amount for each eligible child ~~((is fifteen dollars per month per child, up to a maximum of forty-five dollars per month, per household))~~ shall be:

(a) Twenty dollars per month per child for households with income above two hundred percent FPL, but not above two hundred and fifty percent FPL.

(b) Thirty dollars per month per child for households with income above two hundred and fifty percent FPL, but not above three hundred percent FPL; and

(c) Limited to a monthly maximum of two premiums for households with two or more children.

(6) All children in an assistance unit are ineligible for ~~((medical))~~ healthcare coverage when the head of household fails to pay required premium payments for three consecutive months.

(7) When the department terminates the medical coverage of a child due to nonpayment of premiums, the child has a three-month period of ineligibility beginning the first of the following month. The three-month period of ineligibility is rescinded only when the:

(a) Past due premiums are paid in full prior to the begin date of the period of ineligibility; or

(b) The child becomes eligible for coverage under a non-premium-based ~~((medical))~~ healthcare program. The department will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.

(8) The department writes off past-due premiums after twelve months.

(9) When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for premium-based ~~((children's healthcare))~~ coverage under a program included in apple health for kids.

(10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full premium amount is the obligation of the head of household of the assistance unit. A family can decide to request ~~((medical))~~ healthcare coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

(11) A change that affects the premium amount is effective the month after the change is reported and processed.

(12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the:

(a) Establishment of the period of ineligibility described in subsection (7) of this section; or

(b) Obligation of the head of household to pay past-due premiums.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-542-0010 Purpose and scope of premium-based ~~((children's healthcare programs))~~ healthcare coverage under programs included in apple health for kids. The department administers the programs included in apple health for kids that provide premium-based ~~((children's~~

~~healthcare))~~ coverage through a combination of state and federal funding sources as described below:

(1) Federally matched healthcare coverage as authorized by Title XXI of the Social Security Act state children's health insurance program (SCHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred percent of the federal poverty level (FPL) but is not above ~~((two hundred fifty))~~ three hundred percent ~~((of the))~~ FPL.

(2) State funded healthcare coverage for ~~((noncitizen))~~ children with family income above two hundred percent FPL, but not above ~~((two hundred fifty))~~ three hundred percent FPL, who are ineligible for Title XXI federally matched ~~((children's))~~ healthcare coverage due to immigration issues.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-542-0020 Other rules that apply to premium-based ~~((children's healthcare programs))~~ healthcare coverage under programs included in apple health for kids. In addition to the rules of this chapter, children receiving premium-based ~~((children's healthcare clients))~~ coverage under programs included in apple health for kids are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065) if the child is covered under federally matched CN coverage;

(2) WAC 388-505-0210(4), Children's healthcare program eligibility;

(3) WAC 388-505-0211, Premium requirements for premium-based ~~((children's healthcare programs))~~ coverage under programs included in apple health for kids;

(4) WAC 388-416-0015(12), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(5) WAC 388-418-0025, Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-542-0050 Definitions for premium-based ~~((children's healthcare programs))~~ healthcare coverage under programs included in apple health for kids. The following definitions, as well as those found in WAC 388-538-050 and in 388-500-0005 Medical definitions, apply to premium-based ~~((children's healthcare programs))~~ coverage under programs included in apple health for kids.

"Creditable coverage" means most types of public and private health coverage, except Indian health services, that provides access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based ~~((children's healthcare))~~ programs included in apple health for kids. "Creditable coverage" is described in 42 U.S.C. Sec. 1397jj.

"Employer-sponsored dependent coverage" means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or part towards the premium.

Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

AMENDATORY SECTION (Amending WSR 08-05-018, filed 2/12/08, effective 3/14/08)

WAC 388-542-0300 **Waiting period for premium-based (~~healthcare~~) healthcare coverage under programs (coverage) included in apple health for kids following employer coverage.** (1) The department requires applicants to serve a waiting period of four full consecutive months before receiving premium-based (~~children's healthcare programs~~) coverage under programs included in apple health for kids if the client or family:

(a) Chooses to end employer sponsored dependent coverage. The waiting period begins the day after the employment-based coverage ends; or

(b) Fails to exercise an optional coverage extension (e.g., COBRA) that meets the following conditions. The waiting period begins on the day there is a documented refusal of the coverage extension when the extended coverage is:

(i) Subsidized in part or in whole by the employer or union;

(ii) Available and accessible to the applicant or family; and

(iii) At a monthly cost to the family meeting the limitation of subsection (2)(b)(iv).

(2) The department does not require a waiting period prior to premium-based coverage under ((premium-based children's healthcare programs)) a program included in apple health for kids when:

(a) The client or family member has a medical condition that, without treatment, would be life-threatening or cause serious disability or loss of function; or

(b) The loss of employer-sponsored dependent coverage is due to any of the following:

(i) Loss of employment with no post-employment subsidized coverage as described in subsection (1)(b);

(ii) Death of the employee;

(iii) The employer discontinues employer-sponsored dependent coverage;

(iv) The family's total out-of-pocket maximum cost for employer-sponsored dependent coverage is (~~fifty dollars per month or more~~) two and one-half percent or more of the family's countable monthly income;

(v) The plan terminates employer-sponsored dependent coverage for the client because the client reached the maximum lifetime coverage amount;

(vi) Coverage under a COBRA extension period expired;

(vii) Employer-sponsored dependent coverage is not reasonably available (e.g., client would have to travel to another city or state to access care); or

(viii) Domestic violence caused the loss of coverage for the victim.

WSR 09-07-098
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 18, 2009, 8:54 a.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: The purpose of this project is to include the adopted outdoor heat exposure rule in chapter 296-307 WAC, Safety standards for agriculture.

During the public comment period for the outdoor heat exposure rule, the department received comments from stakeholders who believed that chapter 296-62 WAC, General occupational health standards, does not apply currently to chapter 296-307 WAC, Safety standards for agriculture.

Although it was determined that the department is permitted by RCW 49.17.041 to specifically reference the general industry safety rules, the department agreed to initiate rule making to incorporate outdoor heat exposure requirements into chapter 296-307 WAC.

RCW 49.17.041 requires the department to establish an agricultural safety rule that includes two parts: (1) Agricultural-specific rules for agricultural employers; and (2) specific references to the general industry safety rule adopted under chapter 49.17 RCW.¹ Furthermore, agricultural employers are to be exempt from the general industry safety rule adopted under chapter 49.17 RCW for all rules *not specifically referenced* in the agricultural safety rule.²

Currently, the agricultural safety rule, chapter 296-307 WAC, specifically states agricultural employers are covered by the requirements of chapter 296-62 WAC, General occupational health standards. WAC 296-307-006(3) states, "All agricultural operations are also covered by the requirements of chapter 296-62 WAC, General occupational health rules."

While the department has determined that the requirements in chapter 296-62 WAC apply to agricultural employers, the department has decided to add the language from WAC 296-62-095 to chapter 296-307 WAC per stakeholder requests.

¹ RCW 49.17.041 (2)(a).

² RCW 49.17.041 (2)(b) (emphasis added).

Citation of Existing Rules Affected by this Order: WAC 296-307-030 What are the required elements of an accident prevention program?, 296-307-09512 What potable water sources must an employer provide?, 296-307-11015 Violations of this part—Worker protection standards—40 CFR, § 170.9, 296-307-12020 Entry restrictions—Standards for workers—40 CFR, § 170.112, and 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 08-23-084 on November 18, 2008.

Changes Other than Editing from Proposed to Adopted Version: None. WAC 296-62-095 currently applies to agriculture employers. This identical language from WAC 296-62-095 is being adopted into chapter 296-307 WAC, Safety standards for agriculture. As a result, no new or additional

requirements or costs will be created for agriculture employers.

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 7, Amended 5, 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 7, Amended 5, Repealed 0.

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

Date Adopted: March 18, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-030 What are the required elements of an accident prevention program? (1) You must instruct all employees in safe working practices at the beginning of employment. Your instruction must be tailored to the types of hazards to which employees are exposed.

(2) You must develop a written accident prevention program tailored to the needs of your agricultural operation and to the types of hazards involved.

(3) Your accident prevention program must contain at least the following elements:

(a) How, when, and where to report injuries and illnesses, and the location of first-aid facilities.

(b) How to report unsafe conditions and practices.

(c) The use and care of personal protective equipment.

(d) What to do in emergencies. See WAC 296-307-35015 for emergency action plan requirements.

(e) Identification of hazardous chemicals or materials and the instruction for their safe use.

(f) An on-the-job review of the practices necessary to perform job assignments in a safe and healthful manner.

(4) At least once a month, you must conduct a walk-around safety inspection of active job sites, the materials and equipment involved, and operating procedures. A representative chosen by employees must be invited and allowed to accompany you.

Note: Additional requirements in Part G-1, WAC 296-307-097, Outdoor heat exposure, may apply. Employers may address their outdoor heat exposure safety program either in their written accident prevention program (APP) or as a stand-alone written document. See Part G-1.

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-09512 What potable water sources must an employer provide? You must provide potable

water for employees engaged in hand-labor operations in the field, without cost to the employee. Potable water must meet the following requirements:

(1) Potable water is in locations that are accessible to all employees.

(2) Potable water containers are refilled daily or more often as necessary.

(3) Potable water dispensers are designed, constructed, and serviced so that sanitary conditions are maintained. They are closeable and equipped with a tap.

(4) Open containers such as barrels, pails, or tanks for drinking water from which water must be dipped or poured, whether or not they are fitted with a cover, are prohibited.

(5) Any container used to distribute drinking water is clearly marked in English and with the appropriate international symbol describing its contents.

(6) Any container used to distribute drinking water is only used for that purpose.

(7) Potable water is suitably cool and provided in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet employees' needs.

Note: Suitably cool water should be sixty degrees Fahrenheit or less. During hot weather, employees may require up to three gallons of water per day. Additional requirements may be found in the outdoor heat exposure standard in Part G-1, WAC 296-307-09740 Drinking water, which applies between May 1st and September 30th of each year.

(8) The use of common drinking cups or dippers is prohibited. Water is dispensed in single-use drinking cups, personal containers, or by water fountains.

"Single-use drinking cups" means containers of any type or size, disposable or not, and including personal containers if the choice to use a personal container is made by the employee, not the employer.

(9) Employees must be prohibited from drinking from irrigation ditches, creeks or rivers. Potable water must meet the quality standards for drinking purposes of the state or local authority, or must meet quality standards of the United States Environmental Protection Agency's National Interim—Primary Drinking Water Regulations, published in 40 CFR Part 141 and 40 CFR 147.2400.

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-11015 Violations of this part—Worker protection standards—40 CFR, § 170.9. (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person ". . . to use or cause to be used any pesticide contrary to label directions . . ." When 40 CFR, Part 170 is referenced on a label, users must comply with all of its requirements except those that are inconsistent with product specific instructions on the labeling. For purposes of this chapter, the term "use" is interpreted to include:

(a) Preapplication activities, including, but not limited to:

(i) Arranging for the application of the pesticide;

(ii) Mixing and loading the pesticide; and

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker

notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(b) Application of the pesticide.

(c) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus thirty days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination.

(d) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides that have been opened, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(2) A person who has a duty under this chapter, as referenced on the pesticide product label, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, and is subject to civil penalties under RCW 15.58.335, 15.58.260 and 17.21.315.

(3) FIFRA section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.

(4) The requirements of this chapter, including the decontamination requirements, shall not, for the purposes of section 653 (b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by Field Sanitation, WAC 296-307-095, or other agricultural, nonpesticide hazards.

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-12020 Entry restrictions—Standards for workers—40 CFR, § 170.112. (1) General restrictions.

(a) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

(b) Entry-restricted areas in greenhouses are specified in column D in Table 2 under WAC 296-307-12015 (3)(d).

(c) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.

(d) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by subsections (3), (4), and (5) of this section uses the personal protective equipment specified in the product labeling for early entry workers and follows any other requirements on the pesticide labeling regarding early entry.

(2) Exception for activities with no contact. A worker may enter a treated area during a restricted-entry interval if

the agricultural employer assures that both of the following are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and

(b) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(3) Exception for short-term activities. A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas under a restricted-entry interval for any worker does not exceed one hour in any twenty-four-hour period.

(c) No such entry is allowed for the first four hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(d) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:

(i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(iii) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(iv) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(v) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(vi) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-

resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.

(vii) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent materials must not be worn for early entry activities unless these materials are listed on the product labeling as acceptable for such use. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable for tasks with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant liners. However, once leather gloves have been worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(viii) When "chemical-resistant footwear" is specified by the product labeling, it shall be one of the following types of footwear: Chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(ix) When "protective eyewear" is specified by the product labeling, it shall be one of the following types of eyewear: Goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(x) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(e) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(f) The agricultural employer shall assure that:

(i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer's instructions.

(ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable federal, state, and local regulations.

(iv) All personal protective equipment is cleaned according to manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle

and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(x) Each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(g) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early entry activity without implementing, when appropriate, measures to prevent heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(h) During any early entry activity, the agricultural employer shall provide a decontamination site in accordance with WAC 296-307-12050.

(i) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.

(4) Declaration of an agricultural emergency.

(a) The director of the Washington state department of agriculture may declare the existence of circumstances causing an agricultural emergency on a particular establishment or establishments.

(b) The director may declare an agricultural emergency based on the reasonably expected certainty of circumstances occurring based on weather or other forecasts that would create conditions that would normally be anticipated to cause an agricultural emergency.

(c) The agricultural employer may determine if the establishment under his/her control is subject to the agricultural emergency declared by the director.

(d) Emergency repair of equipment that is in use and sited within a pesticide treated area under a restricted-entry interval, such as frost protection devices, shall be considered to be an agricultural emergency. The conditions in WAC 16-228-655 shall be met.

(e) Activities that require immediate response such as fire suppression, relocation of greenhouse plants due to power failure, and similar conditions, shall be considered to be agricultural emergencies. The conditions in WAC 16-228-655 shall be met.

(5) Agricultural activities permitted under an agricultural emergency.

(a) A worker may enter a pesticide treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency if the agricultural employer assures that all the following requirements are met:

(i) No entry is permitted for the first four hours after the pesticide application or the minimum reentry interval allowed by EPA for that product, whichever is less;

(ii) The personal protective equipment specified on the product labeling for early entry is provided to the worker;

(iii) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use;

(iv) The agricultural employer shall assure that the worker wears the proper PPE and that the PPE is in operable condition and that the worker has been trained in its proper use;

(v) The agricultural employer shall assure that measures have been taken, when appropriate, to prevent heat-related illness;

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(vi) A decontamination site has been provided in accordance with EPA regulations;

(vii) The agricultural employer shall not allow or direct any worker to wear home or take home personal protective equipment contaminated with pesticides.

(b) If the agricultural emergency is due to equipment failure, then the agricultural employer shall assure that all the requirements in subsection (1) of this section are met plus the following additional requirement. The only permitted activity until the restricted-entry interval has elapsed is equipment repair that would mitigate the effect of the equipment failure.

(6) Recordkeeping required for agricultural emergencies.

(a) If the employer declares that his/her establishment is affected by an agricultural emergency and that activities regulated by the worker protection standard have been performed, the employer shall keep the following records for seven years from the date of the agricultural emergency:

(i) Date of the agricultural emergency;

(ii) Time of the agricultural emergency, start and end;

(iii) Reason for the agricultural emergency, such as frost, fire, equipment failure, etc.;

(iv) Crop/site;

(v) Pesticide(s) - name, EPA number, REI;

(vi) Name, date, time of entry and exit of early entry person(s);

(vii) Estimated potential of economic loss which would have occurred had no early entry been allowed.

(b) Records shall be completed within twenty-four hours of the early entry exposure and be available to the department and/or department of health and/or medical facility or treating physician if requested by the above or the employee.

(7) Exception to entry restrictions requiring EPA approval. EPA may in accordance with 40 CFR, Part 170.112 (e) grant an exception from the requirements of this section. A request for an exception must be submitted to the Director, Office of Pesticide Programs (H-7501C), Environmental Protection Agency, 401 "M" Street SW, Washington, DC 20460 and must be accompanied by two copies of the information specified in 40 CFR, Part 170.112(e).

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240. (1) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(2) Definition.

(a) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(b) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(3) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(a) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.

(e) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent material shall not be worn for handling activities unless such materials are listed on the product labeling as acceptable for such use.

(f) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.
- (iii) Safety glasses with front, brow, and temple protection.
- (iv) Full-face respirator.

(h) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.

(i) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5. If the label does not specify the type of respirator to be used, it shall meet the requirements of chapter 296-307 WAC, Part Y-5. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply.

(j) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(4) Exceptions to personal protective equipment specified on product labeling.

(a) Body protection.

(i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.

(ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.

(b) Boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(c) Gloves. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(d) Closed systems. If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in (d)(i) and (ii) of this subsection.

(i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-

resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Persons using a closed system to mix or load pesticides other than those in (d)(i) of this subsection or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(iii) Persons using a closed system that operates under pressure shall wear protective eyewear.

(iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.

(e) Enclosed cabs. If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in (e)(i) through (iv) of this subsection.

(i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.

(iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than the vapor-removing or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.

(iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.

(f) Aerial applications.

(i) Use of gloves. Chemical-resistant gloves shall be worn when entering or leaving an aircraft contaminated by

pesticide residues. In the cockpit, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(ii) Open cockpit. Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.

(iii) Enclosed cockpit. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(g) Crop advisors. Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:

(i) Application has been completed for at least four hours.

(ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(5) Use of personal protective equipment.

(a) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(6) Cleaning and maintenance.

(a) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable federal, state, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall be not be reused.

(c) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(d) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.

(e) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer shall assure that when gas-removing or vapor-removing respirators are used, the gas-removing or vapor-removing canisters or cartridges shall be replaced:

(i) At the first indication of odor, taste, or irritation.

(ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer shall inform any person who cleans or launders personal protective equipment:

(i) That such equipment may be contaminated with pesticides.

(ii) Of the potentially harmful effects of exposure to pesticides.

(iii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(i) The handler employer shall assure that handlers have a clean place(s) away from pesticide storage and pesticide use areas where they may:

(i) Store personal clothing not in use.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(7) Heat-related illness. When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

PART G-1

NEW SECTION

WAC 296-307-097 Outdoor heat exposure.

NEW SECTION

WAC 296-307-09710 Scope and purpose. (1) WAC 296-307-097 through 296-307-09760 applies to all employers with employees performing work in an outdoor environment.

(2) The requirements of WAC 296-307-097 through 296-307-09760 apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in Table 1.

Table 1

To determine which temperature applies to each work-site, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels

All other clothing	89°
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°
Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(3) WAC 296-307-097 through 296-307-09760 does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more than fifteen minutes in any sixty-minute period. This exception may be applied every hour during the work shift.

(4) WAC 296-307-097 through 296-307-09760 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer shall comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for fire fighters and chapter 296-307 WAC, Safety standards for agriculture.

NEW SECTION

WAC 296-307-09720 Definitions. (1) **Acclimatization** means the body's temporary adaptation to work in heat that occurs as a person is exposed to it over time.

(2) **Double-layer woven clothing** means clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

(3) **Drinking water** means potable water that is suitable to drink. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

(4) **Engineering controls** means the use of devices to reduce exposure and aid cooling (i.e., air conditioning).

(5) **Environmental factors for heat-related illness** means working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-307-097.

(6) **Heat-related illness** means a medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(7) **Outdoor environment** means an environment where work activities are conducted outside. Work environments

such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.

(8) **Vapor barrier clothing** means clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

NEW SECTION

WAC 296-307-09730 Employer and employee responsibility. (1) Employers of employees exposed at or above temperatures listed in WAC 296-307-09710(2) Table 1 must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP); and

(b) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

NEW SECTION

WAC 296-307-09740 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC 296-307-09710(2) Table 1:

(a) Employers must ensure that a sufficient quantity of drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

NEW SECTION

WAC 296-307-09750 Responding to signs and symptoms of heat-related illness. (1) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

NEW SECTION

WAC 296-307-09760 Information and training. All training must be provided to employees and supervisors, in a language the employee or supervisor understands, prior to outdoor work which exceeds a temperature listed in WAC 296-307-09710(2) Table 1, and at least annually thereafter.

(1) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in WAC 296-307-09710(2) Table 1:

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The importance of acclimatization;

(f) The different types of heat-related illness, the common signs and symptoms of heat-related illness; and

(g) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(2) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC 296-307-09710(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-097 through 296-307-09760;

(c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

(d) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.