

WSR 09-09-002**PERMANENT RULES****TRANSPORTATION IMPROVEMENT BOARD**

[Filed April 1, 2009, 12:17 p.m., effective May 2, 2009]

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

Purpose: Amending WAC 479-05-211 language to the delayed project time frame to include "construction only" projects, giving this category its own time schedule.

Citation of Existing Rules Affected by this Order: Amending WAC 479-05-211.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 09-02-046 on December 31, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 10, 2009.

Stevan Gorcester
Executive Director

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-05-211 When a project is considered delayed. Projects are considered delayed when one of the following occurs:

(1) Urban corridor program projects do not reach construction phase within five years and six months.

(2) Urban arterial program projects do not reach construction phase within four years and six months.

(3) Projects awarded funding as "construction only" will be considered delayed if construction does not begin within one year of funding becoming available.

(4) All other programs must reach construction phase within two years and six months.

The date funding is made available to the local agency by TIB is the starting point in calculating the delay date.

WSR 09-09-032**PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed April 7, 2009, 10:26 a.m., effective May 8, 2009]

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

Purpose: The rules adopt a new chapter in WAC and establish licensing standards for ambulatory surgical facilities. The rules are in response to 2007 legislation (ESHB 1414) which established a new chapter to Title 70 RCW (230). ESHB 1414 requires the department to license ambulatory surgical facilities by July 1, 2009. The anticipated effects of licensing these facilities will be overall quality improvement of patient services.

Statutory Authority for Adoption: Chapter 70.230 RCW.

Adopted under notice filed as WSR 09-04-095 on February 4, 2009.

Changes Other than Editing from Proposed to Adopted Version: Minor changes have been made to the rules. These changes are considered either technical in nature or for the purposes of clarification and are not substantial.

WAC 246-330-010(3), "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002 (and as updated), in its consensus report on serious reportable events in health care as referenced in chapter 70.56 RCW. (Added a reference to chapter 70.56 RCW.)

WAC 246-330-010(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: ... (Removed "same as original clinical" as this language is redundant.)

WAC 246-330-010(27), "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. (Removed "or magnitude" as it is unnecessary.)

WAC 246-330-010(30), "Operating room" means a room intended for invasive ~~and noninvasive~~ procedures. (Removed "and noninvasive" as the words are not necessary.)

WAC 246-330-010(39), ~~"Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition or that directs care for a patient.~~ (This definition is not needed as "procedure" is covered under "surgical services" definition.)

WAC 246-330-010(45), "Sexual assault" means, according to RCW 70.125.030, one or more of the following: ... (Added reference to RCW 70.125.030.)

WAC 246-330-020(1), ~~Before issuing an initial license to~~ For existing facilities currently doing business, that apply for a license exist prior to July 1, 2009, the department will verify compliance with chapter 70.230 RCW and this chapter before issuing an initial license by: (Added language for clarification.)

WAC 246-330-020(2), Before issuing an initial license to a new facility that applies for a license after July 1, 2009, the department will verify compliance with chapter 70.230 RCW and this chapter including, but not limited to: (Added language for clarification.)

WAC 246-330-020, **Note: A change of ownership application does not require a construction review or on-site inspection. A change of ownership may or may not require a certificate of need review and approval per chapter 70.38 RCW.** (DOH policy does not allow "notes" in

rules. This note was found after WAC 246-330-020 (4)(c). It has been incorporated into this section.)

WAC 246-330-120(4), Establish and implement a facility-wide procedure for double-checking ~~certain~~ drugs, biologicals, and agents as designated by facility; (Removed "certain" as it was a vague term. Added "as designated by facility" for clarification.)

WAC 246-330-125 (1)(j), Family input in care decisions, in compliance with existing legal directives of the patient or existing court-issued legal orders. (Added additional language to clarify the parameters of family input.)

WAC 246-330-130 (1)(a) ~~For the purpose of this section~~ As found in the list of serious reportable events adopted by the national quality forum in 2002 (and as updated), in its consensus report on serious reportable events in health care. "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient. (Added the proper reference for "serious disability" and renumbered the section.)

WAC 246-330-150 (4)(g), Are promptly filed, accessible, and retained according to ~~chapter 5.46 RCW~~ facility policy; and (added proper reference.)

WAC 246-330-200, was restructured to clarify responsibilities of the facility and that of the pharmacist consultant.

WAC 246-330-205 (3)(h), Care and handling of patients whose condition require special medical or ~~medical-legal~~ consideration; (Removed "or medical-legal" to simplify/clarify language.)

WAC 246-330-230 (2)(h)(ii), (ii) ~~Operate and maintain a water supply providing~~ Provide hot and cold running water under pressure which conforms to chapter 246-290 WAC, (department of health, division of drinking water); (Removed WAC reference. The reference was not necessary.)

WAC 246-330-500, **Note: The new construction regulations apply only to facilities submitted to the construction review program after July 1, 2009. Facilities participating in the medicare/medicaid program prior to July 1, 2009, must be able to show compliance with the federal requirements for existing facilities. Facilities participating in medicare/medicaid submitted after July 1, 2009, must comply with the federal requirements for new facilities.** (DOH policy does not allow "notes" in rules. This note was found at the beginning of WAC 246-330-500. It has been incorporated at the end of WAC 246-330-500.)

A final cost-benefit analysis is available by contacting John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, 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 29, Amended 0, 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 29, Amended 0, Repealed 0.

Date Adopted: April 7, 2009.

Mary C. Selecky
Secretary

Chapter 246-330 WAC

AMBULATORY SURGICAL FACILITIES

NEW SECTION

WAC 246-330-001 Purpose and applicability of chapter. The Washington state department of health adopts this chapter to implement chapter 70.230 RCW and establish minimum health and safety requirements for the licensing, inspection, operation, maintenance, and construction of ambulatory surgical facilities.

(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.

NEW SECTION

WAC 246-330-010 Definitions. For the purposes of this chapter, 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 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 to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the National Quality Forum in 2002 (and as updated), in its consensus report on serious reportable events in health care as referenced in chapter 70.56 RCW.

(4) "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.

(5) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or

electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

(6) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. Excluded from this definition are a dental office, an ambulatory surgical facility licensed as part of a hospital under chapter 70.41 RCW or a practitioner's office where surgical procedures are conducted without general anesthesia.

(7) "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 the ambulatory surgical facility 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.

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

(9) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

(10) "Clinical evidence" means 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; or

(e) Medical photographs.

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

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

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

(a) Articles recognized in the official United States 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.

(14) "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 of 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 provide a safe transfer to a hospital before delivery; or

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

(15) "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.

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

(17) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(18) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

(19) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

(20) "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.

(21) "Invasive medical 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.

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

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

(24) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

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

(26) "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.

(27) "Neglect" means mistreatment or maltreatment, a disregard of consequences 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 that may result in emotional or behavioral problems, physical manifestations, and disorders.

(28) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

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

(30) "Operating room" means a room intended for invasive procedures.

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

(32) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

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

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

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

(36) "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.

(37) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(38) "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.

(39) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical facility staff under defined circumstances recorded in policy and procedure.

(40) "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, surgery, or other diagnostic or treatment procedures.

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

(42) "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.

(43) "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.

(44) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(45) "Sexual assault" means, according to RCW 70.125.030, 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;

**PART I
OPERATIONAL RULES**

NEW SECTION

WAC 246-330-020 Department responsibilities—Licensing, change of ownership—Adjudicative proceeding. This section outlines the actions and roles of the department for licensing an ambulatory surgical facility.

(1) For existing facilities currently doing business, that apply for a license prior to July 1, 2009, the department will verify compliance with chapter 70.230 RCW and this chapter before issuing an initial license by:

(a) Receipt and approval of the initial license application;
(b) Receipt of the correct licensing fee;
(c) Receipt of a completed and accepted inspection conducted by:

(i) The Centers for Medicare and Medicaid Services;
(ii) The Joint Commission;
(iii) The Accreditation Association for Ambulatory Health Care;

(iv) The American Association for Accreditation of Ambulatory Surgery Facilities; or

(d) For facilities that have not been inspected by medicare or one of the accrediting organizations listed in (c) of this subsection, the following:

(i) Receipt of a certificate of need, when needed, as provided in chapter 70.38 RCW;

(ii) Receipt of a certificate of occupancy by the local jurisdiction;

(iii) Receipt of the ambulatory surgical facility's safety and emergency training program; and

(iv) Successfully completing an on-site licensing inspection conducted by the department.

(2) Before issuing an initial license to a new facility that applies for a license after July 1, 2009, the department will verify compliance with chapter 70.230 RCW and this chapter including, but not limited to:

(a) Approval of construction documents in accordance with this chapter;

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

(c) Receipt and approval of the initial license application;

(d) Receipt of the correct license fee;

(e) Receipt of the ambulatory surgical facility's safety and emergency training program; and

(f) Receipt of a completed and accepted inspection conducted by:

(i) The Centers for Medicare and Medicaid Services;
(ii) The Joint Commission;
(iii) The Accreditation Association for Ambulatory Health Care;

(iv) The American Association for Accreditation of Ambulatory Surgery Facilities; or

(g) Successfully completing an on-site licensing inspection conducted by the department.

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

(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 offenses in (a) through (h) of this subsection.

(46) "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.

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

(48) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cytogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

(49) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

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

(51) "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.

(52) "Vulnerable adult" means:

(a) 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;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) 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.

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

(a) Approve the amended ambulatory surgical facility application form; and

(b) Confirm receipt of the correct fee.

(4) Before issuing a change of ownership license, the department will:

(a) Approve the change of ownership application;

(b) Confirm receipt of the change of ownership fee; and

(c) Confirm the change of ownership will not alter the certificate of need status or require a certificate of need review.

(5) A change of ownership application does not require a construction review or on-site inspection. A change of ownership may or may not require a certificate of need review and approval per chapter 70.38 RCW.

(6) The department may issue a provisional license to allow the operation of an ambulatory surgical facility, if the department determines that the applicant or licensed ambulatory surgical facility failed to comply with chapter 70.230 RCW or this chapter.

(7) The department may deny, suspend, modify, or revoke a license when it finds an applicant or ambulatory surgical facility has failed or refused to comply with chapter 70.230 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 chapter 246-10 WAC. An applicant or license holder has the right to an adjudicative proceeding to contest the decision as described in WAC 246-330-100(4)(c) of this chapter.

NEW SECTION

WAC 246-330-025 Department responsibility—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 ambulatory surgical facility every eighteen months or more often using the health and safety standards in this chapter and chapter 70.230 RCW;

(b) Accept, in accordance with RCW 70.230.100(2), as a substitute for the department's eighteen months on-site survey, on-site surveys conducted by the Joint Commission, Accreditation Association for Ambulatory Health Care, American Association for Accreditation of Ambulatory Surgery Facilities or the Centers for Medicare and Medicaid Services as substituting for the eighteen month state survey requirement once every three years;

(c) Notify the ambulatory surgical facility in writing the survey findings following each on-site survey;

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

(e) Notify the ambulatory surgical facility when their submitted plan of correction adequately addresses the survey findings.

(2) Complaint investigations. The department will:

(a) Conduct an investigation of every complaint against an ambulatory surgical facility that concerns patient well-being;

(b) Notify the ambulatory surgical facility in writing of complaint investigation findings following each complaint investigation;

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

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

(3) The department may:

(a) For the purpose of meeting the every eighteen month survey requirement in RCW 70.230.100(2), allow an ambulatory surgical facility to conduct a self-survey once every three years if the previous three department inspections did not reveal any significant deficient practice;

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

(c) Contact an ambulatory surgical facility to discuss the findings of the Joint Commission, Accreditation Association for Ambulatory Health Care or American Association for Accreditation of Ambulatory Surgery Facilities on-site accreditation survey.

NEW SECTION

WAC 246-330-030 Operating without a license—Adjudicative proceeding. This section outlines the department's responsibility and authority over ambulatory surgical facilities that operate after July 1, 2009, without a department issued license.

(1) The department will investigate complaints of an ambulatory surgical facility operating without a license.

(2) Upon confirming that an ambulatory surgical facility is operating without a license, the secretary of the department may:

(a) Issue a notice of intention to issue a cease and desist order; or

(b) Issue a temporary cease and desist order after making a written finding of fact that the public interest will be irreparably harmed by delay in issuing the order. The temporary cease and desist order will remain in effect until further order by the secretary of the department.

(3) The person receiving a temporary cease and desist order is entitled to a prompt hearing. Actions taken under this section are governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapter 246-10 WAC.

NEW SECTION

WAC 246-330-035 Exemptions, interpretations, alternative methods. (1) The department may exempt an ambulatory surgical facility from complying with portions of this chapter when:

(a) The exemption will not change the purpose and intent of chapter 70.230 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) Structural integrity of the building is not compromised.

(2) The department will send a written interpretation of a rule within thirty calendar days after the department has received complete information relevant to the request for interpretation.

(3) The department may approve an ambulatory surgical facility 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 246-330-100 Application for license—Annual update of ambulatory surgical facilities information—License renewal—Right to contest a license decision. This section identifies the actions and responsibilities of an applicant or ambulatory surgical facility for 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 ambulatory surgical facility.

(2) Annual update. Before December 31st of each calendar year, a licensed ambulatory surgical facility must submit to the department an annual update documentation form.

(3) License renewal. No later than thirty days before the license expiration date, a licensed ambulatory surgical facility must submit to the department a renewal application form and fee.

(4) An applicant or ambulatory surgical facility has the right to contest a department decision to deny, modify, suspend or revoke a license 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) Include 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 chapter 246-10 WAC.

NEW SECTION

WAC 246-330-105 Ambulatory surgical facility responsibilities. This section identifies the actions and responsibilities of a licensed ambulatory surgical facility.

(1) An ambulatory surgical facility must comply with chapter 70.230 RCW and this chapter;

(2) An ambulatory surgical facility certified by the Centers for Medicare and Medicaid Services or accredited by the

Joint Commission, Accreditation Association for Ambulatory Health Care or American Association for Accreditation of Ambulatory Surgery Facilities must:

(a) Notify the department of a certification or 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 246-330-110 Requests for exemptions, interpretations, alternative methods. This section outlines a process to request an exemption, interpretation, or approval to use an alternative method and the department's response. 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 licensed ambulatory surgical facility 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;
 - (iii) How the exemption will not change the purpose and intent of chapter 70.230 RCW or this chapter;
 - (iv) Why the exemption does not threaten patient safety or health;
 - (v) How the exemption will not reduce or alter fire and life safety or infection control requirements; and
 - (vi) Why the exemption does not compromise structural integrity of the building.

(2) A licensed ambulatory surgical facility 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 licensed ambulatory surgical facility 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 licensed ambulatory surgical facility must keep and make available copies of each exemption, alternative, or interpretation received from the department.

(5) The department will, in response to a written request for an exemption or approval to use alternative materials, designs, and methods, send a written determination within thirty days after the department has received complete information relevant to the request.

NEW SECTION

WAC 246-330-115 Governance. This section outlines the organizational guidance and oversight responsibilities of

ambulatory surgical facility resources and staff to support safe patient care.

An ambulatory surgical facility must have a governing authority that is responsible for determining, implementing, monitoring and revising policies and procedures covering the operation of the facility that includes:

- (1) Selecting and periodically evaluating a chief executive officer or administrator;
- (2) Appointing and periodically reviewing a medical staff;
- (3) Approving the medical staff bylaws;
- (4) Reporting practitioners according to RCW 70.230.-120;
- (5) Informing patients of any unanticipated outcomes according to RCW 70.230.150;
- (6) Establishing and approving a coordinated quality performance improvement plan according to RCW 70.230.-080;
- (7) Establishing and approving a facility safety and emergency training program according to RCW 70.230.060;
- (8) Reporting adverse events and conducting root cause analyses according to RCW 70.56.020;
- (9) Providing a patient and family grievance process including a time frame for resolving each grievance according to RCW 70.230.080 (1)(d);
- (10) Defining who can give and receive patient care orders that are consistent with professional licensing laws; and
- (11) Defining who can authenticate written or electronic orders for all drugs, intravenous solutions, blood, and medical treatments that are consistent with professional licensing laws.

NEW SECTION

WAC 246-330-120 Leadership. This section describes leaderships' role in assuring care is provided consistently throughout the facility according to patient needs.

The ambulatory surgical facility leaders must:

- (1) Identify patient care responsibilities for all nursing personnel;
- (2) Assure nursing services are provided in accordance with state nurse licensing law and recognized standards of practice;
- (3) Assure a registered nurse is available for emergency treatment at all times a patient is present in the facility;
- (4) Establish and implement a facility-wide procedure for double-checking drugs, biologicals, and agents as designated by the facility;
- (5) Ensure immediate staff access to and appropriate dosages for emergency drugs;
- (6) Require individuals conducting business in the ambulatory surgical facility comply with facility policies and procedures;
- (7) Post the complaint hotline notice according to RCW 70.230.160; and
- (8) Adopt and implement policies and procedures to report suspected abuse within forty-eight hours to local police or appropriate law enforcement agency according to RCW 26.44.030.

NEW SECTION

WAC 246-330-125 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.

Ambulatory surgical facilities 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 facility 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 70.230.150;
 - (i) Be informed and agree to their care; and
 - (j) Family input in care decisions, in compliance with existing legal directives of the patient or existing court-issued legal orders.
- (2) Provide each patient a written statement of patient rights from subsection (1) of this section.
- (3) 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 246-330-130 Adverse events. (1) As found in the list of serious reportable events adopted by the National Quality Forum in 2002 (and as updated), in its consensus report on serious reportable events in health care, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.

(2) Ambulatory surgical facilities must:

- (a) Notify the department according to RCW 70.56.020 whenever an adverse event is confirmed in the facility; and
- (b) Send the department a report regarding the event according to RCW 70.56.020.
- (3) The department will assure all notifications and reports submitted to the department are maintained confidentially according to RCW 70.56.050.

NEW SECTION

WAC 246-330-140 Management of human resources. This section ensures that ambulatory surgical facilities provide competent staff consistent with scope of services.

Ambulatory surgical facilities must:

- (1) Create and periodically review job descriptions for all staff;
- (2) Supervise staff performance to assure competency;
- (3) Verify and document licensure, certification, or registration of staff;
- (4) 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*;
- (5) Provide infection control information to staff upon hire and annually which includes:
 - (a) Education on general infection control according to chapter 296-823 WAC blood borne pathogens exposure control; and
 - (b) General and specific infection control measures related to patient care.
- (6) Establish and implement an education plan that verifies staff training on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.

NEW SECTION

WAC 246-330-145 Medical staff. This section requires development of a medical staff structure, consistent with clinical competence, to ensure a safe patient care environment.

The medical staff must:

- (1) Be accountable to the governing body;
- (2) Adopt bylaws, rules, regulations, and organizational structure including an appointment and reappointment process;
- (3) Be legally and professionally qualified for the positions to which they are appointed and for the performance of privileges in accordance with recommendations from qualified medical personnel;
- (4) Periodically review and reappraise medical staff privileges using peer review data;
- (5) Periodically review and amend the scope of procedures performed in the ambulatory surgical facility;
- (6) If the ambulatory surgical facility assigns patient care responsibilities to practitioners other than physicians, it must have established policies and procedures, approved by the governing body, for overseeing and evaluating their clinical activities; and
- (7) Report practitioners for discipline of unprofessional conduct according to RCW 70.230.120.

NEW SECTION

WAC 246-330-150 Management of information. The purpose of this section is to improve patient outcomes and ambulatory surgical facility performance through obtaining, managing, and use of information.

An ambulatory surgical facility 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) Indicates authentication after the record is transcribed;
- (g) Are promptly filed, accessible, and retained according to facility policy; 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;
- (c) Transmittal of medical data to ensure continuity of care; and
- (d) Exclusion of clinical evidence from the medical record.

NEW SECTION

WAC 246-330-155 Coordinated quality improvement program. The purpose of this section is to ensure the establishment and on-going maintenance of a coordinated quality improvement program. The intent is to improve the quality of health care services provided to patients and to identify and prevent medical malpractice.

An ambulatory surgical facility must:

(1) Have a facility-wide approach to process design and performance measurement, assessment, and improving patient care services according to RCW 70.230.080 including, but not limited to:

- (a) A written performance improvement plan that is periodically evaluated;
- (b) Performance improvement activities that 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 management or administration related to wrong medication, wrong dose, wrong time, near misses and any other medication errors and incidents;

(e) Injuries, falls, restraint use, negative health outcomes and incidents injurious to patients in the ambulatory surgical facility;

(f) Adverse events according to chapter 70.56 RCW;

(g) Discrepancies or patterns between preoperative and postoperative (including pathologic) diagnosis, including pathologic review of specimens removed during surgical or invasive procedures;

(h) Adverse drug reactions (as defined by the ambulatory surgical facility);

(i) Confirmed transfusion reactions;

(j) Patient grievances, needs, expectations, and satisfaction; and

(k) Quality control and risk management activities.

NEW SECTION

WAC 246-330-176 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, staff, medical staff, and visitors.

An ambulatory surgical facility 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);

(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, sterilizing, 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) Facility-wide daily and periodic cleaning;

(i) Occupational health consistent with current practice;

(j) Clothing;

(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, transmission and isolation precautions; and

(q) Pharmacy and therapeutics.

(6) Establish and implement a plan for:

(a) Reporting communicable diseases including cluster or outbreaks of postoperative infections according to chapter 246-100 WAC; and

(b) Surveying and investigating communicable disease occurrences in the ambulatory surgical facility consistent with chapter 246-100 WAC; and

(c) Collecting, measuring and assessing data on infection rates, pathogen distributions and antimicrobial susceptibility profiles.

NEW SECTION

WAC 246-330-199 Fees—License, survey, change of ownership, refund process. This section establishes the license, survey, and change of ownership fees, a late penalty fee and request for refund of an initial fee. The license and survey fee are good for the entire three-year license period. The change of ownership fee is good for that transaction and does not change the original license ending date.

(1) Initial license. Applicants for an initial license must send the department:

(a) An initial license fee of two hundred dollars; and

(b) An initial survey fee based on the number of known or expected annual visits as follows:

(i) One thousand two hundred dollars for under one thousand annual patient visits;

(ii) One thousand six hundred dollars for one thousand one to five thousand annual patient visits; or

(iii) Two thousand two hundred dollars for more than five thousand annual patient visits.

(2) Renewal license. Licensees must send the department a license renewal and survey fee at least thirty days before the license expiration date as follows:

(a) One thousand three hundred dollars for under one thousand annual patient visits;

(b) One thousand seven hundred dollars for one thousand one to five thousand annual patient visits; or

(c) Two thousand three hundred dollars for more than five thousand annual patient visits.

(3) Late fee. A licensee must send the department a late fee in the amount of twenty-five dollars per day, not to exceed five hundred dollars, whenever the renewal fee is not paid by thirty days before the license expiration (date as indicated by the postmark).

(4) Change of ownership. The person purchasing or taking over ownership of a licensed ambulatory surgical facility must:

(a) Send the department a change of ownership fee in the amount of two hundred fifty dollars. The fee is paid thirty days before the change of ownership becomes final; and

(b) Receive from the department a new license valid for the remainder of the current license period.

(5) 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.

NEW SECTION

WAC 246-330-200 Pharmaceutical services. This section assures patient pharmaceutical needs are met in a planned and organized manner. This section is consistent with the requirements for a health care entity license under RCW 18.64.450 and chapter 246-904 WAC.

An ambulatory surgical facility must:

(1) Only administer, dispense or deliver legend drugs and controlled substances to patients receiving care in the facility;

(2) Assure drugs dispensed to patients are dispensed and labeled consistent with the requirements of RCW 18.64.246, and chapters 69.41 and 69.50 RCW;

(3) Establish a process for selecting medications based on evaluating their relative therapeutic merits, safety, and cost; and

(4) Designate a pharmacist consultant who is licensed in Washington state. The pharmacist consultant can be either employed or contracted by the facility. The pharmacist consultant is responsible for:

(a) Establishing policy and procedures related to:

(i) Purchasing, ordering, storing, compounding, delivering, dispensing and administering of controlled substances or legend drugs;

(ii) Assuring drugs are stored, compounded, delivered or dispensed according to all applicable state and federal rules and regulations;

(iii) Maintaining accurate inventory records and patient medical records related to the administration of controlled substances and legend drugs;

(iv) Maintaining any other records required by state and federal regulations;

(v) Security of legend drugs and controlled substances; and

(vi) Controlling access to controlled substances and legend drugs.

(b) Establishing a process for completing all forms for the purchase and order of legend drugs and controlled substances; and

(c) Establishing a method for verifying receipt of all legend drugs and controlled substances purchased and ordered by the ambulatory surgical facility.

NEW SECTION

WAC 246-330-205 Patient care services. This section guides the development of a plan for patient care. The ambulatory surgical facility accomplishes this 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.

An ambulatory surgical facility 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 ambulatory surgical facility at all times patients are present;

(3) Adopt, implement, review and revise patient care policies and procedures designed to guide staff that address:

(a) Criteria for patient admission;

(b) Reliable method for personal identification of each patient;

(c) Conditions that require patient transfer to 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 or advanced registered nurse practitioner;

(h) Care and handling of patients whose condition require special medical 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) 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) Dependent upon the procedure and the risk of harm or injury, 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) When treating pediatric patients, the immunization status;
- (e) Physical examination, if within thirty days prior to admission, and updated as needed if patient status has changed; and
- (f) Discharge plans when appropriate, coordinated with:
 - (i) Patient, family or caregiver; and
 - (ii) Receiving agency, when necessary.

NEW SECTION

WAC 246-330-210 Surgical services. The purpose of this section is to guide the development and management of surgical services.

An ambulatory surgical facility 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 and advanced registered nurse practitioner's privileges for operating room staff; and
 - (d) Define staff qualifications and oversight.
- (2) Use facility 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) 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 a registered nurse qualified by training and experience functions as the circulating nurse in every operating room whenever deep sedation or general anesthesia are used during surgical procedures.

NEW SECTION

WAC 246-330-215 Anesthesia services. The purpose of this section is to guide the management and care of patients receiving anesthesia and sedation.

An ambulatory surgical facility must:

- (1) Adopt and implement policies and procedures that:
 - (a) Identify the types of anesthesia and sedation that may be used;
 - (b) Identify areas where each type of anesthesia and sedation may be used; and
 - (c) Define the staff qualifications and oversight for administering each type of anesthesia and sedation used in the facility.
- (2) Use facility policies and procedures which define standards of care; and
- (3) Assure emergency equipment, supplies and services are immediately available in all areas where anesthesia is used.

NEW SECTION

WAC 246-330-220 Recovery care. The purpose of this section is to guide the management of patients recovering from anesthesia and sedation.

An ambulatory surgical facility must:

- (1) Adopt and implement policies and procedures that define the qualifications and oversight of staff delivering recovery services;
- (2) Assure a physician or advanced registered nurse 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 246-330-225 Emergency services. The purpose of this section is to guide the management and care of patients receiving emergency services.

An ambulatory surgical facility must:

- (1) Develop, implement and maintain a facility safety and emergency training program that includes:
 - (a) On-site equipment, medication and trained personnel to manage any medical emergency that may arise from the services provided or sought;
 - (b) A written and signed transfer agreement with one or more local hospitals that has been approved by the ambulatory surgical facility's medical staff;
 - (c) Policies and a procedural plan for handling medical emergencies; and
 - (d) Define the qualifications and oversight of staff delivering emergency care services.
- (2) Assure at least one registered nurse skilled and trained in emergency care services on duty and in the ambulatory surgical facility at all times a patient is present, who is:
 - (a) Immediately available to provide care; and
 - (b) Trained and current in advanced cardiac life support.
- (3) Assure communication with agencies and health care providers as indicated by patient condition; and
- (4) Assure emergency equipment, supplies and services necessary to meet the needs of patients are immediately available.

PART II ENVIRONMENT OF CARE

NEW SECTION

WAC 246-330-230 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) An ambulatory surgical facility must create and follow 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) An ambulatory surgical facility must assure the environment of care management plan contains the following items:

(a) Safety:

(i) Policies and procedures on safety-related issues such as but not limited to physical hazards and injury prevention;

(ii) Method to educate and periodically review with staff the safety policies and procedures;

(iii) Process to investigate, correct and report safety-related incidents; and

(iv) Process to keep the physical environment free of hazards.

(b) Security:

(i) Policies and procedures to protect patients, visitors, and staff while in the facility including preventing patient abduction;

(ii) Method to educate and periodically review security policies and procedures with staff; and

(iii) When the facility has security staff, train the security staff to a level of skill and competency for their assigned responsibility.

(c) Hazardous materials and waste:

(i) Establish and implement a program to safely control hazardous materials and waste according to federal, state, and local regulations;

(ii) Provide space and equipment for safe handling and storage of hazardous materials and waste;

(iii) Process to investigate all hazardous material or waste spills, exposures, and other incidents, and report as required to appropriate authority; and

(iv) Method to educate staff on hazardous materials and waste policies and procedures.

(d) Emergency preparedness:

(i) Establish, implement and periodically review a disaster plan for internal and external disasters that is specific to the facility and community;

(ii) Process to educate and train staff on the disaster plan;

(iii) Process to periodically conduct drills to test the plan.

(e) Fire safety:

(i) Policies and procedures on fire prevention and emergencies including an evacuation plan; and

(ii) Process to orient, educate, and conduct drills with staff fire prevention, emergency and evacuation policies and procedures.

(f) Medical equipment:

(i) Method to operate and maintain medical equipment properly, safely and according to manufacturer's recommendations;

(ii) Perform and document preventive maintenance; and

(iii) Process to investigate, report, and evaluate procedures in response to equipment failures.

(g) Utility systems:

(i) Policies and procedures to operate and maintain a safe and comfortable environment; and

(ii) Process to investigate and evaluate utility systems problems, failures, or user errors and report incidents.

(h) Physical environment:

(i) Process to keep the physical environment clean including cleaning the operating room between surgical procedures;

(ii) Provide hot and cold running water under pressure;

(iii) Assure hot water for handwashing does not exceed 120°F;

(iv) Assure cross connection controls meet the requirements of the state plumbing code; and

(v) Operate and maintain ventilation to prevent objectionable odors and excessive condensation.

PART III

NEW CONSTRUCTION

NEW SECTION

WAC 246-330-500 Applicability of WAC 246-330-500 through 246-330-510. The purpose of the new construction regulations is to provide minimum standards for the construction, maintenance and operation of ambulatory surgical facilities and the establishment of a safe and adequate care and treatment environment. These rules are consistent with other accrediting organizations and federal agency rules and regulations without redundancy and contradictory requirements. Compliance with these new construction regulations does not relieve an ambulatory surgical facility of the need to comply with applicable state and local building and zoning codes.

(1) These regulations apply to ambulatory surgical facilities as defined in RCW 70.230.010:

(a) New buildings to be licensed as an ambulatory surgical facility;

(b) Conversion of an existing building or portion thereof for use as an ambulatory surgical facility;

(c) Additions to an existing ambulatory surgical facility;

(d) Alterations to an existing ambulatory surgical facility.

(2) This requirement does not apply to:

(a) Any ambulatory surgical facility existing and operating prior to July 1, 2009, that is certified by the Centers for Medicare and Medicaid Services or accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities that is not doing any of the things described in subsection (1)(b) through (d) of this section after July 1, 2009;

(b) Any minor alteration to an ambulatory surgical facility; or

(c) Any area of an ambulatory surgical facility unaffected by an alteration of that ambulatory surgical facility.

(3) The requirements of this chapter in effect at the time the application, fee, and construction documents are submitted to the department for review will apply for the duration of the construction project.

(4) The new construction regulations apply only to facilities submitted to the construction review program after July 1, 2009.

(5) Facilities participating in the medicare/medicaid program prior to July 1, 2009, must be able to show compliance with the federal requirements for existing facilities.

(6) Facilities participating in medicare/medicaid submitted after July 1, 2009, must comply with the federal requirements for new facilities.

NEW SECTION

WAC 246-330-505 Department responsibilities—Construction review, approval of plans. (1) This section identifies the actions and responsibilities of the department for reviewing and approving new construction of ambulatory surgical facilities.

(2) Before issuing an approval of plans, the department will verify compliance with chapter 70.230 RCW and this chapter which includes, but is not limited to:

(a) Review of all construction documents for compliance with these standards and other applicable federal and state regulations;

(b) Assure the issuance of a certificate of need, when needed, as provided in chapter 70.38 RCW;

(c) Receipt of the application for construction review services and a full plan review fee based on chapter 246-314 WAC;

(d) Approval by the local jurisdiction has been obtained;

(e) Approval of the initial license application;

(f) Verify compliance with the applicable chapters of the *2006 Guidelines for the Design and Construction of Health-care Facilities*.

NEW SECTION

WAC 246-330-510 Design, construction review, and approval of plans. (1) Drawings and specifications for new construction, must be prepared by, or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW must be used for the various branches of the work where appropriate. The services of a registered professional engineer may be used in lieu of the services of an architect if work involves engineering only.

(2) An ambulatory surgical facility must submit construction documents for proposed new construction to the department for review and approval prior to new construction as required in RCW 70.230.050 (1)(b).

(3) The facility must submit:

(a) A written functional program containing, at a minimum:

(i) Information concerning surgical services to be provided and operational methods to be used; and

(ii) Description of work, patient, soiled waste and clean processing flows.

(b) Two sets of construction drawings and specifications to include coordinated civil, architectural, structural, mechanical, fire sprinkler, fire alarm and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided.

(c) Floor plan of the building showing the alterations and additions including location of any service or support areas.

(d) For additions and/or alterations:

(i) A plan to show how the ambulatory surgical facility will ensure the health and safety of occupants during construction and installation of finishes. This includes taking appropriate infection control measures, keeping the surrounding area free of dust and fumes, and assuring rooms or

areas are well-ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors.

(ii) A plan to show how the ambulatory surgical facility will provide safety during construction consistent with the fire code showing required paths of egress, exit discharge and interim life safety measures serving the alterations or additions.

(4) An ambulatory surgical facility must:

(a) Respond to requests for additional or corrected documents;

(b) Submit to the department for review and approval any addenda or modifications to the original department approved construction documents;

(c) Assure construction is completed in compliance with the final "department approved" documents; and

(d) Notify the department when construction is completed and provide a copy of the local jurisdiction's approval for occupancy if requested by the department.

(5) An ambulatory surgical facility will not use any new construction, alterations or additions until:

(a) The construction documents are approved by the department; and

(b) The local jurisdictions have issued an approval to occupy; and

(c) Notification to the department that the construction has been completed, the proposed occupancy date, final declared construction cost and that any additional fees have been paid.

WSR 09-09-044**PERMANENT RULES****DEPARTMENT OF****RETIREMENT SYSTEMS**

[Filed April 9, 2009, 8:51 a.m., effective May 10, 2009]

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

Purpose: The purpose of this rule-making order is to adopt changes to WAC 415-501-494 How will the account be distributed if my beneficiary is a minor? Currently, a guardianship must be established prior to the distribution of a deferred compensation program (DCP) account to a minor beneficiary, regardless of the value of the account. The department is changing its rule to allow for the nomination of a custodian to receive DCP funds on behalf of a minor under the Uniform Transfers to Minors Act. If a custodian is not nominated and the account value is less than \$5,000, an adult family member may receive the funds or a custodianship may be established on the minor's behalf. If a custodian is not nominated and the account value is \$5,000 or more, a guardianship must be established on the minor's behalf prior to distribution.

Citation of Existing Rules Affected by this Order: Amending WAC 415-501-494.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.50.770, 41.50.780.

Adopted under notice filed as WSR 09-05-027 on February 10, 2009.

Changes Other than Editing from Proposed to Adopted Version: The text being adopted has minor changes from the text proposed in filing WSR 09-01-149. The department clarified the use of "custodian" by changing, or removing, reference from "designated" to "nominated." The meaning of the rule is not changing.

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: April 9, 2009.

Steve Hill
Director

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-494 How will the account be distributed if my beneficiary is a minor? ~~((1) The department will distribute deferred compensation funds on behalf of a minor beneficiary only upon proof that the minor has either a court-appointed guardian or a custodian designated in compliance with RCW 11.114.030.~~

~~(2) If the department does not receive the proof in subsection (1) of this section, or if the guardian or custodian is unable or unwilling to serve, the department will request a court of competent jurisdiction to establish a guardianship under chapters 11.88 and 11.92 RCW. The department will make this request no sooner than one hundred eighty days after notification of your death, regardless of the amount at issue.~~

~~(3) After a guardianship or custodianship has been established, either by prior designation or by court order, the department will transfer the deferred compensation funds to the named guardian or custodian.~~

~~(4) If you have more than one minor beneficiary, a separate custodianship must be established for each minor. Each minor's interest must be determined in accordance with the governing instrument and applicable law. Only one person may be the custodian for each minor.~~

~~(5) Disbursement of funds to the guardian or custodian on behalf of the minor discharges the department from further liability.~~

~~(6) The guardian or custodian may choose a deferred compensation distribution date and method on behalf of the minor, consistent with the requirements of this chapter.)~~ If you die before your entire account has been distributed and if one or more of your beneficiaries is a minor child, the depart-

ment will distribute your deferred compensation funds to the minor according to the following:

(1) **Nominated UTMA custodian.** If your beneficiary is a minor at the time of your death, and if you have nominated a custodian to receive funds on behalf of your minor beneficiary pursuant to RCW 11.114.030 of the Uniform Transfers to Minors Act (UTMA), the department will distribute your funds to the custodian regardless of the amount to be distributed. If you have more than one minor beneficiary, a separate custodianship must be established for each minor.

(2) **No nominated UTMA custodian.** If, at the time of your death, your beneficiary is a minor and you did **not** nominate a custodian to receive the funds on behalf of your minor beneficiary, then your funds will be distributed according to the following:

(a) If your beneficiary is an emancipated minor and your DCP account balance is less than five thousand dollars, the department will distribute the funds directly to the minor.

(b) If your beneficiary is an unemancipated minor and your DCP account balance is less than five thousand dollars, the department will distribute the funds to an adult member of the minor's family or to a court-appointed custodian who submits a claim on behalf of the minor beneficiary. If no adult family member or court-appointed custodian submits a claim within one hundred eighty days of your death, the department will directly petition the court for the appointment of a custodian under the UTMA. After a custodian is appointed, the department will distribute the funds to the custodian.

(c) If your beneficiary is a minor and your DCP account balance is five thousand dollars or greater, the department will distribute the funds only to a court-appointed guardian.

(i) Upon satisfactory proof of guardianship, the department will distribute the funds to the guardian of the minor.

(ii) If the department does not receive satisfactory proof of guardianship within one hundred eighty days of your death, the department will petition the court for the appointment of a guardian under chapters 11.88 and 11.92 RCW. After a guardian is appointed, the department will distribute the funds to the guardian pursuant to the terms of the guardianship order.

(3) Distribution consistent with this rule releases the department from further liability with regard to your DCP account.

(4) The person receiving the distribution pursuant to this rule must choose a distribution date and method on behalf of the minor, consistent with the requirements of this chapter.

(5) **Terms used.** For purposes of this rule, the following terms are defined as:

(a) An "adult" is any person who has attained the age of twenty-one years.

(b) A "member of the minor's family" means a parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt of the minor, whether in whole or half blood or by adoption.

WSR 09-09-045
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)

[Filed April 9, 2009, 10:28 a.m., effective May 10, 2009]

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

Purpose: The veterinary board of governors recently approved the program for assessment of veterinary education equivalence (PAVE). The board also approves the education commission for foreign veterinary graduates program. Both programs assess the educational equivalence of graduates from nonaccredited programs. The veterinary board of governors has authority to issue a specialty license and is now adopting the PAVE program as an option for specialty licensure.

Citation of Existing Rules Affected by this Order: Amending WAC 246-933-300.

Statutory Authority for Adoption: RCW 18.92.030, 18.-92.135.

Adopted under notice filed as WSR 08-23-016 on November 6, 2008.

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

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

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

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

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

Date Adopted: March 2, 2009.

Harmon A. Rogers, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending Order 299B, filed 8/19/92, effective 9/19/92)

WAC 246-933-300 Veterinary specialty licensure. (1) A person may be licensed to practice only specialized veterinary medicine in Washington state. Application for specialty licensure shall be made on forms provided by the secretary and include:

(a) Official transcript or other evidence of graduation from an American Veterinary Medical Association approved or accredited college or university; or

(b) Certification (~~from~~) that the applicant has successfully completed either:

(i) The American Veterinary Medical Association's Educational Commission for Foreign Veterinary Graduates; or

(ii) The American Association of Veterinary State Board's Program for the Assessment of Veterinary Education Equivalence (PAVE); and

(c) Documented licensure, in good standing, to practice veterinary medicine in any state, United States territory, or province of Canada; and

(d) Certification as a diplomate of a national board or college recognized in the specialty area for which application is submitted.

(2) Applicants must pass a written examination approved by the board pertaining to laws regulating the practice of veterinary medicine in the state of Washington. Examination grades will be based on a possible score of one hundred percent with a minimum passing score of ninety percent.

(3) At the time of license renewal, licensees must present evidence of continued certification by the veterinary specialty board authority.

(4) The veterinary board of governors recognizes all veterinary medicine specialties recognized by the American Veterinary Medical Association. The practice of a veterinarian licensed as a specialized practitioner is limited to the specialty for which licensed.

(5) Individuals licensed as a veterinary specialist are subject to chapter 18.130 RCW.

(6) Veterinary specialty licensees shall be charged the impaired veterinarian assessment on each license issuance or renewal: Provided however, That no licensee shall pay more than one impaired veterinarian assessment per year.

WSR 09-09-047
PERMANENT RULES
YAKIMA VALLEY
COMMUNITY COLLEGE

[Filed April 10, 2009, 8:32 a.m., effective May 11, 2009]

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

Purpose: Repeal chapter 132P-08 WAC to bring the college's rules into compliance with Washington administrative hearings rules and regulations.

Citation of Existing Rules Affected by this Order: Repealing chapter 132P-08 WAC.

Statutory Authority for Adoption: RCW 28B.50.140 (13) and (20).

Adopted under notice filed as WSR 09-04-086 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 0, Repealed 33.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 33.

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: April 9, 2009.

Mark L. Rogstad, Director
Human Resource Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 132P-08

WSR 09-09-056

PERMANENT RULES

GAMBLING COMMISSION

[Order 642—Filed April 10, 2009, 4:14 p.m., effective July 1, 2009]

Effective Date of Rule: July 1, 2009.

Purpose: At the May 2008 meeting, the commission filed a petition for rule change from the Recreational Gaming Association (RGA) to increase the maximum amount of a single wager in nonhouse-banked card games from \$40 to \$500. This change would only apply to house-banked card game licensees who offer poker games. Class E and Class F card game licensees will continue to be limited to the \$40 wager limit. After months of discussion, at their January 2009 meeting, the commission filed Alternatives #1 and #2 for discussion. The commission decided not to continue discussion of the RGA's original request outlined above.

Alternative #1: At their November 2008 meeting, the commission asked staff to draft alternative language to WAC 230-15-135 to only allow a specific type of "all-in" wager for Texas Hold'em to be up to \$500 while the rest remained at \$40. In order to place the wager, the player would be required to use all his or her remaining chips. If a player had more than \$500 in chips, they would not be eligible to place the wager. The house-banked card room must meet the surveillance requirements in WAC 230-15-280.

Alternative #2: This alternative was proposed by the RGA after staff asked for comments on Alternative #1. The RGA's alternative would allow single wagers up to \$300 for Texas Hold'em games only, as long as the house-banked card room meets the surveillance requirements in WAC 230-15-280. This alternative is broader than Alternative #1 and would result in a player being able to wager more money than in Alternative #1, but less than in the RGA's original proposal.

At their April 2009 meeting, the commission adopted Alternative #1.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-135.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-03-093 on January 20, 2009, and published February 4, 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 1, Repealed 0.

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

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

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

Date Adopted: April 10, 2009.

Susan Arland
Rules Coordinator

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

WAC 230-15-135 Wagering limits for nonhouse-banked card games. Card room licensees must not exceed these wagering limits:

(1) **Poker** -

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed forty dollars, except that an all-in wager in the game of Texas Hold'em may not exceed five hundred dollars for house-banked card game licensees meeting the surveillance requirements specified in WAC 230-15-280; and

(d) An all-in wager is when a player wagers with all of their remaining chips on the current hand;

(2) **Games based on achieving a specific number of points** - Each point must not exceed five cents in value;

(3) **Ante** - No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan)** - The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

WSR 09-09-065

PERMANENT RULES

GAMBLING COMMISSION

[Order 643—Filed April 13, 2009, 4:58 p.m., effective July 1, 2009]

Effective Date of Rule: July 1, 2009.

Purpose: The change allows persons under the age of eighteen to sell raffle tickets for an unlicensed charitable or nonprofit organization which has the development of youth as its primary purpose. Charitable and nonprofit organiza-

tions that want to allow minors to sell raffle tickets must continue to meet the following requirements:

- Have the development of youth as a primary purpose;
- Have at least three members or advisors who are at least eighteen who supervises the raffle; and
- Have an adult member or advisor designated as the raffle manager.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-140 and 230-11-030.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-05-087 on February 17, 2009, and published March 4, 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 2, Repealed 0.

Date Adopted: April 10, 2009.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-140 Full and regular membership requirements. (1) "Bona fide member" means the same thing as "bona fide active member." Bona fide members hold full and regular membership status.

(2) To have full and regular membership status in a Washington charitable or nonprofit organization, you must:

(a) Be at least eighteen years old, unless the organization:

(i) Has a primary purpose that is the development of youth; and

(ii) ~~((Is applying only for a))~~ The only activity the organization conducts is raffles or amusement games (license), whether licensed or unlicensed; and

(iii) Has at least three members or advisors who are at least eighteen years old and who supervise the operation of the gambling activity; and

(iv) Has an adult member or advisor designated as the manager for the gambling activity; and

(b) Take part in at least one of the following activities of the organization:

(i) Attend at least one regular membership meeting per year; or

(ii) Vote for officers and/or board members; or

(iii) Help set policy by serving as a member of the board of directors or a similar policy setting position; or

(iv) Serve as a volunteer providing services or raising funds from nongambling sources; or

(v) Maintain a level of communication that demonstrates knowledge of the activities of the organization; and

(c) Live within one hundred miles of the main administrative offices of your organization which are located in Washington, or attend seventy-five percent of the organization's board meetings.

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

WAC 230-11-030 Restrictions on ticket sales. (1) Only the following people, who are at least eighteen years old, may sell raffle tickets:

(a) Members of the organization ((~~or~~)), except as explained in subsection (2) of this section; and

(b) Volunteers under the supervision of a member ((~~may sell tickets; and~~)).

(2) Organizations may allow members under the age of eighteen to sell tickets when the organization has:

(a) Development of youth as a primary purpose; and

(b) At least three members or advisors who are at least eighteen years old and who supervise the operation of the raffle; and

(c) An adult member or advisor designated as the manager of the raffle.

(3) Organizations must sell tickets for a particular raffle for the same price unless offering an authorized discount plan; and

((~~3~~)) (4) Organizations must not:

(a) Sell raffle tickets via the internet; or

(b) Require anyone to purchase more than one raffle ticket; or

(c) Give away raffle tickets; or

(d) Give an opportunity to participate in a raffle drawing to a person who has not purchased a ticket.

WSR 09-09-068

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed April 14, 2009, 9:29 a.m., effective May 15, 2009]

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

Purpose: Revising language for clarity, and consistency with Washington state department of transportation (WSDOT) policies and practices. These changes would create an alternative mechanism for "certification" as required under RCW 36.75.090 and chapter 47.24 RCW. These revisions would allow WSDOT and local agencies to coordinate property transfers in a more efficient manner, which will help to conserve state and local resources.

Citation of Existing Rules Affected by this Order: Amending WAC 468-18-040, 468-30-070, and 468-30-075.

Statutory Authority for Adoption: RCW 36.75.090.

Adopted under notice filed as WSR 09-06-064 on Monday, March 2, 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 3, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 8, 2009.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending Order 186, filed 12/21/98, effective 1/21/99)

WAC 468-18-040 Design standards for rearranged county roads, frontage roads, access roads, intersections, ramps and crossings. Because of the wide variety of rearranged county roads, frontage or access roads, intersections, ramps and crossings encountered by the freeway construction and relocation of other state highways, further understandings are desirable as to the jurisdiction and the responsibility between the county and state.

Following are the criteria, procedure and design standards that the state department of transportation shall use in the planning for frontage roads and access roads that counties will be requested to accept as county roads and the construction of rearranged county roads, intersections, ramps and crossings:

(1) At the early stages of planning, ~~((before the right of way maps are prepared,))~~ the state and county shall review the proposed improvement and determine what cooperative agreements will be needed between the state and county.

(2) The proposed design standards shall not be less than the current ~~("Washington state county arterial design standards,")~~ "city-county design standards" located within the "Local Agency Guideline Manual," except where an individual county shall have adopted a higher design standard, in which case the higher standard shall apply.

(3) ~~((The required right of way for the proposed improvement, which shall not be less than that called for by the current "Washington state county arterial design standards," shall be either decided to the county or the county given an easement for rights of way purposes.~~

(4)) The proposed construction shall include all the necessary traffic control and safety devices and be signed in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, as modified and adopted by the Washington state department of transportation, to protect the driving public.

~~((5) An agreement shall be negotiated between the state and county at this early stage of planning, before right of way~~

~~maps are approved for each rearranged county road, frontage or access road, intersection or crossing, which shall cover the standards of construction, right of way, and outline)) (4) Unless otherwise agreed to between the state and county, the ((responsibility)) responsibilities of each agency ((which)) shall conform to the following basic principles ((of maintenance responsibilities)):~~

(a) Where an existing county road is crossed by a state highway underpass, the state will construct the underpass and necessary approaches and maintain the underpass.

The roadway to be provided for county traffic will be constructed by the state.

If illumination exists on the county road at the time of construction of the underpass, the state shall provide the necessary facilities for illuminating the county's portion of the road over the state highway and the necessary approach roadway.

If it is determined that illumination will be necessary at a later date and it will be necessary to place conduits in the structure, the state shall provide same.

The county will maintain the roadway providing for county traffic including traffic stripe, snow removal, sanding and illumination, if needed, for the county road.

(b) Where an existing county road is crossed by a state highway overpass, the state will construct the structure and necessary approach roadway and maintain the structure.

The county will maintain the entire roadway under the structure except special drainage, if needed.

The state shall provide the necessary facilities for illuminating the county's portion of the road under the structure and necessary approach roadway, unless otherwise agreed.

(c) When an existing county road is crossed at grade by a new state highway, the state will assume all costs for the construction including taper sections, acceleration and deceleration lanes and be responsible for all maintenance to the right of way line.

Stop signs after installation shall be maintained in accordance with the state statutes.

The construction and maintenance of illumination will be the responsibility of the state.

When a new county road intersects a state highway, the maintenance responsibilities will be the same as outlined above. The construction costs shall be the responsibility of the county.

(d) Whenever, because of increased traffic, heavy turning movements, accident frequency or other good cause, it becomes necessary to initiate a project for the improvement of an existing intersection not incidental to a construction project, the state and county will cooperate in the cost of the improvement in each case by mutual agreement in accordance with the following formula:

(i) Ascertain the number of legs of the intersection under the existing responsibility of each agency involved.

(ii) Ascertain the traffic volume on each leg.

(iii) Add the traffic counts on each agency's intersection legs.

(iv) The resulting percentage of the traffic volume total falling to each jurisdiction should be the relative proportion of the improvement's cost to be borne by each agency: Pro-

vided, That in no case shall the county's share of the total cost of the improvement exceed fifty percent of that cost.

The maintenance responsibilities will be the same as outlined above in subparagraph (c) of this subsection.

(e) When an interchange is constructed at an intersection of a state highway and county road, the ramps, structure and crossroad within the interchange area shall be maintained and reconstructed, if necessary, by the state. Illumination, if required, shall be constructed by the state and that portion located on state right of way maintained by the state or as otherwise agreed.

Traffic signals on state right of way, if required at ramp terminals, shall be constructed, operated and maintained by the state.

(f) Where it is necessary to relocate an existing county road, the state will construct the road and the county will maintain the road.

(g) If a county road or street is dead-ended, the state will construct a cul-de-sac to the county standards.

(h) When it is necessary for the state to construct service roads, landlock prevention roads or dead-end roads, which may be desirable in lieu of damages to property, the provisions of RCW 47.52.105 shall be the guide.

~~((These))~~ All roads under this subsection shall be the state's responsibility unless (by agreement in accordance with the procedures outlined in the policy statement, the county will accept these roads as county roads and if such an agreement is entered into, all dead end roads shall have a cul-de-sac constructed to the county's standard)) otherwise agreed to between the state and county.

(i) Upon completion of the construction of each rearranged county road, frontage road, access road, intersection or crossing for which an agreement has been entered into between the state and county, an inspection by the state and county road engineer shall be made to determine that all the requirements of the agreement have been fulfilled. Upon fulfillment of the agreement, the ~~((district engineer))~~ state shall notify the county in writing and the county shall ~~((accept the road as a county road or))~~ assume the responsibilities as set forth in said agreement.

~~((Within one year the state will turn over the right of way to the county for any construction accepted by the county as a county maintained road.))~~ (5) The transfer of any right of way by the state to a county for any rearranged county road, frontage road, access road, intersection, crossing, or improvements constructed under this chapter shall be in accordance with WAC 468-30-070, as amended.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-30-070 Procedure for transfer of abandoned state highways to counties. A public highway which is or has been a part of the route of a state highway and is no longer necessary as such may be certified to the county in which it is located in the following manner:

The ~~((state aid engineer))~~ department of transportation shall notify the affected board of county commissioners and the county engineer of any certifications anticipated for the ensuing calendar year not later than August 1 of the previous

year, so that the county may provide in its budget for the maintenance and/or reconstruction of roads which are transferred to it by the department of transportation in accordance with RCW 36.75.090.

(1) When a tentative date has been determined on which the transfer of the highway is to be made, the ~~((district engineer))~~ appropriate department of transportation region shall arrange for a joint maintenance inspection by representatives of the ~~((highway))~~ department of transportation and the county.

~~((2))~~ ((The highway department shall be represented by the district state aid engineer and the district maintenance engineer or his designated representative.

~~((3))~~ The county shall be represented by the county road engineer and his maintenance engineer, supervisor or designated representative.

~~((4))~~ Any and all routine maintenance deficiencies which are noted at the time of this inspection shall be corrected by the ~~((district))~~ department of transportation region maintenance forces.

~~((5))~~ (3) Upon completion of any maintenance work deemed necessary, the ~~((district engineer))~~ department of transportation shall by letter inform the county engineer to the effect that all maintenance deficiencies noted during the inspection have been corrected.

~~((6))~~ (4) The county engineer shall by letter subsequently inform the ~~((district engineer))~~ department of transportation that the road or highway to be transferred is either (a) in a condition acceptable to the county, or (b) in a condition not acceptable to the county, in which case the unacceptable conditions shall be enumerated in detail.

~~((7))~~ (5) In the event that the ~~((district engineer))~~ department of transportation feels that additional maintenance work is required, ~~((he))~~ it shall direct such work to be done and again follow the procedure outlined in subsection ~~((5))~~ (3) of this section; and the county engineer shall then follow the procedure outlined in subsection ~~((6))~~ (4) of this section.

~~((8))~~ (6) In the event that it becomes impossible for the ~~((district))~~ department of transportation and the county to reach agreement, a full report of the initial inspection and the apparent points of disagreement shall be transmitted to the ~~((state aid))~~ highways and local programs engineer, who will then consult with the state maintenance engineer and the county engineer and provide the ~~((director))~~ secretary of transportation with all significant information and with ~~((his))~~ their own recommendations.

~~((9))~~ (7) The secretary of transportation will take final action on the transfer of the road and the county shall be provided with a copy of ~~((his))~~ the decision two weeks before the certification is made.

~~((10))~~ (8) After the certification has been made, the ~~((state))~~ department of transportation will provide the county with all available maps, conveyances, permits, franchises and other documents which may relate to that portion of the road or highway transferred.

Maintenance is described as being the preservation and upkeep of a highway, including all of its elements, in as nearly its original, or as constructed, or as subsequently

improved, condition as possible. This includes traffic control devices and other safety control measures deemed necessary.

In the alternative, the department with any county may enter into an agreement that modifies the above highway certification process so long as the agreement complies with the provisions of RCW 36.75.090.

AMENDATORY SECTION (Amending Order 35, filed 8/20/79)

WAC 468-30-075 Procedure for transfer of abandoned state highways to cities and towns. A public highway which is or has been a part of the route of a state highway and is no longer necessary as such may be certified to the city or town in which it is located in the following manner:

The ~~((state aid engineer))~~ department of transportation shall notify the affected legislative body and the city or town engineer of any certifications anticipated for the first half of July of the ensuing calendar year not later than August 1 of the previous year, so that the city or town may provide in its budget for the maintenance and/or reconstruction of roads which are transferred to it by the department of transportation in accordance with RCW 36.75.090 and 47.24.010.

(1) The department of transportation shall make such certifications between the first and fifteenth of July each year. A reasonable time prior to the certification of a highway, the ~~((district administrator))~~ appropriate department of transportation region shall arrange for a joint maintenance inspection by representatives of the ~~((transportation))~~ department of transportation and the city or town.

~~(2) ((The transportation department shall be represented by the district state aid engineer and the district maintenance engineer or his designated representative.~~

~~(3) The city or town shall be represented by the city or town engineer and his maintenance engineer, supervisor or designated representative.~~

~~(4))~~ Any and all routine maintenance deficiencies which are noted at the time of this inspection shall be corrected by the ~~((district))~~ department of transportation region maintenance forces or by contract.

~~((5))~~ (3) Upon completion of any maintenance work deemed necessary, the ~~((district administrator))~~ department of transportation shall by letter inform the city or town engineer to the effect that all maintenance deficiencies noted during the inspection have been corrected.

~~((6))~~ (4) The city or town engineer shall by letter subsequently inform the ~~((district administrator))~~ department of transportation that the road or highway to be transferred is either (a) in a condition acceptable to the city or town or (b) in a condition not acceptable to the city or town in which case the unacceptable conditions shall be enumerated in detail.

~~((7))~~ (5) In the event that the ~~((district administrator))~~ department of transportation feels that additional maintenance work is required, ~~((he))~~ it shall direct such work to be done and again follow the procedure outlined in subsection ~~((5))~~ (3) of this section; and the city or town engineer shall then follow the procedure outlined in subsection ~~((6))~~ (4) of this section.

~~((8))~~ (6) In the event that it becomes impossible for the ~~((district))~~ department of transportation and the city or town

to reach agreement, a full report of the initial inspection and the apparent points of disagreement shall be transmitted to the ~~((state aid))~~ highways and local programs engineer, who will then consult with the ~~((state))~~ department of transportation maintenance engineer and the city or town engineer and provide the secretary of transportation with all significant information and with ~~((his own))~~ their recommendations.

~~((9))~~ (7) The secretary of transportation will take final action on the transfer of the road and the city or town shall be provided with a copy of ~~((his))~~ the decision two weeks before the certification is made.

~~((10))~~ (8) After the certification has been made, the state will provide the city or town with all available maps, conveyances, permits, franchises and other documents which may relate to that portion of highway transferred.

Maintenance is described as a program to preserve and repair a system of roadways together with its elements to ensure its designed or established structural life and operational expectancy. This includes traffic control devices and other safety control measures deemed necessary.

In the alternative, the department with any city or town may enter into an agreement that modifies the above highway certification process so long as the agreement complies with the provisions of RCW 36.75.090.

WSR 09-09-082

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-52—Filed April 15, 2009, 3:28 p.m., effective June 16, 2009]

Effective Date of Rule: June 16, 2009.

Purpose: Amend WAC 232-28-286 2010, 2011, and 2012 Spring black bear seasons and regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-286.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020.

Adopted under notice filed as WSR 09-03-111 on January 21, 2009.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail lori.preuss@dfw.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 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

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

Date Adopted: April 4, 2009.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 07-292, filed 12/13/07, effective 1/13/08)

WAC 232-28-286 ((2007, 2008, and 2009)) 2010, 2011, and 2012 Spring black bear seasons and regulations.

Who may apply: Anyone with a valid Washington big game license, which includes black bear as a species option.

Hunt areas, permit levels, and season dates for each license year:

Hunt name	Hunt area	Permits	Season dates ^b
Sherman	GMU 101	15	April 15 – May 31
Kelly Hill	GMU 105	10	April 15 – May 31
Douglas	GMU 108	5	April 15 – May 31
Aladdin	GMU 111	10	April 15 – May 31
49 Degrees North	GMU 117	15	April 15 – May 31
Huckleberry	GMU 121	15	April 15 – May 31
Blue Creek	GMU 154	((30)) 15	April 15 – May 31
Dayton	GMU 162	((22)) 15	April 15 – May 31
Tucannon	GMU 166	((7)) 5	April 15 – May 31
Wenaha	GMU 169	45	April 15 – ((May 31)) June 15
Mt. View	GMU 172	((22)) 15	April 15 – May 31
Lick Creek	GMU 175	((22)) 15	April 15 – May 31
Grande Ronde	GMU 186	((7)) 5	April 15 – May 31
North Skagit	That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, and Grandy Lake Timber company.	20	April 15 – May 31
Monroe	That portion of GMU 448 that is designated as the hunt area by DNR, Green Crow, and Longview Timber Lands.	25	April 15 – May 31
Copalis ^a	That portion of GMU 642 that is designated as the hunt area by ((Rainier)) Rayonier Timber Company.	100	April 15 – June 15
Kapowsin ^a	That portion of GMUs 653 and/or 654 that is designated as the hunt area by Hancock Forest Management.	((400)) 150	April 15 – June 15
((Capitol Forest^a	That portion of Capitol Forest within GMU 663	50	April 15 – June 15))
Lincoln ^a	That portion of GMU 501 that is designated as the hunt area by participating commercial timber landowners.	50	April 15 – May 31

^aSpring black bear hunting seasons under this area constitute a pilot program to reduce black bear damage to trees.

^bPermits are valid for the license year they are issued.

Bag limit: One black bear per black bear special permit season.

License required: A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

Hunting method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

Submitting bear teeth: Successful bear hunters must submit the black bear premolar located behind the canine tooth of the upper jaw.

WSR 09-09-083

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-53—Filed April 15, 2009, 3:31 p.m., effective May 16, 2009]

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

Purpose: Amending WAC 232-12-047 Unlawful methods for hunting, 232-12-051 Muzzleloading firearms, 232-12-054 Archery requirements—Archery special use permits, 232-12-055 Hunting—Hunter orange clothing requirements, 232-12-068 Nontoxic shot requirements, 232-12-828 Hunting of game birds and animals by persons with a disability, 232-28-248 Special closures and firearm restriction areas, 232-28-266 Damage prevention permit hunts, 232-28-272

2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations, 232-28-273 2009-2011 Moose, bighorn sheep, and mountain goat seasons and permit quotas, 232-28-282 Big game and wild turkey auction, raffle, and special incentive permits, 232-28-291 Special hunting season permits, 232-28-294 Multiple season big game permits, 232-28-295 Landowner hunting permits, 232-28-333 Game management units (GMUs) boundary descriptions—Region three, 232-28-335 Game management units (GMUs) boundary descriptions—Region five, 232-28-336 Game management units (GMUs) boundary descriptions—Region six, 232-28-337 Deer and elk area descriptions, 232-28-342 2009-10, 2010-11, 2011-12 Small game seasons, 232-28-351 2009-2011 Deer general seasons and definitions, 232-28-352 2009-2011 Elk general seasons and definitions, 232-28-353 2009 Deer special permits, 232-28-354 2009 Elk special permits, and 232-28-516 Trapping seasons and regulations; adopting WAC 232-12-062 Party hunting, 232-12-840 Hunting and fishing opportunities for terminally ill persons, and 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations; and repealing WAC 232-28-515 Trapping seasons and regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-515; amending WAC 232-12-047, 232-12-051, 232-12-054, 232-12-055, 232-12-068, 232-12-828, 232-28-248, 232-28-266, 232-28-272, 232-28-273, 232-28-282, 232-28-291, 232-28-294, 232-28-295, 232-28-333, 232-28-335, 232-28-336, 232-28-337, 232-28-342, 232-28-351, 232-28-352, 232-28-353, 232-28-354, and 232-28-516.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240.

Adopted under notice filed as WSR 09-03-111 on January 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail lori.preuss@dfw.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 3, Amended 24, Repealed 1.

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

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

Date Adopted: April 4, 2009.

Miranda Wecker, Chair
Fish and Wildlife Commission

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-10 issue of the Register.

WSR 09-09-091

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed April 16, 2009, 3:45 p.m., effective May 17, 2009]

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

Purpose: Updating current language for clarification to include the addition of definitions. The language changes will also include new standards for background checks and restrictions for vehicle markings.

Citation of Existing Rules Affected by this Order: Amending chapter 204-36 WAC.

Statutory Authority for Adoption: RCW 46.37.194 and 46.37.005.

Adopted under notice filed as WSR 09-05-082 on February 17, 2009.

Changes Other than Editing from Proposed to Adopted Version: Removed the uniform restrictions outlined under WAC 204-36-040(4).

Made edits to WAC 204-36-050 to remove the restriction for signal preemption devices and flashing or strobing headlights and added those two items under subsection (3) as equipment that may be installed provided that such equipment is listed on the application and approved by the patrol.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 25, 2009.

John R. Batiste
Chief

AMENDATORY SECTION (Amending Order 88-08-ESR, filed 7/18/88)

WAC 204-36-010 Promulgation. The state patrol hereby adopts the following regulations relating to the issuance of an authorized emergency vehicle permit, for those vehicles not already authorized under statute.

AMENDATORY SECTION (Amending Order 88-08-ESR, filed 7/18/88)

WAC 204-36-020 Definitions. (1) Geographic area means the city, county, state routes or interstate roads on which the vehicle will be operated under the authorized emergency vehicle permit if approved.

(2) Operator or driver. The term operator and the term driver, as used herein, means every person who is in actual physical control of an authorized emergency vehicle.

~~((3))~~ (3) Operation. The term operation, as used herein, is the driving or moving by any operator or driver upon a public highway of any vehicle that is equipped or has attached thereon any equipment, the installation of which requires an authorized emergency vehicle permit, whether or not the emergency equipment is activated.

~~((4))~~ (4) Patrol ~~((shall))~~ means the Washington state patrol.

(5) Primary jurisdiction means lead department who has jurisdiction on the roads that the applicant wishes to use the emergency lighting on.

(6) Political subdivision means the individual who has authority over the applicant if the applicant is the chief law enforcement officer or fire chief.

AMENDATORY SECTION (Amending WSR 02-07-055, filed 3/14/02, effective 4/14/02)

WAC 204-36-030 Permit requirements. (1) Any person, firm, corporation or municipal corporation desiring to have a vehicle registered as an authorized emergency vehicle pursuant to RCW 46.37.194 ~~((shall))~~ must apply for such classification to the state patrol on forms provided by the patrol.

(2) The applicant ~~((shall))~~ must furnish the following information to the patrol:

(a) A description of the specific geographic area in which the vehicle ~~((shall))~~ will be used as an authorized emergency vehicle.

(b) A description of the vehicle, to include, year, make, model, VIN, license number, and registered owner.

(c) A description of the specific purposes for which the vehicle ~~((shall))~~ will be used as an authorized emergency vehicle, funeral escorts, fire response, or other (describe in detail). This description must include each function for the vehicle, including, but not limited to, traffic control, incident response, roadside safety and security patrols.

(d) An explanation of the nature and scope of the duties, responsibilities and authority of the vehicle operator which necessitate the need for vehicle to have an authorized emergency vehicle permit. This description must include the authority under statute for the operator to perform the functions listed under the permit.

(e) A description of the emergency equipment to be used if the permit is granted.

(f) A listing of the names, addresses, birthdates, operator's license numbers and other identifying data as may be prescribed on the application form by the patrol, of all persons who will use the vehicle as an authorized emergency vehicle, and a completed applicant fingerprint card.

(g) Certification from each primary jurisdiction identified in (a) of this subsection that the vehicle is to be used as described. Such certification ~~((shall))~~ must be by:

(i) The chief law enforcement officer if the applicant is a law enforcement or security officer, or has funeral home, coroner, ambulance or other nonfire related duties.

(ii) The fire chief if the vehicle is to be used for firefighting purposes.

(iii) If the person making the application is the chief law enforcement officer or the fire chief of the jurisdiction, certification must be made by the chief executive officer of the political subdivision of the jurisdiction.

The certification ~~((shall))~~ must state that a need exists in the jurisdiction for the vehicle to be used as described and that the certifier knows of no reason why the application should be denied.

(Note: ~~If the person making application is the chief law enforcement officer or the fire chief of the jurisdiction, certification must be made by the chief executive officer of the political subdivision of the jurisdiction.~~)

Upon satisfactory application the patrol may issue an emergency vehicle permit or permits which, when carried as required, are valid until expiration or cancellation as prescribed in WAC 204-36-070.

AMENDATORY SECTION (Amending WSR 02-07-055, filed 3/14/02, effective 4/14/02)

WAC 204-36-040 Permit limitations. (1) A vehicle ~~((registered))~~ authorized by the patrol ~~((shall))~~ must not be used as an authorized emergency vehicle except as follows:

(a) Only by the operators named in the original or amended application approved by the patrol. If the applicant wishes to add or remove operator(s) from the permit, such request must be made to the patrol in writing.

(b) Only with the equipment described in the original or amended application approved by the patrol.

(c) Only within the geographic area described in the original or amended application approved by the patrol.

(d) Only for the purposes set forth in the original or amended application approved by the patrol.

(e) If being used for escort services, may be used only for funeral escorts.

(2) If an authorized emergency vehicle is used for private purposes, or for purposes in an area or by an operator other than as set forth in the application, all emergency equipment which is exposed to public view ~~((shall))~~ must be removed or covered with an opaque hood, and ~~((shall))~~ must not be operated during such period of time.

(3) The issuance of an emergency vehicle permit does not relieve the driver from the duty to drive with regard for the safety of all persons, nor ~~((shall))~~ will such provisions protect the driver from the consequences of his disregard for the safety of others and does not grant police authority to the operators of said vehicle. Any inappropriate or misuse of authorized emergency vehicles may result in criminal or civil liability as well as cancellation of the emergency vehicle permit.

AMENDATORY SECTION (Amending WSR 90-07-034, filed 3/15/90, effective 4/15/90)

WAC 204-36-050 Equipment requirements. (1)

Authorized emergency vehicles ~~((shall))~~ must be:

(a) Conventional passenger cars, vans, pickups, or similar vehicles~~((The vehicles shall be))~~;

(b) Conventionally painted~~((;))~~; and

(c) Legally equipped ~~((and shall not display commercial signs, posters, or pictures. Equipment, not related to the emergency nature of the vehicle, shall not be carried or attached to the outside of the vehicle. Every authorized emergency vehicle shall be equipped))~~ in conformance with RCW 46.37.190(1) with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal. Such equipment must not be installed prior to obtaining approval of the application and issuance of a temporary certificate of approval for the vehicle(s) by the patrol. To be considered approved equipment for use under the provisions of this section, all devices must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

~~((+))~~ (i) Conformance to current standards and specifications of the Society of Automotive Engineers, or~~((;))~~ if none~~((;~~

~~((;))~~ (ii) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

~~((a))~~ Such equipment shall not be installed prior to obtaining approval of the application by the patrol.

~~((b))~~ (2) Authorized emergency vehicles must not:

(a) Be equipped with blue lamps ~~((shall not be installed unless requested in the application and specifically approved and listed on the permit))~~;

(b) Display commercial signs, posters, or pictures.

(c) Carry or attach to the outside of the vehicle equipment, not related to the emergency nature of the vehicle.

(d) Display or use any name that includes the word "police" or "law enforcement" or other word which portrays the individual or business as a public law enforcement agency.

(3) Authorized emergency vehicles may, in addition to the required equipment, have:

(a) An amber or white lamp on their vehicle as outlined under WAC 204-21-130;

(b) Signal preemptive device as outlined in RCW 46.37.670;

(c) Flashing or strobing headlamps; provided that such equipment is listed on the application and approved by the patrol.

AMENDATORY SECTION (Amending WSR 02-07-055, filed 3/14/02, effective 4/14/02)

WAC 204-36-060 Procedure. (1)

If the patrol approves the application, ~~((it shall first issue))~~ the applicant will be issued a certificate of approval for the vehicle(s) which ~~((shall))~~ will be valid for thirty days, during which time the emergency equipment may be installed. After installation of

the emergency equipment, the applicant ~~((shall))~~ must bring the vehicle to a district or detachment office of the Washington state patrol to be examined to determine if it is of an approved type. A Washington state patrol officer ~~((shall))~~ will certify the results of this examination on a form prescribed and provided by the patrol and the applicant ~~((shall))~~ must file the form with the State Patrol, E.S.R. Unit, General Administration Building, P.O. Box ~~((42614))~~ 42600, Olympia, WA 98504- ~~((2614))~~ 2600. Upon receipt of such certification, the patrol ~~((shall))~~ will issue a vehicle permit, which ~~((shall expire))~~ must be carried in the vehicle at all times, and expires when the vehicle is:

(a) Removed from the permit; or

(b) The authorized emergency vehicle permit is terminated by the applicant or by the patrol; or

(c) An authorized emergency vehicle permit which will expire one year from the date of issuance thereof.

(2) The patrol may refuse to approve the application, certificate or permit or in the case of an application which lists multiple operators may refuse to approve any single operator if the applicant/operator:

(a) Has been convicted of a felony during the ten years preceding the date of the application provided the felony for which the applicant was convicted directly relates to the specific occupation, trade, vocation, or business for which the certificate or permit is sought;

(b) Has ever been convicted of any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the state of conviction;

(c) Has been convicted of DUI as defined in chapter 46.61 RCW, or convicted of a similar offense regardless of the state of conviction, within the last seven years;

(d) Has been convicted of reckless driving, or a hit and run, within the last seven years;

(e) Has been convicted of a gross misdemeanor within the last five years;

(f) Has been convicted of any misdemeanor within the last year; or

(g) Must register as a sex offender.

Crimes referenced in this section are as defined in the criminal code as they exist at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

(3) Each approved authorized emergency vehicle permit will be good for a period of one year. A renewal application must be filed with the patrol on forms prescribed by the patrol as outlined in WAC 204-36-030.

(a) A request to add drivers to a permit may be made, in writing to the patrol, at any time. If there is a request for new drivers to be added to the permit, the drivers will not be allowed to operate the vehicles as outlined in the permit until they have been approved to do so by the patrol. Any request to add or remove drivers from a permit must be made to the patrol in writing.

(b) A request to add vehicles to a permit may be made, in writing to the patrol, at any time. If there is a request for new vehicles to be added to the permit, a certificate of approval for the vehicles will be issued granting a thirty-day period

within which the equipment must be installed and inspected by the patrol. Once the inspection paperwork is received by the patrol it will be reviewed, and if approved, the patrol will issue a vehicle permit which must be carried in the vehicle at all times.

(i) No additional equipment other than the equipment outlined on the permit is authorized for use under the permit.

(ii) If additional equipment other than that approved under the vehicle permit must be installed, a new certificate of equipment must be filled out for the vehicle and the patrol must inspect and approve such equipment issuing a new vehicle permit prior to its use under the authorized emergency vehicle permit.

~~((3))~~ (4) The certificate of approval and when issued, the permit, including all endorsements for change of conditions as provided in WAC 204-36-030, ~~((shall))~~ must be carried in the authorized emergency vehicle at all times, and ~~((shall))~~ must be displayed on request to any law enforcement officer.

AMENDATORY SECTION (Amending Order 88-08-ESR, filed 7/18/88)

WAC 204-36-070 Revocation or suspension. (1) Violation of any of these regulations ~~((shall))~~ will be grounds for suspension or revocation of the authorized emergency vehicle permit. Notice ~~((shall))~~ will be furnished to the applicant at least twenty days prior to the effective date of such suspension or revocation. The notice ~~((shall))~~ will describe the grounds for the order and ~~((shall))~~ will furnish the applicant an opportunity to be heard within the twenty-day period. The notice may provide for immediate suspension of the permit prior to any hearing, or the patrol may suspend the permit following the hearing but prior to final determination, if it is necessary to do so in the interests of the public health, safety or welfare.

(2) The chief law enforcement officer, or fire chief if the vehicle is to be used for firefighting purposes, of each primary jurisdiction in which the vehicle is operated as an authorized emergency vehicle may revoke his certification of the vehicle by notifying the patrol in writing of such revocation and his reasons ~~((therefor))~~ therefore. Following notice to the applicant and an opportunity to be heard, the permit may be invalidated by the patrol.

(3) Mailing by certified mail of any notice or correspondence by the patrol to the last address of the applicant shown on his application ~~((shall))~~ will be sufficient service of notice as required by this chapter.

WSR 09-09-101

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 20, 2009, 10:11 a.m., effective May 21, 2009]

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

Purpose: The department is amending WAC 388-513-1340 Determining excluded income for long-term care (LTC) services, as follows:

- Adding interest or dividend income as an exclusion, except for the community spouse of an institutionalized client.
- Adding current child support payments received from an absent parent for a minor child who is not institutionalized.
- Removing exclusions based on federal rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1340.

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

Other Authority: Social Security Act § 1611, 1902; C.F.R. 435.725.

Adopted under notice filed as WSR 09-06-079 on March 3, 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: April 15, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-087, filed 12/14/99, effective 1/14/00)

WAC 388-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the department excludes when determining a client's eligibility and participation in the cost of care for LTC services with the exception~~((s))~~ described in subsection~~((s-(30) and-(33)))~~ (31).

- (1) Crime victim's compensation;
- (2) Earned income tax credit (EITC);
- (3) Native American benefits excluded by federal statute (refer to WAC 388-450-0040);
- (4) Tax rebates or special payments excluded by other statutes;
- (5) Any public agency's refund of taxes paid on real property and/or on food;
- (6) Supplemental security income (SSI) and certain state public assistance based on financial need;
- (7) The amount a representative payee charges to provide services when the services are a requirement for the client to receive the income;

(8) The amount of expenses necessary for a client to receive compensation, e.g., legal fees necessary to obtain settlement funds;

(9) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution;

(10) Child support payments received from an absent parent for a ~~((minor))~~ child ~~((who is not institutionalized))~~ living in the home are considered the income of the child;

~~((11))~~ ~~((The amount of expenses related to impairments of a permanently and totally disabled client that allow the client to work;~~

~~((12))~~ ~~The amount of expenses related to blindness that allow the client to work;~~

~~((13))~~ Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);

~~((14))~~ (12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;

~~((15))~~ (13) Assistance (other than wages or salary) received under the Older Americans Act;

~~((16))~~ (14) Assistance (other than wages or salary) received under the foster grandparent program;

~~((17))~~ (15) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

~~((18))~~ (16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;

~~((19))~~ (17) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;

~~((20))~~ (18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

~~((21))~~ (19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

~~((22))~~ (20) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

~~((23))~~ (21) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

~~((24))~~ (22) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

~~((25))~~ (23) Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

~~((26))~~ (24) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

~~((27))~~ (25) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

~~((28))~~ (26) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

~~((29))~~ (27) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

~~((30))~~ ~~Interest earned from payments described in subsections (24) through (29) is considered available and counted as nonexcluded income)~~ (28) Interest or dividends received by the client is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bond, or savings accounts. Institutional status is defined in WAC 388-513-1320;

~~((31))~~ (29) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, e.g., chore services;

~~((32))~~ (30) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent;

(b) Unusual medical expenses, aid and attendance allowance, and housebound allowance, with the exception described in subsection ~~((33))~~ (31);

~~((33))~~ (31) Benefits described in subsection ~~((32)(b))~~ (30)(b) for a client who resides in a state veterans' home and has no dependents are excluded when determining eligibility, but are considered available when determining participation in the cost of care.

WSR 09-09-103

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 20, 2009, 2:02 p.m., effective April 21, 2009]

Effective Date of Rule: April 21, 2009.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The rule change is necessary to allow the department to apply the federal policy regarding the economic stimulus rebates equally to all programs. Federal economic stimulus payments were sent out beginning in May 2008. The rules have been in effect via emergency adoption since April 30, 2008, and they expire on April 21, 2009. This rule filing is to make these rules permanently effective on April 21, 2009.

Purpose: The department is amending WAC 388-450-0015 and 388-470-0045 to exclude federal economic stimulus payments, as income in the month of receipt and to exclude the payments as a resource for an additional two months when these payments are specifically excluded from federal law. This change is necessary in order to apply the federal policy to [the] general assistance program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015 and 388-470-0045.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 74.08.090.

Adopted under notice filed as WSR 08-24-082 on December 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: We clarified that the federal economic stimulus payments that we do not count as income or as a resource are

payments that are specifically excluded for federal and federally-assisted state programs.

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 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 2, Repealed 0.

Date Adopted: April 17, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments that are excluded for federal and federally-assisted state programs;

(d) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

~~((e))~~ (e) Energy assistance payments;

~~((f))~~ (f) Educational assistance we do not count under WAC 388-450-0035;

~~((g))~~ (g) Native American benefits and payments we do not count under WAC 388-450-0040;

~~((h))~~ (h) Income from employment and training programs we do not count under WAC 388-450-0045;

~~((i))~~ (i) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((j))~~ (j) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((k))~~ (k) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((l))~~ (l) Payments we are directly told to exclude as income under state or federal law.

~~((m))~~ (m) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

~~((n))~~ (n) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts; or

(vii) Lump sum payments as described in chapter 388-455 WAC.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

- (b) Basic Food benefits;
 - (c) Income tax refunds in the month of receipt;
 - (d) Earned income tax credit (EITC) in the month received and the following month;
 - (e) Advance earned income tax credit payments;
 - (f) Federal economic stimulus payments that are excluded for federal and federally-assisted state programs;
 - (g) Individual development accounts (IDAS) established under RCW 74.08A.220;
 - ~~((g))~~ (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;
 - ~~((h))~~ (i) Underpayments received under chapter 388-410 WAC;
 - ~~((i))~~ (j) Educational benefits that are excluded as income under WAC 388-450-0035;
 - ~~((j))~~ (k) The income and resources of an SSI recipient;
 - ~~((k))~~ (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;
 - ~~((l))~~ (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;
 - ~~((m))~~ (n) Adoption support payments;
 - ~~((n))~~ (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and
 - ~~((o))~~ (p) Resources specifically excluded by federal law.
- (3) The following types of real property do not count when we determine your eligibility:
- (a) Your home and the surrounding property that you, your spouse, or your dependents live in;
 - (b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:
 - (i) Employment;
 - (ii) Training for future employment;
 - (iii) Illness; or
 - (iv) Natural disaster or casualty.
 - (c) Property that:
 - (i) You are making a good faith effort to sell;
 - (ii) You intend to build a home on, if you do not already own a home;
 - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or
 - (iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.
 - (d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.
- (4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.
- (5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

- (i) Closing on your new home is taking longer than anticipated;
 - (ii) You are unable to find a new home that you can afford;
 - (iii) Someone in your household is receiving emergent medical care; or
 - (iv) Your children are in school and moving would require them to change schools.
- (b) If you have good cause, we will give you more time based on your circumstances.
- (c) If you do not have good cause, we count the money you got from the sale as a resource.

WSR 09-09-109

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed April 21, 2009, 10:48 a.m., effective May 22, 2009]

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

Purpose: Rule making is required to enhance the administration of the DOT number information required in RCW 46.16.615 and 46.32.100.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 09-05-088 on February 18, 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 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 1, 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: April 21, 2009.

Mykel D. Gable
Assistant Director
Driver and Vehicle Services

NEW SECTION

WAC 308-96A-570 Invalid or fraudulent DOT numbers—Cancellation of registrations. The department will cancel any license registration issued to a motor carrier who provided invalid or fraudulent DOT number information to register a commercial motor vehicle as required in RCW 46.16.615.

WSR 09-09-118
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed April 21, 2009, 2:58 p.m., effective May 22, 2009]

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

Purpose: The changes being proposed are to clean up existing WAC language and ensure Washington state tow standards are in line with national standards.

Citation of Existing Rules Affected by this Order: Amending chapter 204-91A WAC.

Statutory Authority for Adoption: RCW 46.37.005, 46.55.050, and 46.55.115.

Adopted under notice filed as WSR 09-05-083 on February 17, 2009.

Changes Other than Editing from Proposed to Adopted Version: Added "The class (B/E) tow trucks currently in-service with those tow operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company."

Also added the word "tow" before business records in WAC 204-91A-040 (2)(a)(i) and (2)(a)(i)(B).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 17, 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: April 21, 2009.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 02-07-056, filed 3/15/02, effective 4/15/02)

WAC 204-91A-010 Authority. This chapter is adopted pursuant to RCW 46.37.005, 46.55.050, and 46.55.115 ((which require rules, regulations and equipment standards for tow trucks be made and to provide for the removal from the highway of disabled, abandoned, or damaged motor vehicles, or the removal of vehicles when the driver is intoxicated or otherwise incompetent)).

AMENDATORY SECTION (Amending Order 89-04-ESR, filed 6/23/89)

WAC 204-91A-020 Purpose. This chapter is intended to implement the public policy expressed by the legislature and to carry out the statutory duties of the Washington state patrol.

All registered tow truck operators providing service as a result of being appointed by, or contracted to the Washington state patrol ((~~shall~~)) must conduct all operations in accordance with all applicable laws of the state of Washington and applicable rules of the Washington state patrol and the department of licensing.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-030 Definitions. The following definitions ((~~shall~~)) will apply throughout this chapter:

(1) ((~~"Patrol" means the Washington state patrol as defined in RCW 43.43.010.~~

~~(2)) "Chief" means the chief of the Washington state patrol ((~~or designee~~)).~~

~~((3)) (2) "Department" means the Washington state department of licensing.~~

~~(3) "Designee" means a person designated by the chief of the Washington state patrol.~~

~~(4) "Director" means the director of the department of licensing.~~

~~(5) ("Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.~~

~~(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles, or in the disposal of abandoned vehicles.~~

~~(7) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing or otherwise transporting other vehicles with specific equipment approved by the state patrol.~~

~~(8) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.~~

~~(9) "Tow truck service" means the towing, moving, transporting, or impounding of vehicles, together with personal effects and cargo, by a registered tow truck operator utilizing equipment approved by the patrol.~~

~~(10) "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.~~

~~(11) "Place of business" means a building which the registered tow truck operator occupies, either continuously or at regular times, where tow business books and records are kept and tow business is transacted in each assigned tow zone.~~

~~(12) "Vehicle storage area" means the approved yard/buildings (primary and secondary) where stored vehicles are kept. The storage areas and fencing will comply with the requirements as established by the department and all local zoning rules and regulations. Both primary and secondary storage areas must be physically located within tow zone assigned to the operator.~~

~~(13) "Special event" means any event which causes an unusually large number of impounded vehicles and/or tow calls in a short period of time and is so declared by the district commander or designee.~~

(14) "Special event storage area" means an area used for temporarily storing vehicles impounded/towed from special events. Approval for such areas shall be obtained from the department, the patrol, and appropriate city and county jurisdictions.

(15) "District commander" means the commanding officer of an area established by the Washington state patrol.

(16) "Inspector" means a commissioned officer of the Washington state patrol who has been designated as a tow truck inspector by the patrol.

(17) "Tow zone" means that specific geographical area designated by the district commander for the removal of vehicles as defined in Title 46 RCW and this chapter.

(18) "Section" means the section designated by the chief of the Washington state patrol to coordinate the tow truck inspection program, maintain tow truck files, and issue letters of appointment.

(19) "Letter of appointment" means a letter issued by the section that authorizes a registered tow truck operator to tow and store vehicles on a rotational or contractual basis, in a specific area, for the Washington state patrol. The letter of appointment must have an attached valid contractual agreement listing the maximum rates that will be charged by the operator for services provided as a result of state patrol originated calls.

(20) "Initial tow" means services provided including, but not limited to, accidents, incidents, disableds, and impound requests, as a result of an original call, on a particular vehicle, that the tow operator receives from the patrol using a copy of a current rotational call list for the particular zone. Any vehicles of combination oversized/weight requiring a permit, may only be moved to the nearest safe location agreed upon by all parties involved, until such time a permit is acquired or until the load can be made legal by reducing.

(21) "Secondary tow" means towing services from an operator's storage facility or place of business, to another location designated by the owner/agent of a vehicle that was initially towed as a result of call from the patrol.

(22) "Letter of contractual agreement" means the document, attached to the letter of appointment, that specifies the maximum tow rates that may be charged for services provided as a result of state patrol originated calls.

(23) "Owner/operator" means owner is active in the general management of the towing business-)) "District commander" means the commanding officer or designee of an area established by the Washington state patrol.

(6) "Emergent move" means a law enforcement directed movement of any vehicle by a tow truck, utilizing any safe means, for the purposes of clearing the roadway in the interest of safety and/or for the reduction of congestion. Emergent movement of any oversized or overweight vehicle(s) or combination of vehicles requiring a permit must only be made to the nearest safe location, until such time as a permit is acquired or until the load can be made legal by reducing the nonfixed load. Emergent movement of a vehicle is limited to a distance of five miles, unless an exception is granted by a patrol supervisor based on special circumstances.

(7) "Highway" means the entire width between the boundary lines of every highway publicly maintained when

any part thereof is open to the use of the public for purposes of vehicular travel.

(8) "Initial tow" means services provided including, but not limited to, collisions, incidents, disableds, and impound requests, as a result of an original call, on a particular vehicle, that the tow operator receives from the patrol using a copy of a current rotational call list for the particular zone.

(9) "Inspector" means a commissioned officer of the Washington state patrol who has been designated as a tow truck inspector by the patrol.

(10) "Letter of appointment" means a letter issued by the Washington state patrol that authorizes a registered tow truck operator to tow and store vehicles for the patrol on a rotational or contractual basis in a specified area.

(11) "Letter of contractual agreement" means the document, attached to the letter of appointment, that specifies the maximum tow rates that may be charged for services provided as a result of state patrol originated calls.

(12) "Owner/operator" means an owner who is active in the general management of the towing business.

(13) "Patrol" means the Washington state patrol as defined in RCW 43.43.010.

(14) "Place of business" means a building located in an assigned tow zone that the registered tow truck operator occupies, either continuously or at regular times, where tow business books and records are kept and tow business is transacted.

(15) "Registered tow truck operator" or "operator" means a person who engages in the impounding, transporting, or storage of unauthorized vehicles, or in the disposal of abandoned vehicles.

(16) "Secondary tow" means towing services from an operator's storage facility or place of business to another location designated by the owner/agent of a vehicle, when the initial towing services were the result of a call from the patrol.

(17) "Section" means the section designated by the chief of the Washington state patrol to coordinate the tow truck inspection program, maintain tow truck files, and issue letters of appointment.

(18) "Special event" means any event that causes an unusually large number of impounded vehicles and/or tow calls in a short period of time and which is declared as such by the district commander or designee.

(19) "Special event storage area" means an area used for temporarily storing vehicles impounded/towed from special events. Approval for such areas must be obtained from the department, the patrol, and appropriate city and county jurisdictions.

(20) "State recognized holiday" means a legal holiday as outlined under RCW 1.16.050.

(21) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing or otherwise transporting other vehicles with specific equipment approved by the patrol.

(22) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(23) "Tow truck permit" means the permit issued annually by the department that has the classification of service that the tow truck may provide stamped upon it.

(24) "Tow truck service" means the towing, moving, transporting, or impounding of vehicles, together with personal effects and cargo, by a registered tow truck operator utilizing equipment approved by the patrol.

(25) "Tow zone" means that specific geographical area designated by the district commander for the removal of vehicles as defined in Title 46 RCW and this chapter.

(26) "Vehicle storage area" means the approved yard and buildings (primary and secondary) where stored vehicles are kept. The storage areas and fencing must comply with the requirements established by the department and all local zoning rules and regulations. Both primary and secondary storage areas must be physically located within the tow zone assigned to the operator.

NEW SECTION

WAC 204-91A-035 Registered tow truck application process. (1) A tow company must apply through the patrol to be a registered tow operator in Washington state.

Once an application is received, the patrol must conduct an initial inspection of the applicant's place of business, facilities, and equipment.

(2) At the time of initial inspection:

(a) The applicant must:

(i) Provide written verification that the business complies with all applicable local laws and regulations in the geographical area where the towing business will be established.

(ii) If local zoning regulations apply, provide a copy of the certification of approval from the local zoning commission. This certificate will become a part of the permanent record maintained on each approved towing firm approved by the patrol.

(b) The inspector will:

(i) Verify the identities and status of driving privileges for all persons who operate tow trucks, and notify the applicant of any person who does not meet the minimum licensing requirements.

(ii) Determine if the applicant meets the applicable requirements of chapter 46.55 RCW, or Titles 308 or 204 WAC.

(A) If applicant meets the requirements, the inspector will provide certification.

(B) If the applicant does not meet the requirements, the inspector must state the reasons for failure to qualify in a separate report which must be returned to the applicant along with the application and inspection form. If the applicant is initially not certified, the applicant may request an additional inspection once all deficiencies are corrected.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-040 Inspections. ~~((Upon the request of a registered tow operator or applicant, the patrol shall conduct an inspection of the applicant's place of business, facilities, and equipment to determine if the applicant meets the requirements of chapter 46.55 RCW, or Titles 308 and/or 204~~

~~WAC. Verification must be shown to the inspector that the applicant complies with all applicable local laws and regulations as prescribed for the geographical area where the towing business will be established. If local zoning regulations are applicable, a copy of the certification of approval from the local zoning commission will be furnished to the inspector. This certification may be included in the department's application form for license. The certification will become a part of the permanent record maintained on each approved towing firm by the section.)) (1) ((Reinspections)) **When will an inspection be conducted?**~~

~~(a) After the initial inspection, inspections will be conducted at least once a year.~~

~~(b) Unscheduled inspections may be conducted without notice at the operator's place of business by an inspector to determine the fitness of tow trucks, facilities, and business records.~~

~~(2) ((If reinspection of a previously approved tow truck reveals equipment defects, one of the following procedures shall apply:~~

~~(a) In the event of a safety-related defect which would render the tow truck a safety hazard upon the public highway, a red "out-of-service" sticker shall be affixed immediately by the inspector.~~

~~(b) In the event of missing or defective equipment that does not constitute a safety hazard but is required, the inspector shall advise the operator of the defect. If after ten days the operator fails or refuses to repair the defect, the red out-of-service sticker shall be affixed.~~

~~(c) Upon confirming the satisfactory repair of the defect or defects that caused the tow truck to be taken out of service, the inspector shall remove the red sticker. In the event that the original inspector is not available to reinspect the equipment, another patrol officer appointed by the appropriate supervisor may do so. The reinspection shall be completed as soon as possible after the operator advises the patrol that the defect has been repaired. Whenever practicable this shall be done within three days and may require the operator to bring the truck to the inspector.~~

~~(d) Upon sale or other transfer of a tow truck from the business, the operator shall so advise the inspector who will request the issued cab card permit be forwarded to the inspector via U.S. mail or other arrangement agreed upon by the parties involved, within three days of any changes. The operator will remove any decals indicating truck class, district and/or zone. The inspector will notify the department and the section of any changes in vehicles.~~

~~(e) Upon the purchase or acquisition of any additional or replacement tow truck(s) to be used pursuant to this chapter, the operator shall immediately notify the patrol and request an inspection of the new unit. The new unit shall not be used for public or private impound calls until satisfactory inspection is completed and a cab card permit and/or decals for the vehicle has been issued by the department and/or patrol.~~

~~(3) On original inspection, and subsequent reinspection, the inspector shall confirm the identities and status of driving privilege of all persons that operate the tow trucks. The inspector shall notify the operator if any person does not meet the minimum license requirements.~~

(a) In the event that an operator becomes aware that the driving privilege of an employee, or owner no longer meets the minimum requirements, the operator shall prohibit that person from operating any tow truck.

(b) An operator shall, within three days of employing a new driver, advise the inspector in writing, on a form provided by the inspector, of the identity, including name, address and date of birth, of the new employee. The check performed by the inspector is not to be used as part of the operator's preemployment screening processes. The inspector shall notify the operator if the new employee does not meet the minimum license requirements in a timely manner.

(c) An operator may not request a waiver for a new employee; the new employee must contact the inspector in writing to request a waiver.)) **What will the inspection consist of?** At the time of inspection:

(a) The operator must:

(i) Provide copies of tow business records by either:

(A) Permitting the patrol to make copies at their place of business.

(B) Permitting the patrol to remove tow business records for the purpose of reproduction provided that the patrol issues a receipt for any original records removed from the place of business.

(ii) Allow the inspectors to reinspect previously approved vehicles for equipment defects.

(iii) Provide current driver information to the inspector.

(b) The inspector must:

(i) Determine if the operator meets the applicable requirements of chapter 46.55 RCW, chapters 204-91A and 308-61 WAC.

(ii) Verify the identities and status of driving privilege of all persons that operate tow trucks, and notify the operator if any person does not meet the minimum license requirements.

(iii) Determine if there are equipment defects on the vehicle(s):

(A) The inspector will conduct equipment inspections per Commercial Vehicle Safety Alliance (CVSA) criteria as outlined in the Federal Motor Carrier Safety Regulations, chapters 204-91A WAC and 46.37 RCW.

(B) The inspector must document the inspection on the Uniform Driver/Vehicle Inspection report utilizing the appropriate Code of Federal Regulations, chapters 46.37 RCW and 204-91A WAC.

(C) If safety-related equipment violations exist which would render the tow truck unsafe for tow operation or constitute a safety hazard upon the public highway, the inspector will place the vehicle out-of-service and notify the operator the vehicle may not be operated until compliance has been met. The operator must repair the violation immediately and certify compliance in writing within fifteen days or remove the vehicle from tow operation.

(D) If violations of equipment or other required items exist, the inspector will notify the operator of the violation(s), and note the violations on the inspection report. The operator must correct the violations and certify compliance in writing within fifteen days.

(c) Whenever practical the patrol will complete a reinspection within three days or as soon as possible after the operator advises the patrol. The patrol may:

(i) Choose to reinspect the vehicle, if it is placed out-of-service.

(ii) Require the operator to bring the truck to the inspector.

(iii) Appoint another patrol officer to reinspect the vehicle(s), if the original inspector is not available. Such appointment must be made by the appropriate patrol supervisor.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-050 ((Certification-)) Adding or removing drivers or vehicles. ((After inspection of the towing business facilities and equipment, the inspector will certify one of the following:

(1) The towing operation of the applicant meets the requirements and qualification standards established by chapter 46.55 RCW, chapters 204-91A and 308-61 WAC, the department of licensing, master licensing services, and the patrol; or

(2) The towing operation of the applicant does not meet the requirements and qualification standards established by the Revised Code of Washington 46.55, Washington Administrative Codes 204-91A and 308-61, the department of licensing, master licensing services, and the patrol. The inspector shall state the reasons for failure to qualify in a separate report which shall be attached to the application/inspection form.

In the event the applicant fails to meet the established requirements for approval, the applicant may, after correcting all deficiencies, request a reinspection for certification.)) (1) Drivers:

(a) If an operator becomes aware that the driving privileges of any tow truck driver no longer meet the minimum licensing requirements, the operator must prohibit that person from operating any tow truck.

(b) If an operator employs a new driver:

(i) The operator must notify the inspector in writing within three days of employing the new driver using the form provided by the inspector.

(ii) The inspector will notify the operator, in a timely manner, if the new employee does not meet the minimum licensing requirements, or the requirements established by chapter 204-91A WAC.

(iii) The operator must not use the check performed by the inspector as part of the preemployment screening processes for a new employee. The new employee must contact the inspector in writing to request a waiver.

(2) Vehicles:

(a) If a tow truck is sold or transferred from the business, within three days, the operator must:

(i) Advise the inspector.

(ii) Send the issued cab card permit to the inspector via U.S. mail or another method agreed upon by the parties.

(iii) Remove any decals indicating truck class, company name, district, and tow zone. Once notification is made, the inspector will notify the department and the patrol.

(b) If a tow truck is purchased or acquired, the operator must immediately notify the patrol and request an inspection. The patrol must complete an inspection and issue either a cab

card permit, or decal or both before the new tow truck is used for impound calls.

(c) Tow trucks newly acquired or purchased must meet the current equipment criteria listed in chapter 204-91A WAC.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-060 Application for letter of appointment. ~~((+))~~ An application (for a letter of appointment to be placed on the rotational tow list, will not be considered or approved unless the owner/operator of the towing company can demonstrate that he/)) must be approved and a letter of appointment issued by the patrol before an operator is authorized to provide towing services pursuant to this chapter. However, nothing herein prohibits the patrol from calling the towing business upon the specific request of a person responsible for a vehicle or his/her agent.

(1) Who must complete the application?

<u>Type of business</u>	<u>Who must complete the application</u>
<u>Tow company</u>	<u>Operator/owner</u>
<u>Partnership</u>	<u>Each partner</u>
<u>Corporation</u>	<u>The patrol may require each of the present and subsequent officers, managers, and stakeholders holding 10% or more of the total issued stock.</u>

(2) What is required on the application?

(a) In order to be issued a letter of appointment, the applicant(s) must:

(i) Fill out the application form provided by the patrol.

(ii) Demonstrate through a letter with the application that they have two years of experience within the towing industry, including which of the following requirement(s) apply:

(A) He or she has been a registered tow truck operator for a minimum of two years prior to the date of application with at least one approved "A" or "B" class tow truck, additional trucks are optional; or

(B) He or she has worked as an employee of a tow company on the state patrol's rotational tow list and gained experience within the towing industry including, but not limited to, the operation of vehicles, complying with the state and federal standards and regulations, and processing of paperwork for auditing and other purposes; or

(C) He or she will keep in place the existing management team/employees for a minimum of one year upon purchasing the business. ((The owner/operator shall submit a letter with the application outlining their experience within the towing industry and outline which requirement listed above fits their situation:))

(iii) Be granted a waiver, if the owner/operator ((doesn't)) does not have the required two years experience ((and is granted a waiver, it will be a probationary waiver)). If the owner/operator is granted a waiver, they will remain on probation for a period of one year from the date of the waiver.

((Note:)) (iv) Attach to the application a signed "letter of contractual agreement" listing the maximum tow rates to be

charged for services resulting from state patrol originated calls.

(v) An exception may be made if an operator desires a letter of appointment for class "C" tows only. In such situations, only a class "C" truck is required.

(vi) Upon request, the ((section shall)) patrol will advise the applicant of the contents of the department's regulations and of the standards established for the issuance of a letter of appointment.

~~(((2)) An application for a letter of appointment to provide towing service for the patrol shall be filed by the applicant with the local state patrol district office on a form prescribed by the patrol. The state patrol may refuse to approve or may revoke a letter of appointment/contract if the applicant, partner, corporate officer involved in day to day operations, or any employee who operates a tow truck or assists in vehicle auctions has been found guilty of or convicted of any felony or any crime involving moral turpitude regardless of type or class, or any individual who must register as or is a convicted sex offender, or within the last three years been convicted or found guilty of driving under the influence of alcohol and/or drug(s), or within the last five years have been found guilty of driving under the influence of alcohol and/or drugs two or more times as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. In the case of a partnership, each partner shall apply on the form prescribed. In the case of a corporation, the patrol may require that each of the present and any subsequent officers, managers, and stockholders holding ten percent or more of the total issued and outstanding stock of the applicant corporation complete an application form. A signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls will be attached to the application.~~

~~(((3))) (b) The district office must:~~

~~(i) Complete the tow zone portion of the application form. The district commander or designee will enter "approved" or "disapproved" next to the zone designation and sign the form; and~~

~~(ii) Forward the application and letter of contractual agreement to the section.~~

~~(c) The patrol will assign the application a docket number which will be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the patrol thereafter.~~

(3) When will an application be denied?

(a) The patrol may refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(i) Has been convicted of any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction;

(ii) Has been convicted of any class B felony within the last ten years;

(iii) Has been convicted of any class C felony within the last five years;

(iv) Has been convicted of DUI, as defined in chapter 46.61 RCW, two or more times within the last five years;

(v) Has been convicted of any gross misdemeanor within the last three years;

(vi) Has been convicted of any misdemeanor within the last year; or

(vii) Must register as a sex offender.

(b) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.

(c) Crimes referenced in this section are as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. Out- of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

(4) If an application is denied, when can a new application be submitted? Only one application per year to tow on the Washington state patrol rotational tow list will be accepted and considered for an applicant who has had their previous application denied or had their letter~~(s)~~ or contract of appointment revoked. The year ~~((shall))~~ will run from the date of application denial or the date of the letter of appointment's revocation.

~~((4) The district commander or designee shall complete tow zone portion of the form. He/she will enter "approved" or "disapproved" and will sign the form next to the zone designation. The application and "letter of contractual agreement" will be forwarded to the section.~~

~~(5) The application form will be assigned a docket number, by the section, which shall be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the section thereafter.~~

~~(6) The filing of an application for a letter of appointment does not in itself authorize the operator to provide towing services pursuant to this chapter until a letter of appointment has been issued by the section. However, nothing herein shall prohibit the patrol from calling the towing business upon the specific request of a person responsible for a vehicle or his agent.)~~

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-070 Issuance of a letter of appointment. (1) ~~((No towing operator shall be called to perform a towing service at the request of the patrol unless such operator has a letter of appointment as described in this chapter. No such))~~ The chief or designee will have the authority to issue a letter of appointment ((will be issued unless)) if all qualifications set out in this chapter have either been met by the applicant, or a waiver of those qualifications not met has been granted ((by the section.

~~(2) The section commander shall have the authority to issue letters of appointment upon request after receiving))~~ In order to issue a letter of appointment the section commander must receive:

(a) Certification from the inspector((-);

(b) An application for a letter of appointment endorsed by the district commander((-); and

(c) A notice from the department that the requestor has been licensed as a registered tow truck operator.

(2) The patrol will notify the requestor of its decision in writing.

(a) If all requirements are met, the request will be approved and the patrol will issue a letter of appointment, and the tow company will be admitted to the patrol's call list for the appropriate tow zone on the effective date of the letter.

~~(b) If ((the section shall find the requestor does not or will not meet)) all requirements are not met, and the requestor is not qualified for a waiver of the requirements, then such request ((shall)) will be denied. ((The section shall notify the requestor of its decision in writing, stating the reasons. If the request is approved, the section commander will issue the letter of appointment and forward it to the tow operator. The tow company will be admitted to the patrol's call list for the appropriate tow zone on the effective date of the letter.))~~

~~(c) If the district commander recommends denial of a request ((for a letter of appointment)), the ((section commander shall)) patrol will notify the applicant and provide an opportunity for the applicant to have a hearing as provided in chapter 34.05 RCW.~~

(3) A letter of appointment will be valid for one business, in a single tow zone, assigned by the district commander. Requests for additional letters of appointment in the same or another zone must be based on a complete and separate place of business capable of independent operation within the appropriate zone.

~~((a))~~ To receive a letter of appointment, each business must:

(a) Be operated independently. One company cannot be dependent upon another for any required operation.

(b) If an individual, partnership, corporation, or other business entity owns more than one business, each business must have a different identifiable name, address, and telephone number, which are answered at the business location during normal business hours. There may, however, be a central dispatch center for multiple companies. ~~((At a minimum, the))~~ This dispatch center must be capable of acknowledging each individual company when answering each call.

~~(c) Have on both sides of the truck a different identifiable name, city of address (even if included in the name of the company), registered tow truck operator license number, and truck number as assigned by the department((- must be located on both sides of the truck)).~~ All required information must be plainly seen and able to be read at all times. All other required markings must also be located where they can be plainly seen and able to be read at all times and be of the size outlined in WAC 308-61-115(1). Companies must comply by December 31, 2007.

~~((Note:))~~ EXAMPLE: A different identifiable name may include the parent company name but must also have an additional name to identify and separate that company. Example: Joe's Towing and Joe's Towing South. Joe's Towing I and Joe's Towing II.

~~((e) There must be))~~ (d) Have adequate staffing for each company with personnel present to answer all incoming calls and who are able to release impounded vehicles during normal business hours 8:00 a.m. to 5:00 p.m. Monday through Friday ((excluding)) except for state recognized holidays.

Each business (~~((shall))~~) must be staffed by a sufficient number of drivers for twenty-four hour day operation.

~~((d) There must be))~~ (e) Have adequate equipment for each company to operate independently. Tow trucks must only be used for the company for which they are registered and within the zone approved/assigned for use in, unless specifically requested by law enforcement. All trucks must be clearly marked with the company's identity as outlined in (b) of this subsection.

~~((e) Separate businesses in the same tow zone may be housed in one building; however, there must be a solid wall from floor to ceiling physically separating each business. Each business must))~~

(f) Have its own outside entrance, or when the building has one main entrance, the offices must have doors clearly marking and separating each business (not acceptable to walk in the main door and be hit with a counter or one office for the multiple tow companies housed in the building), with a sign at the front door and a sign plainly visible from the street indicating the company's name, phone number, and office hours. ~~((Companies currently not meeting these standards will have twelve months from July 1, 2004, to comply.~~

~~((f) Each business must))~~ Separate businesses in the same tow zone may be housed in one building; however, there must be a solid wall from floor to ceiling physically separating each business.

(g) Maintain their own set of required records and books as outlined in RCW 46.55.150 including, but not limited to, a master log, vehicle transaction file, and billing invoices at its place of business. If there is a corporate accountant/bookkeeper for more than one company, all records and/or files for each company, other than those records, which are required to be maintained at the business location, must be maintained separately.

~~((g))~~ (h) Have impound/storage areas ((must meet)) meeting the requirements of WAC 308-61-026(2) at all times, including proper segregation. All storage areas, primary and secondary for each place of business must be in the tow zone assigned to that place of business.

(i) Maintain at least one truck meeting the minimum class "A," "B," or "C" standards as listed in WAC 204-91A-170.

~~((All registered tow truck operators providing service to WSP must be in compliance with these requirements. Failure to comply will result in the cancellation of your letter of appointment to tow on the patrol's rotational tow list.))~~

(4) A tow operator (or a district commander) may petition the section in writing for a waiver of one or more requirements. The section may grant a waiver if it finds that:

(a) The towing service available to the patrol without the waiver is inadequate to meet the needs of the public;

(b) The request is otherwise reasonable; and

(c) The request has the district commander's approval.

In the event a qualified tow operator meeting all requirements and qualifications receives a letter of appointment in the same zone as a tow operator that had earlier been granted a waiver, the tow operator with a waiver will have the letter of appointment rescinded by the section and after notification will not be called for patrol-initiated tows.

(5) Every letter of appointment (~~((shall))~~) will be issued in the name of the applicant and the holder thereof (~~((shall))~~) must not allow any other person or business to use the letter of appointment.

(6) The letter of appointment will only be valid for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment (~~((shall))~~) will be valid until suspended, superseded, or revoked by the (~~((section))~~) patrol.

(8) ~~((The holder of each letter of appointment must maintain at least one tow truck meeting the minimum class "A," "B," or "C" standards as listed in WAC 204-91A-170.~~

~~((9))~~ All storage areas, primary and secondary, for each place of business must be in the tow zone assigned to that place of business.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-080 Suspension or revocation of letter of appointment. The patrol may deny, suspend, or revoke a letter of appointment:

(1) Upon receiving evidence that any appointee has failed to comply or no longer complies with any requirement or provision of law or this chapter (~~((the section may deny, suspend, or revoke the letter of appointment))~~). The following process must be used:

(a) The patrol must give the appointee ((shall be given)) notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to denial, suspension, or revocation of the letter of appointment.

~~((a))~~ (b) Upon receiving notice of the action, the appointee may ((request)), within twenty days from the date of the notice of action, request in writing to the section commander a hearing on the denial, suspension or revocation of the letter of appointment. ((Such request must be made in writing within twenty days from the date of the notice.)) An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, (~~((shall))~~) will constitute default and may result in the entry of a final order under RCW 34.05.440.

~~((b))~~ (c) Upon receiving a hearing request, the section may, at the request of the appointee, or on its own initiative, schedule an informal settlement conference which ((shall)) will be without prejudice to the rights of the parties. The informal settlement conference will be held in the district where the company resides at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

~~((e) The holder of a letter of appointment may voluntarily relinquish the letter. The section and the district commander will be advised in writing of this voluntary relinquishment. After receiving written notice, the district commander will cause the inspector to physically obtain the original letter of appointment and forward it to the section.))~~

(2) ~~((The section may summarily suspend a letter of appointment))~~ Without prior notification if it finds that there

is danger to the public health, safety, or welfare which requires immediate action. In every summary suspension of a letter of appointment, ~~((the section shall enter))~~ an order ~~(;)~~ signed by the chief or designee must be entered, ~~((which is))~~ in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instituted and determined. The ~~((section shall))~~ patrol must give notice as is practicable to the appointee.

~~((A tow company may be immediately removed from the state patrol's rotational tow list for the following - revocation or cancellation of their registered tow truck operator license by the department or cancellation of the tow company's insurance certificate or bond.))~~ Immediately if the department revokes or cancels the registered tow truck operator license or if the tow company's insurance certification bond is canceled.

(4) If the holder of a letter of appointment voluntarily relinquishes the letter, the inspector and the district commander will be advised in writing of this voluntary relinquishment. After receiving written notice, the district commander will instruct the inspector to obtain the original letter of appointment. If the owner/operator requests reissuance of a letter of appointment, the patrol may require a new application. Additionally, if applicable, all new equipment exempted under the previous letter of appointment must meet current requirements outlined in WAC and RCW.

(5) If violations of the terms and conditions of the letter of appointment that are subject to suspension for the first violation are categorized as major violations any subsequent or continuing major violation may be cause for termination unless the patrol imposes additional suspensions for longer periods, if deemed appropriate.

(a) When considering punitive action for a major violation of the letter of appointment, the district commander may take into consideration all major and minor violations that occurred within thirty-six months prior to the date of the current violation.

(b) Terms of disciplinary action - minor violations of the terms and conditions of the LOA may be cause for disciplinary action in the following manner:

(i) First violation within a twelve-month period - letter of written reprimand;

(ii) Second violation within a twelve-month period - thirty day suspension;

(iii) Third violation within a twelve-month period - sixty - ninety day suspension;

(iv) Fourth violation within a twelve-month period - termination of the letter or appointment.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-090 Hearing procedure. Hearings under this chapter ~~((shall))~~ will be pursuant to chapters 34.05 RCW, 446-08~~(;)~~ and 10-08 WAC, as supplemented by this section.

(1) The presiding officer ~~((shall))~~ will conduct the hearing and any prehearing conference(s).

(2) The burden of proof in any hearing ~~((before the chief shall))~~ will be on the applicant seeking a letter of appointment, or the person or agency seeking the suspension or revocation of a letter of appointment, or other action by the chief or designee. The chief or designee, after having heard and considered all pertinent evidence, or if the hearing is conducted by an administrative law judge, after having considered a record of a hearing conducted by an administrative law judge duly appointed pursuant to chapter 34.12 RCW, ~~((shall))~~ will make written findings of facts and conclusions based on evidence presented.

(3) Oral proceedings ~~((shall))~~ must be recorded ~~((on tape))~~ by a method chosen by the patrol and such ~~((tape shall))~~ recording will become part of the hearing record.

~~((4) This section is intended to supplement the procedures contained in the Administrative Procedure Act, chapter 34.05 RCW, the model rules of procedure, chapter 446-08 WAC, and chapter 10-08 WAC.))~~

AMENDATORY SECTION (Amending WSR 94-18-083, filed 9/2/94, effective 10/3/94)

WAC 204-91A-110 Complaints. (1) All law enforcement or local licensing agencies that receive complaints involving registered tow truck operators ~~((shall))~~ must forward ~~((the))~~ complaints, along with ~~((supporting documents, including))~~ all results from the complaint investigations and other supporting documents, to the department.

~~((1) Those complaints investigated by the patrol will be reviewed by the section commander before forwarding to the department.))~~

(2) The patrol ~~((shall))~~ will investigate all complaints involving equipment deficiencies ~~((of equipment)).~~

(3) Complaints investigated by the patrol will be reviewed by the chief or designee before forwarding to the department.

(4) A complete copy of all complaints investigated by the patrol will be kept on file ~~((by the section)).~~

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-120 Business office hours and records. (1) Business hours for purposes of inspection of records, place of business, and towing equipment must be 8 a.m. to 5 p.m., excluding weekends and state recognized holidays.

~~((+))~~ (2) The owner/operator must have personnel at the place of business during business hours to answer phone calls and to release vehicles and personal property. Persons from adjoining or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours.

(3) When an operator is not open for business and does not have personnel present at the place of business, the operator must post a clearly visible telephone number at the business location ~~((for the purpose of advising))~~ to advise the public how to make contact for the release of vehicles or personal property.

~~((The owner/operator will have personnel at the place of business during business hours to answer phone calls and to~~

release vehicles and/or personal property. Persons from adjoining businesses or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours, with the exception of the lunch hour. Lunch hours will be posted and will be consistent on a monthly basis.

~~(2))~~ (4) The owner/operator must maintain personnel who can be contacted twenty-four hours a day to release impounded vehicles within a ~~((thirty))~~ sixty-minute period of time. The personnel must be identifiable as representing the company.

~~((3))~~ (5) All billing invoices ~~((shall))~~ must be numbered and ~~((shall))~~ must contain the following information:

- (a) Date of service and tow truck operator's name.
- (b) Time of departure in response to the call.
- (c) Time service completed.
- (d) Class of tow truck.

(e) If the towing call is for a Washington state patrol request, another police agency, a private impound, or the result of a private citizen request.

- (f) All fees for service ~~((shall))~~ must be itemized.
- (g) The date and time the vehicle was released.

~~((Note:))~~ (6) Yard cards containing the ~~((above))~~ information in subsection (5) of this section may be used for internal control of vehicles by the operator until the vehicle is released, sold, or otherwise disposed of. Yard cards ~~((shall be))~~ are supplemental to, and ~~((shall))~~ do not replace the invoice required above.

(7) A copy of the invoice ~~((shall))~~ must be filed by invoice number at the business location and a copy of any voided invoice ~~((shall))~~ must be retained in this same file. Another copy of the invoice ~~((shall))~~ must be included with the transaction file items identified in RCW 46.55.150.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-130 Personal property handling procedures. All personal belongings and contents in the vehicle ~~((and))~~ that are not permanently attached ~~((, shall))~~ must be kept intact, and ~~((shall))~~ must be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. The tow operator must without charge ~~((;))~~ and upon demand, ~~((shall))~~ release personal property not being held for evidence purposes by the impounding agency, to the vehicle's owner or agent during normal business hours of 8:00 a.m. to 5:00 p.m. except for weekends and ~~((legal))~~ state recognized holidays. Release procedures ~~((will))~~ must also follow guidelines as set forth in chapter 308-61 WAC and chapter 46.55 RCW.

The vehicle ~~((and))~~ contents ~~((within))~~, less items listed in WAC and RCW, and personal property not picked up prior to the vehicle going to auction ~~((, stays))~~ must remain with the vehicle ~~((, Personal property will be sold with the vehicle at auction, unless arrangements with the legal/registered owner are made for pickup of items. The items))~~ and may not be kept by the operator or sold at auction to fulfill a lien against the vehicle.

(1) The items of personal property ~~((which))~~ that the state patrol will not accept in response to RCW 46.55.090 include but are not limited to the following:

- (a) Tire chains;
- (b) Spare tire ~~((/))~~ and wheels;
- (c) Used auto parts and ~~((/))~~ accessories;
- (d) Seat covers;
- (e) Fuel containers;
- (f) Jacks ~~((;))~~ and lug wrenches;

(g) Radios, stereos, and other items attached to the vehicle by bolts, screws, or some other manner ~~((which))~~ that incorporates them to the vehicle ~~((shall))~~. These items must remain with the vehicle;

(h) Refuse, trash, garbage, open or empty alcohol containers and perishable items;

(i) ~~((Trash;~~

~~((j))~~ Garbage;

~~((k))~~ Open alcohol containers;

~~((h))~~ Soiled or mildewed items, including clothing, shoes, blankets, and tarps ~~((, etc.))~~ having no actual value;

~~((m))~~ (i) Miscellaneous unofficial papers and other items having no actual value.

(2) Items ~~((which))~~ that must be turned over to the patrol within forty-eight hours and inventoried include, but are not limited to:

(a) Money;

(b) Wallets ~~((or))~~ and purses;

(c) Bank ~~((or))~~ and check books;

(d) Bank ~~((or))~~ and credit cards;

(e) Official identification cards, operator's license ~~((, or))~~ and passports;

(f) Jewelry ~~((items));~~

(g) Firearms and any type weapon;

(h) Contraband ~~((and/or))~~ including controlled substances;

(i) Stocks, bonds, money orders, bank certificates, travelers checks, postage stamps, and food stamps ~~((, etc.));~~

(j) Other items of obvious value.

(3) The tow operator ~~((shall))~~ must not remove or damage any vehicle parts permanently affixed to the vehicle, i.e., trunk locks or door locks. The tow operator must allow the registered owner or driver of a vehicle to remove specialized hand controls, provided that their removal does not damage the vehicle.

(4) If a vehicle is equipped with an ignition interlock system as outlined in RCW 46.20.720, the tow operator must contact the ignition interlock company through the phone number provided on the ignition interlock label within forty-eight hours to inform them that the vehicle has been impounded. The ignition interlock system must be removed by a qualified technician and released to the installing company, at no charge and upon proof of ownership, prior to the auction of the vehicle. The removal of the ignition interlock system must not render the vehicle inoperable.

(5) After the certified sale letter has been mailed, the tow operator may dispose of any perishable items or items that may rot, decay, or otherwise cause substantial odor within the interior of the vehicle.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-140 Fees. (1) All towing fees ~~((shall))~~ must be based on a flat, hourly rate only and ~~((shall))~~ will apply without regard ~~((for))~~ to the hour of day, day of the week or whether the service was performed on a Saturday, Sunday, or state recognized holiday. The hourly rate for each class of truck ~~((shall))~~ must be the only charge for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or state recognized holidays, if different from the hourly rate, ~~((shall))~~ must be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

The tow inspector will investigate allegations of overcharging. Intentional overcharging or a pattern of overcharging will be cause for suspension. The suspension will remain in effect until the tow operator has presented to the patrol sufficient proof that the aggrieved customer(s) has been fully reimbursed.

(2) The chief ~~((of the state patrol shall))~~ or designee will, prior to October 15th of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates ~~((shall))~~ will be determined after ~~((consulting))~~ consultation with members of the towing industry, review of current private towing rates, and such other economic factors as the chief ~~((may))~~ deems appropriate.

When signed by the chief ~~((or his/her designee))~~ or designee and the tow operator, a contractual agreement to charge no more than the maximum rates ~~((shall))~~ will become part of the operator's letter of appointment. The tow operator may, however, adopt a rate schedule charging less than the maximum rates established by the chief.

The hourly rate ~~((shall))~~ must:

(a) Be the only basis used by the tow operator to compute total charges for towing services.

(b) Apply when ~~((the))~~ a call for a tow is made by the state patrol, including, but not limited to, collisions and impound requests.

(c) Include all ancillary activities ~~((such as))~~ including, but not limited to, removal of glass ~~((and))~~, debris, and vehicle fluids less than one gallon from the roadway and any other area referred to as the "scene or incident," necessary winching, dolly service, drive line removal, ~~((installing))~~ installation of chains on the tow truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement ~~((on vehicle to be towed))~~ and standby time. ~~((Tow companies))~~ Before leaving any collision or incident, the tow company must advise the department of transportation ~~((and/or))~~, the patrol or local road department of all fluid spills ~~((before leaving the scene that they will not clean up. Tow companies must document and file information in the vehicle transaction file))~~ greater than one gallon.

(d) ~~((Be considered to))~~ Include the labor of one person per truck. When responding with a class "C" or a S-1 rotator truck to a major collision~~((s and))~~ or incident~~((s))~~, a second person is allowed at the hourly labor rate per contract for an extra RTO employee. Any charges for additional labor

~~((and/or))~~ or ancillary vehicles ~~((trailers, pickups, etc.))~~, or both or for removing debris, cargo, ~~((etc.))~~ or other items must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene.

(e) Be computed from the actual time the truck departs in response to a call until the truck returns to its normal area/zone, responds to another call, or the tow yard. The hourly rate ~~((shall))~~ must be applied to the resulting net time and, after the first hour, ~~((shall))~~ must be rounded to the nearest fifteen minutes. The operator may charge the hourly rate for the first hour or any portion thereof. After the first hour, no more than one-quarter of the hourly rate may be charged for each fifteen minutes of tow or service work performed.

(f) Be evenly divided between vehicles transported when class "E" trucks are used for multiple towing/recovery (one on bed, one in tow) from the same location.

(3) The basic storage fee: ~~((Vehicles shall be measured bumper to bumper; trailers shall be measured tongue to bumper.))~~

(a) ~~((shall))~~ Must be calculated using bumper to bumper measurements for vehicles, and using tongue to bumper measurements for trailers; and

(b) Must be calculated on a twenty-four-hour basis ~~((clock))~~ and ~~((shall))~~ must be charged to the nearest half day from the time the vehicle ~~((arrived))~~ arrives at the secure storage area. Vehicles stored over twelve hours on any given day within the twenty-four-hour ~~((clock shall constitute))~~ period may be charged a full day's storage. Vehicles stored ~~((for))~~ less than twelve hours on any ~~((give))~~ given day, ~~((shall))~~ may only be charged for twelve hours of storage; and

~~((b) shall))~~ (c) Must be the same for all three and four-wheel vehicles twenty feet or less in length; and

~~((e))~~ (d) For vehicles or combinations exceeding twenty feet, the storage fee ~~((shall))~~ must be computed by multiplying each twenty feet of vehicle length, or any portion thereof, by the basic storage fee; and

~~((d) Two wheel))~~ (e) For motorcycles ~~((shall be one-half))~~, operators may charge the basic storage fee for ~~((three and four wheel))~~ vehicles.

(4) After hours release fee. ~~((If an operator or employee is already present, for other reasons, at the storage facility after business hours when a customer arrives, the vehicle and/or property shall be released as if it were during business hours. No "after hours fee" may be assessed.))~~ After hour fees must:

(a) Be based on a flat, hourly rate;

(b) Be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes;

(c) Be no more than one-half of the class "A" rate; and

(d) Apply on any weekday after 5 p.m. and before 8 a.m.; Saturday or Sunday; and state recognized holidays. If the operator or employee is called to the place of business specifically for the purpose of releasing the vehicle and/or property, an "after hours fee," ~~((equivalent to one-half of the maximum Class "A" hourly rate,))~~ may be assessed.

(5)(a) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for the following services ~~((listed below shall))~~ must charge the same lower rate for similar ser-

vices performed as a result of ~~((state))~~ patrol ~~((originated))~~ initiated calls~~((:))~~:

~~((a))~~ (i) Roadside mechanical service, including, but are not limited to, fuel transfer, tire and belt changes~~((,-etc-))~~;

~~((b))~~ (ii) Disabled vehicle tow/transportation;

~~((c))~~ (iii) Storage;

~~((d))~~ (iv) After hours release fees.

~~((Any such))~~ (b) The price requirement ~~((shall not be imposed for))~~ in subsection (a)(i) through (iii) of this section does not apply to unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

(6) Upon redemption of a vehicle, an additional charge may not be assessed for moving or relocating any stored vehicle from inside a tow operator's storage yard to the front of the business establishment.

AMENDATORY SECTION (Amending Order 89-04-ESR, filed 6/23/89)

WAC 204-91A-150 Towing procedure. Officers of the patrol ~~((shall))~~ will obtain towing services to remove damaged or disabled vehicles from the highway or to remove vehicles from the highway with the following limitations:

(1) If the vehicle does not constitute an obstruction to traffic and the owner/operator of the vehicle is present at the scene and appears competent to determine disposition of the vehicle, the owner/operator may, upon request, make his own arrangements for removal. This does not affect rotational positions.

(2) If the vehicle is to be removed from the scene, the owner/operator of the vehicle may make a specific request for a particular tow operator. The request will be honored by the officer of the patrol if the requested tow operator is reasonably available and the request is otherwise reasonable in view of the circumstances at the scene. This does not affect rotational positions.

(3) When the owner/operator of the vehicle makes no specific request, or when the owner/operator is incapacitated or is unavailable, the officer of the patrol ~~((shall))~~ will, when practicable, obtain towing services by notifying the radio communications center and requesting tow service at that location.

(4) The chief ~~((shall))~~ or designee will specify that tow services obtained by the patrol will be on a contractual, rotational, or other basis in specific geographical areas in the state.

(5) For the purposes of rotational or contractual tow requests, an approved tow truck ~~((shall))~~ must be used only in the tow zone designated by the district commander. The patrol may, when tow service is not reasonably available within a given zone, obtain service from an adjacent zone.

(6) The patrol may adopt rules that will allow approved towing firms to establish their own central dispatch centers to dispatch tow trucks at the request of the patrol in selected geographical areas of the state.

(a) These dispatch centers will be the responsibility of those member towing firms that utilize this type of service, and must dispatch the specific company requested.

(b) The patrol communications center will advise the towing dispatch center of the approximate location, ~~((zone number, class of tow truck(s), and))~~ number of tow trucks needed ~~((at the location)),~~ number of occupants, make, model and color of the vehicle, if available, and the reason for the call. The towing dispatch center will be responsible for dispatching the participating firm's tow trucks.

(c) Permanent records of all tow trucks dispatched at the request of the patrol will be maintained by the towing dispatch center for a period of three years.

(7) Tow operators responding to calls from the patrol must be capable of transporting one occupant. In those instances where the occupant is argumentative, disabled, or otherwise incapable of riding in a tow truck, the patrol will provide or obtain alternative transportation.

AMENDATORY SECTION (Amending WSR 94-18-083, filed 9/2/94, effective 10/3/94)

WAC 204-91A-160 Tow zones. Each district commander ~~((shall))~~ will outline geographical areas within ~~((his))~~ their district to be designated as tow zones. The geographical tow zones for each patrol district ~~((shall))~~ will be filed with the ~~((section))~~ patrol. The boundaries established pursuant to this action may be modified as circumstances warrant. Considerations may include, but are not limited to, such factors as the frequency and severity of ~~((accidents))~~ collisions and the frequency of DWI arrests in various areas throughout the district, the volume and pattern of traffic, the availability of tow services, and the accessibility of tow services to the areas of need within each district. Nothing herein ~~((shall))~~ will prevent the patrol from amending tow zones from time to time as required by changing traffic and ~~((accident))~~ collision patterns and other such factors affecting the adequacy of towing service available to the patrol.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-170 Minimum tow truck equipment standards. All tow/recovery trucks used by a registered tow operator for public or private impounds or in response to patrol requests ~~((shall))~~ must meet the minimum standards as listed in this section.

~~((Note:))~~ Equipment standards will be effective one year from the date of adoption.

(1) Minimum standards:

(a) All equipment used in conjunction with the tow truck winching system ~~((shall have a working load limit at least twenty-five percent more than the working load limit of the wire rope or equivalent material being used))~~ must be used in such a way as not to exceed the equipment working load limit. All equipment ~~((shall))~~ must comply with the Washington safety and health administration (WSHA) regulation if applicable.

~~((Note:))~~ Industry standards set the working load limit of wire rope or equivalent material at ~~((1/5))~~ one-fifth of ~~((its))~~ the manufacturer's rated nominal or breaking strength.

(b) Each wire rope or equivalent material ~~((shall))~~ must be capable of being fully extended from and fully wound onto its drum. Each wire rope or equivalent material ~~((shall))~~ must

meet the industry standards for specified type of use with equipment.

~~((Note:))~~ OSHA (1410.179 (h)(2)(iii)) requires **no less** than two wraps of rope remain on drum when rope is "fully extended." This is to ensure the full load **never** bears on the rope to drum connection.

~~(c) ((All wire rope or equivalent material meeting industry standards for specified type of use with equipment shall be 6 X 19 or 6 X 37 classification graded "extra improved plow steel" (XIP).~~

Notes: Documentation from the supplier must be kept on file showing the type of wire rope installed and the date of installation for each truck.

~~6 X 37 wire rope classification includes wire ropes with six strands having wire combinations from twenty-seven through forty-nine wires per strand but not more than eighteen outer wires in each strand.~~

~~6 X 19 wire rope classification includes wire ropes with six strands having wire combinations from fifteen through twenty-six wires per strand but not more than twelve outer wires in each strand.))~~

The wire rope on each recovery class truck must be equivalent to a 6 x 19 or 6 x 37 "extra improved plow steel" (XIP) independent wire rope center (IWRC), and must meet all industry standards for working load limit.

(i) The operator must retain a receipt of purchase from the manufacturer indicating the type and WLL of wire rope, and document the type and date the wire rope was installed on each vehicle.

(ii) Class "A," "D," and "E" trucks may utilize either IWRC or fiber core wire rope.

(d) All wire rope ~~((shall))~~ must be in good working order. The following industry standards for **out-of-service** criteria ~~((shall))~~ will apply:

(i) No more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay.

(ii) Excessive abrasion causing the loss of more than one-third the original diameter of an outside individual wire.

(iii) Evidence of rope deterioration from corrosion.

(iv) Kinking, crushing, or other damage that results in detrimental distortion of the rope structure.

(v) Any evidence of heat damage.

(vi) Any marked reduction in diameter either along the entire main length or in one section.

(vii) Unlaying or opening up of a tucked splice.

(viii) Core protrusion along the entire length.

(ix) End attachments that are cracked, deformed, worn, or loosened.

~~((Note: Hooks must be replaced if the throat opening has increased beyond manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.))~~

(x) Any indication of strand or wire slippage in end attachments.

(xi) More than one broken wire in the vicinity of fittings.

(e) Wire rope end connections shall be swaged or, if clamped, ~~((shall))~~ must have a minimum of three forged clamps spaced a minimum of six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the cable. The "U" bolt will be placed

over the short or "dead" end of the rope and will be of the proper size for the cable being clamped.

~~((Note:))~~ (i) Recovery or tow hooks must be installed, maintained, and used in the manner in which the manufacturer prescribes.

(ii) Recovery or tow hooks must be replaced if the throat opening has increased beyond the manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.

(iii) Wire rope clamps must be installed and torqued per manufacturer specifications.

(f) All wire rope related equipment, sheaves, etc., must conform to the diameter of the wire rope being used or to the original tow truck equipment manufacturer specifications.

(g) All winching equipment, booms, snatch blocks, etc., ~~((shall))~~ must have permanently affixed durable factory identification, stating the working load limit ~~((WLL))~~. If this identification has been removed or is no longer readable, it is criteria for placing the item out-of-service. Equipment may be reinspected by a recognized recertification company. If the equipment is acceptable, it may be reidentified with a working load limit ~~((WLL))~~ and a recertification company identifier. It will be deemed acceptable if the operator maintains a copy of the certification of winching equipment provided the serial number on the equipment corresponds with the certification provided by the manufacturer.

(h) Snatch block hooks that were manufactured with a retractable safety retention clip must have a functional clip installed.

~~((h))~~ (i) All block and tackle equipment used in the winching system which shows signs of permanent deformation, significant wear or damage is criteria for placing the item out-of-service.

~~((h))~~ (j) All "J" hook chain assemblies must be grade "7" chain or better.

~~((h))~~ (k) Safety chains must only be used for the securing of vehicles to the truck. Must be minimum grade ~~((4"))~~ "7" chain or meet the original manufacturer's recommendations. Safety chain hooks that were manufactured with retractable safety retention clips must have a functional clip installed.

~~((h))~~ (l) Comply with legal lighting, equipment, and license requirements.

~~((h))~~ (m) Portable tail, stop, and turn signal lights for vehicles being towed.

~~((h))~~ (n) Have department of licensing registration and truck numbers painted or permanently affixed to both sides of the truck. Have firm's name, city of address, and phone number permanently affixed to both sides of the vehicle. Letters must be a minimum of three inches high with one-half inch strokes.

~~((h))~~ (o) Have a revolving~~((+))~~, strobe, or intermittent red light with three hundred sixty degrees visibility. Trucks may also be equipped with flashing amber and/or white lights which may be used in conjunction with the red lamps. Additionally, trucks must also be equipped with a warning light visible from the driver seat which is energized when the red revolving light or flashing amber lights are activated.

~~((h))~~ (p) Have a broom, minimum twelve inches wide, with a handle at least four feet long.

~~((p))~~ (q) Have a scoop type shovel, minimum seven inches wide, overall length minimum three feet long and a minimum of a three-gallon hard ~~(#)~~ or solid sided receptacle (trash bags of any type will not meet this requirement) able to contain debris typically found at collision scenes without breaking.

~~((q))~~ (r) Be maintained in a reasonably clean condition.

~~((r))~~ (s) Have ~~((two tempered steel pinch bars or equivalent devices, one tapered and one flattened; one at least three feet long and one))~~ at least one steel pinch bar four feet long, tapered on one end and flattened on the other with a minimum diameter of three-quarters of an inch.

~~((s))~~ (t) Have a two-way radio or mobile telephone system capable of communicating with a base station. A citizen band radio does not suffice. A mobile telephone system is acceptable ~~((#))~~ provided that it must:

(i) ~~((The equipment is of a recognized and established manufacture and is properly installed.~~

(ii) ~~The equipment is)~~ Be in proper working order and function ~~((s))~~ correctly throughout the assigned tow areas for all towing operations including on call drivers.

~~((iii))~~ The equipment does not utilize a siren to signal incoming calls.

~~((iv))~~ ~~The equipment is)~~ (ii) Be used in a ~~((correct and))~~ lawful manner.

~~((t))~~ (u) Have one 20 BC rated or two 10 BC rated fire extinguishers accessible and secured on or in the tow truck.

~~((u))~~ (v) Axle weight must comply with the requirements of RCW 46.37.351.

(w) Carry two gallons of absorbent material designed to and capable of absorbing a one-gallon liquid spill from a motor vehicle. For the purposes of this chapter, vehicular liquids consist of motor oil, antifreeze, transmission fluid, and gear oil.

(2) **Class "A" tow trucks:** Trucks that are capable of towing and recovery of passenger cars, pickup trucks, small trailers, or equivalent vehicles. Class "A" tow trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) A ~~((ten))~~ fourteen thousand five hundred pound minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Dual tires on the rear axle.

(c) A minimum of one hundred feet of three-eighths inch continuous length XIP wire rope on each drum, measured from the point of attachment at the drum to the hook.

(d) A minimum ~~((six))~~ eight-ton boom rating with a single ~~((or dual))~~ hydraulic boom ~~((s))~~. Dual winches to control a minimum of two service drums. Class "A" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(e) A minimum of two snatch blocks rated at 3.4 tons each.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles ~~((that are))~~ not otherwise towable.

(h) If equipped with a wheel lift system, it must have a fully extended working load rating of at least three thousand pounds and a seven thousand pound tow rated capacity.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be minimum grade "7" chain with matching fittings.

(3) **Class "B" tow trucks:** Trucks that are capable of towing and/or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles. Class "B" tow trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) ~~((Seventeen))~~ Eighteen thousand pounds minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Minimum ~~((ten-ton boom rating, single or dual booms,))~~ of one fourteen-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of one hundred feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(d) Minimum of four standard release tools (caging stud assemblies).

(e) A minimum of two snatch blocks rated at 4.5 tons each.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles ~~((that are))~~ not otherwise towable when the class "B" tow truck is being used for class "A" tows.

(h) If equipped with a wheel lift system, it must have a fully extended working load limit of at least six thousand pounds and a twenty thousand pound tow rated capacity ~~((when operating as a class B truck. May be equipped with a three thousand pound fully extended working load wheel lift system with a seven thousand pound tow rated capacity if operating as a class A truck)).~~

(i) A minimum of one ten-foot or two five-foot one-half inch diameter recovery chains used in the winching system and must be grade "8" chain with matching fittings. Class "B" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(4) **Class ~~((B**))~~ "B-2" trucks:** Are trucks rated at over 30,000 GVWR ~~((or more))~~ with air brakes. Class ~~((B**))~~ "B-2" trucks ~~((shall))~~ must:

(a) Meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section ~~((and in addition shall)).~~

(b) Have a minimum of one hundred fifty feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

~~((Class B** trucks shall also))~~ (c) Meet the requirements of subsection (3)(b), (d), (e), (f), (g), (h), and (i) of this section. Class "B-2" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(5) **Class "C" tow trucks and class "C" rotator trucks:** Are trucks that are capable of towing and/or recov-

ery of large trucks, trailers, buses, motor homes, or similar vehicles. Class "C" trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((+))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) A ~~((forty))~~ forty-six thousand pound manufacturer's gross vehicle weight rating ~~((or equivalent))~~ (GVWR).

(b) Tandem rear axle truck chassis (both drive axles).

(c) A minimum of ~~((twenty-five-ton))~~ thirty-ton boom rating with ~~((single or dual booms))~~ a hydraulic boom. Dual winches to control a minimum of two service drums. Class "C" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(d) A minimum of ~~((one))~~ two hundred ~~((fifty))~~ feet of ~~((nine-sixteenths))~~ five-eighths inch continuous length XIP IWRC wire rope on each drum measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) If equipped with a wheel lift system, it must have a fully extended working load limit of at least twelve thousand pounds.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(i) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(j) A minimum of two snatch blocks rated at eight tons each.

(6) **Class "D" tow trucks:** Trucks that are equipped for and primarily used as "wheel lift" or nonrecovery trucks.

Class "D" trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((+))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) A wheel lift ~~((assemble))~~ assembly with a fully extended manufacturer's working load limit of three thousand pounds and a seven thousand pound tow rated capacity.

(b) One winch and drum with one hundred feet of three-eighths inch XIP wire rope meeting class "A" requirements.

(c) One snatch block rated at 3.5 tons.

(d) A minimum of one five-foot recovery chain for use in the winching system and must be a minimum of grade "7" chain with matching fittings.

(7) **Class "E" tow trucks:** Trucks that are primarily designed and intended to transport other vehicles by loading and carrying the transported vehicle entirely ~~((onto))~~ on the truck. These vehicles may be a flatbed, slide back, tilt bed, or rail design truck. Class "E" trucks, unless specifically factory equipped with a side recovery system, are not designed for vehicle recovery and therefore must not be used as a replacement for a class "A" truck unless specifically requested by the patrol. Class "E" trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((+))~~ (w) of this section ~~((and))~~.

(a) In addition ((shall)) must have:

~~((+))~~ (i) Four securing devices with a minimum working load limit of three thousand ~~((nine))~~ four hundred pounds. The devices ~~((may be))~~ must:

(A) Be grade "7" or stronger chain ~~((minimum grade "7"))~~, wire rope, nylon strap, or steel strap.

~~((The))~~ (B) Have tie downs ~~((shall be))~~ attached to the axle, tires, or frame member of the transported vehicle both front and rear. ~~((All))~~ Factory style "T" hook tie downs may be used for front and rear securement.

(C) Ensure all tie down ends ~~((shall be))~~ are secured to the truck bed or rail in a manner that will prevent movement of the transported vehicle. ~~((Factory style "T" hook tie downs may also be used (front and rear)).~~

~~((b))~~ (ii) One snatch block rated at 3.5 tons.

~~((+))~~ (iii) Dual tires on the rear axle.

~~((+))~~ (b) Class "E" trucks may also be equipped with a sling, tow bar, and/or a wheel lift system.

(i) If equipped with a towing system, the system must have a manufacturers' rating appropriate to the vehicle being towed. If used in a towing mode (as opposed to carrying), a sling, tow bar, and/or wheel lift assembly can be used and must have a manufacturers' rating appropriate to the vehicle being towed.

~~((+))~~ (ii) Class "E" trucks are only required to carry portable lights when used in towing mode.

(c) If factory equipped with a side vehicle recovery system, such system must meet all the winch and wire rope minimum requirements listed for a class "A" truck.

(d) Additional minimum class "E" truck requirements include:

~~((i))~~ Gross vehicle weight rating 14,500

~~((ii))~~ Purchased tonnage 14,500

~~((iii))~~ Winch rating 4 ton

~~((iv))~~ XIP wire rope 50 feet 3/8 inch

~~((v))~~ One five-foot chain use in the winching system and must be a minimum of grade "7" chain with matching fittings.

~~((vi))~~ Car carrier (bed) 17 feet

Note: Bed may be shorter in a collapsed mode, but must be capable of telescoping to a minimum of seventeen feet.)

(i) Fourteen thousand five hundred pound gross vehicle weight rating (GVWR):

(ii) Current licensing and tonnage equal to the maximum combination GVWR:

(iii) Four ton winch rating:

(iv) Fifty feet three-eighths inch XIP fiber core or IWRC wire rope:

(v) One five-foot grade "7" chain with matching fittings for use in winching: and

(vi) Seventeen feet of usable bed capable of carrying vehicles.

(e) Class "E" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(8) **Class "S" tow/recovery trucks:** Tow/recovery trucks that cannot meet the requirements of class "A," "B,"

"C," "D," or "E" and are not eligible for appropriate waiver as outlined in WAC 204-91A-070(4), may be approved as class "S" (special).

~~(To have a truck designated as class "S" the tow operator must submit a request for approval through the district commander to the section. The written request shall indicate)~~ (a) To be designated as a class "S" truck, the operator must submit a request for approval through the district commander to the section which must include:

- (i) Why the truck is needed;
- (ii) What the truck will be used for;
- (iii) The vehicle size;
- (iv) Purchased tonnage, if required;
- (v) Capability; and
- (vi) The equipment carried or used with the truck.

(b) The gross vehicle weight rating of the class "S" truck will determine the appropriate equipment required.

If the district commander approves the request, the request will be forwarded with recommendations for equipment and/or operation instructions or limitations to the patrol for review and final approval. If approval is granted, the equipment ~~(shall)~~ must be inspected as outlined in WAC 204-91A-040 with reports forwarded in the normal manner.

~~(Note:)~~ (c) If the provisions of this section require a change in classification for a previously approved tow truck, such change may be made upon the next annual reinspection. In any case, all tow trucks shall must be correctly classified within one year of adoption of these rules.

(9) **Class "S-1 rotator" trucks:** Are tow trucks that are capable of recovery, towing, or both of large trucks, trailers, buses, motor homes, or similar vehicles. Class "S-1 rotator" trucks must meet the requirements of subsection (1)(a) through (w) of this section and in addition must have:

- (a) A fifty-two thousand pound manufacturer's GVWR.
- (b) Tandem or triple rear axle truck chassis with at least two drive axles.
- (c) A minimum of forty ton rotating boom rating with a single boom.
- (d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on two drums measured from the point of attachment at the drum to the hook.
- (e) Air brakes and a system capable of supplying air to towed vehicles.
- (f) A minimum of four standard release tools (caging stud assemblies).
- (g) Equipped with a wheel lift system and have a fully extended working load limit of at least twelve thousand pounds.
- (h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.
- (i) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.
- (j) A minimum of two snatch blocks rated at eight tons each.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-180 Additional vehicle towing/operator qualifications, restrictions, and requirements. In addition to the requirements contained in WAC 204-91A-170, tow truck operators appointed pursuant to this chapter ~~(shall)~~ must conform to all laws and administrative rules pertaining to the tow industry and ~~(shall)~~ must observe the following practices and procedures:

(1) When called by the patrol during normal business hours, the tow truck operator ~~(will)~~ must dispatch a tow truck, from within the assigned zone ~~(;)~~ within five minutes ~~(during normal business hours)~~ after receiving the call. Tow trucks must be registered to and belong to the particular tow business that is called and assigned only to that tow zone ~~(only)~~. If ~~(the)~~ an officer at the scene deems it necessary, the officer may authorize additional assistance ~~(may be authorized)~~ from a registered tow truck operator outside of the tow zone.

(2) ~~(Tow trucks dispatched at the request of)~~ When called by the patrol after normal business hours (will be on the move), the tow truck operator must dispatch a tow truck from within the assigned zone within fifteen minutes after receiving the call.

(3) The tow truck that is dispatched ~~(will)~~ must arrive at the stated location within a reasonable time considering distance, traffic, and weather conditions.

(4) If for any reason a tow operator is unable to dispatch a tow truck within the stated time or if the dispatched truck will be delayed for any reason, the operator ~~(shall so)~~ must advise the patrol stating the reason and estimated time of arrival. In the event the tow truck fails to arrive at the scene within a reasonable time, the patrol will contact another tow operator to respond to the scene and will cancel the original tow.

(5) A tow operator on rotation who is unable to dispatch or arrive within the times stated in subsections (1), (2), (3), and (4) of this section will forfeit ~~(his)~~ the operator's turn and be placed at the bottom of the rotation list as if ~~(he)~~ the operator had responded.

(6) Consistent refusal or failure of the appointee to respond to calls from the patrol for towing services ~~(and/)~~ or to provide the requested services may result in the suspension or revocation of the tow operator's letter of appointment.

(7) The tow operator ~~(shall)~~ must advise the appropriate patrol office when the tow company is temporarily unavailable to respond to rotational calls with a class "A," "B," or "C" tow truck. Unavailability may occur due to conditions ~~(such as)~~ including, but not limited to, other tow truck commitments, tow truck disabled and/or under repair, unforeseen driver shortage due to illness ~~(, etc)~~. The period of unavailability may last less than an hour or much longer. The operator will give the reason for unavailability and approximately when the company will be available to respond to calls.

The tow company will be removed from the rotational list and will not be called until the operator advises the patrol that the company is once again able to respond to calls with an "A," "B," or "C" class truck. In all such cases, the tow company will resume its normal position on the rotational list

without regard to any missed calls or its position prior to being unavailable.

(8) The tow operator ~~((will))~~ must advise the patrol whenever a private call is received for a tow with circumstances that indicate that the tow is for a vehicle ~~((which))~~ that has been involved in a collision, incident, or equipment breakdown on the public roadway. The tow operator also ~~((will))~~ must advise the patrol of all private calls to motor vehicle collisions on private property resulting in bodily injury or death.

(9) The tow operator ~~((will))~~ must notify the patrol before moving any vehicle involved in a collision on a public highway under the jurisdiction of the patrol as defined in the motor vehicle code, Title 46 RCW, or where it appears that the driver of the vehicle to be moved is under the influence of intoxicants or drugs, or is otherwise incapacitated.

(10) Other than a service patrol established and funded by the department of transportation, a tow operator ~~((shall))~~ must not solicit tow or roadside services by patrolling the public roadways searching for disabled vehicles or vehicles involved in a traffic collision.

~~((10))~~ (11) When the patrol is in charge of a collision scene or other such incident, a tow operator ~~((shall))~~ must not respond to such scene unless his services have been specifically requested by the patrol, the driver/owner, or his agent.

~~((11))~~ (12) The tow operator ~~((shall))~~ must be available, or will ensure that specific employees are available, twenty-four hours a day for the purpose of receiving calls or arranging for the release of vehicles. Business hours will be posted conspicuously at the operator's place of business so they can be seen during business hours and nonbusiness hours. A copy will also be sent to the section and patrol district commander of the district in which the tow operator does business. Changes of business hours will be sent to the department, the section, and the patrol district commander ten days before their effective date.

~~((12))~~ (13) The operator ~~((shall))~~ must post a current copy of tow and storage rates, on a form approved by the department and the patrol, in the following locations:

(a) At the entrance to the place of business, in a conspicuous location, plainly visible and ~~((readable by members of))~~ capable of being read by the public, whether the business is open or closed. If, in order to meet this requirement, the rate sheets must be placed in a location, exposed to the elements, they ~~((shall))~~ must be protected so as to remain legible.

(b) Inside the business location, where business is commonly transacted. The rate sheets ~~((shall))~~ must be posted in such manner as to be clearly and plainly visible and ~~((readable))~~ read at all times by customers of the business.

(c) A copy of the current rates will be sent to the department, the section, and the patrol district commander of the district in which the tow operator has applied for a letter of appointment. Notice of any change(s) in service rates will be forwarded to the department, the section, and the district commander of the area ten days before the effective date of the changes. Charges made for towing services arising from calls initiated by the patrol ~~((shall))~~ must be consistent with current posted towing rates and ~~((shall))~~ must be based only upon services listed on the prescribed form.

(d) In the event that an operator has only a class "B" truck and utilizes it for class "A" and "B" type tows, the operator ~~((shall))~~ must file a rate sheet that specifies the rates charged for the different types of tows.

(e) Whenever any operator utilizes a larger truck than the towed vehicle warrants, the operator ~~((shall))~~ must charge fees based on the size of the towed vehicle not the size of the truck used.

~~((Example: A class "C" truck is used, at the operator's discretion, to tow a class "B" size vehicle. The fees charged shall be those for a class "B" truck NOT a class "C".~~

~~((13))~~ (14) Charges made for towing services arising from calls initiated by the patrol ~~((shall))~~ must not exceed the maximum rates established by the chief.

~~((14))~~ (15) Unless other arrangements are made with commissioned patrol personnel at the scene, all impounded vehicles ~~((shall))~~ must be taken to the tow operators nearest approved storage location.

~~((15))~~ (16) The tow operator will maintain, for three years, records on towed and released vehicles which were towed at the request of the patrol. ~~((This))~~ Such records will be available for inspection by the patrol during normal business hours at the operator's place of business. Records will include, but not be limited to:

(a) An itemized receipt of all charges for the services provided.

(b) ~~((An))~~ A tow impound record inventory ~~((sheet))~~ or copy thereof made out by the trooper at the scene of the tow and signed by the operator.

(c) All other records required by the department.

~~((Such records will be available for inspection by the patrol during normal business hours at the operator's place of business.~~

~~((16))~~ (17) The tow operator will sign ~~((an))~~ the tow impound inventory ~~((sheet))~~ record made out by the patrol officer at the scene.

~~((17))~~ (18) Tow operators will obtain and maintain current registration as a licensed tow truck operator pursuant to RCW 46.55.020.

~~((18))~~ (19) Tow operators ~~((shall))~~ must perform towing tasks competently. The standard of competence ~~((shall))~~ will be that quality of work which is accepted as efficient and effective within the towing industry. The tow operator must ensure tow truck drivers responding to calls initiated by the patrol have completed a minimum of one four-hour tow truck driver training course every five years. The operator must keep a file documenting training.

~~((19))~~ (20) No tow operator, employee, or agent ~~((shall))~~ will misappropriate, wrongfully convert to his/her own use, or abuse property belonging to another and entrusted to his/her care or storage.

~~((20))~~ (21) Tow truck operators ~~((will))~~ must use emergency lights to warn other motorists only when at the scene of collisions, disabled vehicles, and/or recoveries. Such lighting ~~((shall))~~ must not be used when traveling to or from the scene.

~~((Tow truck operators whose duties are performed in areas and under circumstances where they are exposed to the danger of moving vehicles shall wear work vests of highly visible materials, or equivalent distinguishing apparel as out-~~

lined in department of labor and industries, WAC 296-155-200(5).

~~((21))~~ (22) Tow truck operators ~~((shall be responsible for cleaning))~~ are required to clean collision/incident scenes of all vehicle glass ~~((and)), debris, and vehicle liquid spills of one gallon or less.~~

~~((22))~~ (23) Specific operating restrictions and/or requirements, by truck class, are as follows:

(a) The standard air brake release tools (caging stud assemblies) required to be carried in the class "B," "B-2," and "C" trucks ~~((shall))~~ must be used, whenever necessary, to preserve potential evidence involving brake equipment or adjustment settings. When an operator is attempting to move a vehicle equipped with locked spring parking brakes that cannot be released by external air supply, the caging assemblies ~~((shall))~~ must be used to release the brake tension. Under no circumstances ~~((shall))~~ will the towed vehicle's brake assemblies or adjustments be moved or disturbed in any way that will prevent later determination of the precollision or incident settings.

(b) Class "B" or "B-2" trucks in excess of twenty-three thousand pounds gross vehicle weight rating need not carry dollies when towing or recovering heavy vehicles.

~~((c))~~ Class "D," "E," and "S" trucks shall not be used to respond to initial calls unless specifically authorized by patrol personnel at the scene or by local written policy approved by the district commander.

~~(d)~~ Class "E" trucks shall:

(i) Have, when used for multiple vehicle towing/recovery (one on bed, one in tow) from the same location, all invoice charges evenly divided between the vehicles so transported;

(ii) Not be operated in excess of either gross vehicle weight rating or purchased tonnage weight limits;

~~(iii)~~ Be required to carry its portable lights only when used in a towing mode.

~~((23))~~ (24) Whenever a "special event or overflow" storage lot is approved by the department, the patrol and appropriate city/county jurisdictions, the following must apply:

(a) The operator ~~((shall))~~ must maintain personnel at the lot twenty-four hours per day for security and vehicle and/or personal property release. If necessary, reimbursement for such labor ~~((shall))~~ must be part of the contract for the "special event" if appropriate or by amended storage rates with a waiver of the ten-day rate change notice requirement approved by the department and the patrol.

(b) At the conclusion of a "special event or overflow" situation, all vehicles not reclaimed by the owner ~~((shall))~~ must be towed to the operator's regular storage facility and processed in the normal fashion. No additional fee ~~((shall))~~ must be charged for towing the vehicle from the overflow lot to the regular storage facility.

~~((24))~~ (25) All work performed by the operator and/or employee ~~((shall))~~ must be in the most professional and expeditious manner. ~~((All invoices and other required forms shall be completed accurately and promptly.~~

(25)) Tow operators and employees must refrain from any unprofessional actions while towing for or conducting towing business at the request of the patrol. The actions include, but are not limited to, any of the following:

(a) Lack of service, selective service, or refusal to provide service which the operator should be capable of performing;

(b) Exhibiting any signs of either alcohol, drug use, or both;

(c) Displaying any objects, logos, slogans, or graphic material within the view of the public that contains any form of pornography, profanity, or prejudice toward any person or group of persons.

(26) Tow operators ~~((shall))~~ must, when required by the patrol or the department, cause to be displayed on each approved truck, decals indicating truck class, patrol district, and/or assigned tow zone.

(27) When responding to a patrol call, tow truck operators must wear clothing identifying the company and driver's name.

(28) Tow truck operators performing recovery, impounding, or towing must wear work vests of highly visible materials, or equivalent distinguishing apparel when outside of the towing vehicle as outlined in WAC 296-155-200(5) and Code of Federal Regulations, Title 23 Part 634.3.

(29) Tow truck operators must not display any sign, shield, marking, accessory, or insignia on uniforms or vehicles indicating the equipment or vehicle marking are similar to or belong to any public law enforcement agency. Tow truck operators must not engage in any advertisement indicating an official connection with the patrol or other law enforcement agency.

WSR 09-09-126

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed April 22, 2009, 9:37 a.m., effective May 23, 2009]

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

Purpose: To amend WAC 390-16-310 Limitations on contributions, to include the term "domestic partner" when referencing spouse or other immediate family members, to clarify contribution limits, to include the statutory reference to RCW 42.17.645, and to incorporate language clarifying that limited liability partnerships (LLP) and limited liability corporations (LLC) have a separate contribution limit from their individual members.

Citation of Existing Rules Affected by this Order: Amending WAC 390-16-310.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 08-21-160 on October 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 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: December 4, 2008.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 05-06-070, filed 3/1/05, effective 4/1/05)

WAC 390-16-310 Limitations on contributions. The limitations on contributions as provided in RCW 42.17-105(8) (~~and RCW~~), 42.17.640, and 42.17.645 shall be as follows:

(1)(a) The limitation on contributions in RCW 42.17.640 or 42.17.645 shall not apply to a "candidate" as that term is defined in RCW 42.17.020(~~(8)~~) when the candidate is contributing to his or her own campaign using his or her own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW 42.17-105(8), 42.17.640, or 42.17.645 shall apply to contributions to the candidate from the candidate's spouse, domestic partner or other immediate family members.

(2) (~~The limitations on contributions shall apply separately to the contributions made by each spouse.~~) Contributions by a husband and wife are considered separate contributions. Contributions by domestic partners are considered separate contributions.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions and the contribution is properly attributed to the emancipated minor child if:

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children shall be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to (~~the~~) that parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship shall be aggregated for purposes of determining the limitations of contributions under RCW 42.17.105(8) (~~and~~), 42.17.640, or 42.17.645.

(5) The limitations on contributions shall apply separately to the contributions made by a partnership, limited liability partnership and limited liability corporation from the

contributions made by an individual partner (~~(except that)~~) or member. However, contributions made from or charged against the capital account of an individual partner, or member of a limited liability partnership or limited liability corporation shall be aggregated with the partner's or member's individual contributions for purposes of determining the limitations on contributions under RCW 42.17.105(8) (~~and~~), 42.17.640, or 42.17.645.

(6) The limitations on contributions in RCW 42.17-105(8), 42.17.640, and 42.17.645 shall apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local units) (~~pursuant to~~) unless the (standards set forth) criteria in RCW 42.17.660 and WAC 390-16-309 are met.

WSR 09-09-131

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 07-16—Filed April 22, 2009, 11:22 a.m., effective May 23, 2009]

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

Purpose: The purpose of chapter 173-345 WAC, Recyclable materials—Transporter and facility requirements, is to require transporters of recyclable material to register with ecology, transport recyclable materials only to locations where recycling occurs, and keep records of all activities for two years. In addition, these new rules require recycling facilities to notify ecology of their existence thirty days before operation commences (ninety days for existing facilities). The adopted rule will incorporate language that prescribes penalties for noncompliance of up to \$1,000 per violation.

Statutory Authority for Adoption: Chapter 70.95 RCW and RCW 70.95.400 - [70.95.]430.

Adopted under notice filed as WSR 08-22-100 on November 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: The final rule language has changes in WAC 173-345-030, 173-345-040, and 173-345-060 from the proposed rule language. In WAC 173-345-030, the following terms and their definitions were deleted from the final rule language: "disposal site," "energy recovery," "incidental," and "transformation." The "covered electronic product" definition was replaced with a reference to the definition in chapter 173-900 WAC. The term "person" was added and clarified in the adopted rule language. In WAC 173-345-040, ecology deleted recyclable materials and clarified that a separate container must be provided. WAC 173-345-060 was changed by eliminating specific methods of disposal.

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 10, 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 10, 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: April 21, 2009.

Jay J. Manning
Director

Chapter 173-345 WAC

RECYCLABLE MATERIALS—TRANSPORTER AND FACILITY REQUIREMENTS

NEW SECTION

WAC 173-345-010 Authority and purpose. The purpose of this chapter is to establish minimum standards for the transportation of recyclable materials; establish notice and reporting standards for recycling facilities and material recovery facilities (MRFs); ensure that recyclable materials are not delivered for disposal; establish penalties for transporters of recyclable materials, recycling facilities, and material recovery facilities (MRFs) that do not meet the standards of this chapter.

NEW SECTION

WAC 173-345-020 Applicability. This rule applies to businesses that transport recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation that are required to possess a common carrier permit to operate issued by the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW. This rule also applies to facilities that recycle solid waste and MRFs except for those facilities with current solid waste handling permits issued under RCW 70.95.170. Businesses that transport covered electronic products exclusively for recycling are exempt only from transporter registration and reporting requirements under this rule because these transporters must comply with chapters 70.95N RCW and 173-900 WAC.

NEW SECTION

WAC 173-345-030 Definitions. "Container" means a portable device used for the collection, storage and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

"Covered electronic product" or "CEP" means as defined in chapter 173-900 WAC.

"Department" means the department of ecology.

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and

improvements to the land used for solid waste handling, including recycling.

"Material recovery facility (MRF)" means a facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

"Permit" means an authorization used by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

"Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatever.

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

"Recycling facility" means a facility where recyclable materials are transformed or remanufactured into useable or marketable materials.

"Recyclable materials" means those solid wastes that are separated for recycling or reused, including but not limited to, papers, metals, glass, that are identified as recyclable material pursuant to a local solid waste management plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Source separated" means the separation of different kinds of solid waste at the place where waste originates.

"Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Transporter of recyclable material" means any person or entity that transports source-separated recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who is required to possess a common carrier permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW.

NEW SECTION

WAC 173-345-040 Collection of solid waste and recyclable materials. All sites where recyclable materials are generated and transported for recycling must provide a separate container for nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

NEW SECTION

WAC 173-345-050 Transporter registration. (1) The rule applies to all transporters of recyclable materials as defined in WAC 173-345-030.

(2) For purposes of this rule "transporters" do not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles, including material recovery facilities hauling their own recyclable material;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers permitted under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(3) Prior to the transportation of recyclable materials, all transporters of recyclable materials shall register with the department, and possess a common carrier permit issued by the Washington utilities and transportation commission.

(4) A transporter of recyclable materials who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty of up to one thousand dollars per violation.

NEW SECTION

WAC 173-345-060 Transporter delivery of recyclable materials. (1) A transporter of recyclable materials may not deliver any recyclable materials for disposal.

(2) A transporter of recyclable materials who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation.

NEW SECTION

WAC 173-345-070 Transporter recordkeeping. (1) A transporter of recyclable materials shall keep records of locations and quantities specifically identified to the generator.

(a) Name;

(b) Address;

(c) Service date;

(d) Invoice documenting where recyclables were sold, delivered for processing, or otherwise marketed.

(2) The records must be retained for two years from the date of collection and must be accessible for inspection by the department and the local health department.

(3) Violations of this section subject the transporter of recyclable materials to a civil penalty of up to one thousand dollars per violation.

NEW SECTION

WAC 173-345-080 Recycling and materials recovery facility notification. (1) All material recovery facilities and all facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under

RCW 70.95.170, must notify the department and the jurisdictional health department in writing within thirty days prior to operation, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

(a) Contact information for the person conducting the recycling activity;

(b) A general description of the recycling activity;

(c) A description of the types of solid waste being recycled; and

(d) A general description of the recycling processes and methods.

(2) Any facility, except product take-back centers, that accepts recyclable materials within the state without first meeting the requirements of subsection (1) of this section, is subject to a civil penalty of up to one thousand dollars per violation.

(3) Facilities exempt from the notification requirements in chapter 173-350 WAC are exempt from the requirements in this section.

NEW SECTION

WAC 173-345-090 Penalties. Any transporter of recyclable materials violating the provisions of WAC 173-345-050, 173-345-060, or 173-345-070, is subject to penalties prescribed in those sections. All recycling facilities and material recovery facilities violating the provisions of WAC 173-345-080 are subject to the penalties prescribed in that section.

NEW SECTION

WAC 173-345-100 Appeals. Any person aggrieved by a penalty of the department may appeal that decision only as provided by applicable law including, but not limited to chapters 43.21B and 34.05 RCW.