

**WSR 09-20-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed September 24, 2009, 9:33 a.m., effective October 25, 2009]

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

Purpose: The purpose of these rules is to provide rules governing the process division of developmental disabilities (DDD) uses to determine the number of respite-hours clients may receive annually when they are approved to receive companion home services. Use of a standardized tool will promote consistency in service determination so that clients with similar assessed support needs receive similar levels of service.

Citation of Existing Rules Affected by this Order: Amending WAC 388-829C-230.

Statutory Authority for Adoption: RCW 71A.12.010 and 71A.12.030.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 09-16-087 on August 3, 2009.

A final cost-benefit analysis is available by contacting Mark Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-2517, fax (360) 407-0955, e-mail eliasmr@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 1, Repealed 0.

Date Adopted: September 23, 2009.

Susan N. Dreyfus
Secretary

NEW SECTION

WAC 388-828-5990 How does DDD determine your unadjusted respite assessment level if DDD has authorized you to receive companion home services per chapter 388-829C WAC? DDD determines your unadjusted respite assessment level for companion home services using the following table:

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
0	None	1

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
0	Low	1
0	Medium	2
0	High	2
1	None	1
1	Low	1
1	Medium	2
1	High	3
2 or 3	None	2
2 or 3	Low	2
2 or 3	Medium	2
2 or 3	High	4
4	None	2
4	Low	2
4	Medium	3
4	High	4
5	None	3
5	Low	3
5	Medium	4
5	High	5
6	None	3
6	Low	3
6	Medium	4
6	High	5

NEW SECTION

WAC 388-828-6010 How does DDD determine your companion home services support score per chapter 388-829C WAC?

If your unadjusted respite assessment level for companion home services in WAC 388-828-5990 is:	Then your companion home services support score is:
1	98
2	98
3	267
4	436
5	605

NEW SECTION

WAC 388-828-6011 How does DDD determine the number to use in the adjustment of your companion home services support score? DDD determines the amount of the adjustment for your companion home services support score using the following table:

If you are authorized to receive companion home services per chapter 388-829C and		Your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
Your medical acuity level per WAC 388-828-5700	None	288	288	321	337
	Low	288	288	321	337
	Medium	288	343	402	443
	High	288	443	619	693

Example: If your ADL support needs level is "medium" and your medical acuity level is "medium," the amount of your adjustment is 402.

NEW SECTION

WAC 388-828-6012 How does DDD determine the number of respite hours you may receive annually if you are receiving companion home services? DDD determines the number of respite hours you may receive annually by adding your companion home services support score in WAC 388-828-6010 to your adjusted companion home services support score in WAC 388-828-6011.

Example: If your companion home services support score is 267 and adjusted companion home services support rating is 343, the number of respite hours you may receive annually is 610.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-230 Are companion home clients eligible to receive respite? Companion home clients are eligible to receive respite care to provide intermittent relief to the companion home provider. ~~((The level of respite available to the companion home must be identified in the companion home contract))~~ The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

WSR 09-20-011

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 25, 2009, 11:22 a.m., effective October 26, 2009]

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

Purpose: Effective July 1, 2009, the department emergency adopted a four percent reduction to the 17 level payment system. The purpose of this rule making is to adopt permanently the four percent reduction to the rates of the 17 level payment system.

Also, the purpose of this rule making is to adopt permanently WAC 388-105-0045 requiring notice within twenty-four hours after a medicaid resident is discharged to a hospital or nursing home from an adult family home (AFH) or a licensed boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL).

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005 and 388-105-0045.

Statutory Authority for Adoption: RCW 74.39A.030(3) and 18.20.290.

Other Authority: Section 206(4), chapter 564, Laws of 2009.

Adopted under notice filed as WSR 09-17-102 on August 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 0, Amended 1, Repealed 0.

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

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

Date Adopted: September 25, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-053, filed 5/13/09, effective 6/13/09)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
KING COUNTY

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((69.22)) <u>66.45</u>	\$((74.64)) <u>71.87</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.32)) <u>46.39</u>
A Med	\$((74.95)) <u>71.95</u>	\$((80.37)) <u>77.37</u>	\$((55.54)) <u>53.32</u>	\$((55.54)) <u>53.32</u>	\$((54.83)) <u>52.64</u>
A High	\$((84.10)) <u>80.74</u>	\$((89.52)) <u>86.16</u>	\$((61.00)) <u>58.56</u>	\$((61.00)) <u>58.56</u>	\$((61.35)) <u>58.90</u>
B Low	\$((69.22)) <u>66.45</u>	\$((74.64)) <u>71.87</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.56)) <u>46.62</u>
B Med	\$((77.24)) <u>74.15</u>	\$((82.66)) <u>79.57</u>	\$((62.14)) <u>59.65</u>	\$((62.14)) <u>59.65</u>	\$((61.66)) <u>59.19</u>
B Med-High	\$((87.48)) <u>83.98</u>	\$((92.90)) <u>89.40</u>	\$((66.07)) <u>63.43</u>	\$((66.07)) <u>63.43</u>	\$((66.06)) <u>63.42</u>
B High	\$((92.09)) <u>88.41</u>	\$((97.51)) <u>93.83</u>	\$((75.53)) <u>72.51</u>	\$((75.53)) <u>72.51</u>	\$((75.53)) <u>72.51</u>
C Low	\$((74.95)) <u>71.95</u>	\$((80.37)) <u>77.37</u>	\$((55.54)) <u>53.32</u>	\$((55.54)) <u>53.32</u>	\$((54.83)) <u>52.64</u>
C Med	\$((84.10)) <u>80.74</u>	\$((89.52)) <u>86.16</u>	\$((69.72)) <u>66.93</u>	\$((69.72)) <u>66.93</u>	\$((70.02)) <u>67.22</u>
C Med-High	\$((104.70)) <u>100.51</u>	\$((110.12)) <u>105.93</u>	\$((92.94)) <u>89.22</u>	\$((92.94)) <u>89.22</u>	\$((91.73)) <u>88.06</u>
C High	\$((105.74)) <u>101.51</u>	\$((111.16)) <u>106.93</u>	\$((93.82)) <u>90.07</u>	\$((93.82)) <u>90.07</u>	\$((93.01)) <u>89.29</u>
D Low	\$((77.24)) <u>74.15</u>	\$((82.66)) <u>79.57</u>	\$((75.07)) <u>72.07</u>	\$((75.07)) <u>72.07</u>	\$((71.38)) <u>68.52</u>
D Med	\$((85.82)) <u>82.39</u>	\$((91.24)) <u>87.81</u>	\$((86.98)) <u>83.50</u>	\$((86.98)) <u>83.50</u>	\$((87.36)) <u>83.87</u>
D Med-High	\$((110.98)) <u>106.54</u>	\$((116.40)) <u>111.96</u>	\$((110.61)) <u>106.19</u>	\$((110.61)) <u>106.19</u>	\$((105.12)) <u>100.92</u>
D High	\$((119.59)) <u>114.81</u>	\$((125.01)) <u>120.23</u>	\$((119.59)) <u>114.81</u>	\$((119.59)) <u>114.81</u>	\$((119.69)) <u>114.90</u>
E Med	\$((144.53)) <u>138.75</u>	\$((149.95)) <u>144.17</u>	\$((144.53)) <u>138.75</u>	\$((144.53)) <u>138.75</u>	\$((144.63)) <u>138.84</u>
E High	\$((169.47)) <u>162.69</u>	\$((174.89)) <u>168.11</u>	\$((169.47)) <u>162.69</u>	\$((169.47)) <u>162.69</u>	\$((169.57)) <u>162.79</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((63.49)) <u>60.95</u>	\$((68.41)) <u>65.87</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.32)) <u>46.39</u>
A Med	\$((66.94)) <u>64.26</u>	\$((71.86)) <u>69.18</u>	\$((53.34)) <u>51.21</u>	\$((53.34)) <u>51.21</u>	\$((52.66)) <u>50.55</u>

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A High	\$((81.81)) <u>78.54</u>	\$((86.73)) <u>83.46</u>	\$((58.17)) <u>55.84</u>	\$((58.17)) <u>55.84</u>	\$((58.08)) <u>55.76</u>
B Low	\$((63.49)) <u>60.95</u>	\$((68.41)) <u>65.87</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.56)) <u>46.62</u>
B Med	\$((72.65)) <u>69.74</u>	\$((77.57)) <u>74.66</u>	\$((58.84)) <u>56.49</u>	\$((58.84)) <u>56.49</u>	\$((58.37)) <u>56.04</u>
B Med-High	\$((82.29)) <u>79.00</u>	\$((87.21)) <u>83.92</u>	\$((62.57)) <u>60.07</u>	\$((62.57)) <u>60.07</u>	\$((62.60)) <u>60.10</u>
B High	\$((89.81)) <u>86.22</u>	\$((94.73)) <u>91.14</u>	\$((73.40)) <u>70.46</u>	\$((73.40)) <u>70.46</u>	\$((73.40)) <u>70.46</u>
C Low	\$((66.94)) <u>64.26</u>	\$((71.86)) <u>69.18</u>	\$((53.56)) <u>51.42</u>	\$((53.56)) <u>51.42</u>	\$((53.05)) <u>50.93</u>
C Med	\$((81.81)) <u>78.54</u>	\$((86.73)) <u>83.46</u>	\$((68.82)) <u>66.07</u>	\$((68.82)) <u>66.07</u>	\$((68.31)) <u>65.58</u>
C Med-High	\$((101.25)) <u>97.20</u>	\$((106.17)) <u>102.12</u>	\$((86.34)) <u>82.89</u>	\$((86.34)) <u>82.89</u>	\$((85.23)) <u>81.82</u>
C High	\$((102.26)) <u>98.17</u>	\$((107.18)) <u>103.09</u>	\$((91.84)) <u>88.17</u>	\$((91.84)) <u>88.17</u>	\$((90.43)) <u>86.81</u>
D Low	\$((72.65)) <u>69.74</u>	\$((77.57)) <u>74.66</u>	\$((74.04)) <u>71.08</u>	\$((74.04)) <u>71.08</u>	\$((69.80)) <u>67.01</u>
D Med	\$((83.48)) <u>80.14</u>	\$((88.40)) <u>85.06</u>	\$((85.24)) <u>81.83</u>	\$((85.24)) <u>81.83</u>	\$((85.01)) <u>81.61</u>
D Med-High	\$((107.33)) <u>103.04</u>	\$((112.25)) <u>107.96</u>	\$((107.87)) <u>103.56</u>	\$((107.87)) <u>103.56</u>	\$((101.92)) <u>97.84</u>
D High	\$((116.30)) <u>111.65</u>	\$((121.22)) <u>116.57</u>	\$((116.30)) <u>111.65</u>	\$((116.30)) <u>111.65</u>	\$((115.79)) <u>111.16</u>
E Med	\$((140.04)) <u>134.44</u>	\$((144.96)) <u>139.36</u>	\$((140.04)) <u>134.44</u>	\$((140.04)) <u>134.44</u>	\$((139.53)) <u>133.95</u>
E High	\$((163.78)) <u>157.23</u>	\$((168.70)) <u>162.15</u>	\$((163.78)) <u>157.23</u>	\$((163.78)) <u>157.23</u>	\$((163.27)) <u>156.74</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((62.36)) <u>59.87</u>	\$((67.60)) <u>65.11</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.32)) <u>46.39</u>
A Med	\$((66.94)) <u>64.26</u>	\$((72.18)) <u>69.50</u>	\$((52.25)) <u>50.16</u>	\$((52.25)) <u>50.16</u>	\$((51.58)) <u>49.52</u>
A High	\$((81.81)) <u>78.54</u>	\$((87.05)) <u>83.78</u>	\$((57.23)) <u>54.94</u>	\$((57.23)) <u>54.94</u>	\$((57.01)) <u>54.73</u>
B Low	\$((62.36)) <u>59.87</u>	\$((67.60)) <u>65.11</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.56)) <u>46.62</u>

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Med	\$((72.65)) <u>69.74</u>	\$((77.89)) <u>74.98</u>	\$((57.75)) <u>55.44</u>	\$((57.75)) <u>55.44</u>	\$((57.29)) <u>55.00</u>
B Med-High	\$((82.29)) <u>79.00</u>	\$((87.53)) <u>84.24</u>	\$((61.40)) <u>58.94</u>	\$((61.40)) <u>58.94</u>	\$((61.38)) <u>58.92</u>
B High	\$((89.81)) <u>86.22</u>	\$((95.05)) <u>91.46</u>	\$((69.42)) <u>66.64</u>	\$((69.42)) <u>66.64</u>	\$((69.42)) <u>66.64</u>
C Low	\$((66.94)) <u>64.26</u>	\$((72.18)) <u>69.50</u>	\$((52.25)) <u>50.16</u>	\$((52.25)) <u>50.16</u>	\$((51.58)) <u>49.52</u>
C Med	\$((81.81)) <u>78.54</u>	\$((87.05)) <u>83.78</u>	\$((65.05)) <u>62.45</u>	\$((65.05)) <u>62.45</u>	\$((65.70)) <u>63.07</u>
C Med-High	\$((101.25)) <u>97.20</u>	\$((106.49)) <u>102.44</u>	\$((83.04)) <u>79.72</u>	\$((83.04)) <u>79.72</u>	\$((81.98)) <u>78.70</u>
C High	\$((102.26)) <u>98.17</u>	\$((107.50)) <u>103.41</u>	\$((86.81)) <u>83.34</u>	\$((86.81)) <u>83.34</u>	\$((85.52)) <u>82.10</u>
D Low	\$((72.65)) <u>69.74</u>	\$((77.89)) <u>74.98</u>	\$((69.99)) <u>67.19</u>	\$((69.99)) <u>67.19</u>	\$((66.01)) <u>63.37</u>
D Med	\$((83.48)) <u>80.14</u>	\$((88.72)) <u>85.38</u>	\$((80.57)) <u>77.35</u>	\$((80.57)) <u>77.35</u>	\$((80.39)) <u>77.17</u>
D Med-High	\$((107.33)) <u>103.04</u>	\$((112.57)) <u>108.28</u>	\$((101.96)) <u>97.88</u>	\$((101.96)) <u>97.88</u>	\$((96.37)) <u>92.52</u>
D High	\$((109.93)) <u>105.53</u>	\$((115.17)) <u>110.77</u>	\$((109.93)) <u>105.53</u>	\$((109.93)) <u>105.53</u>	\$((109.48)) <u>105.10</u>
E Med	\$((132.36)) <u>127.07</u>	\$((137.60)) <u>132.31</u>	\$((132.36)) <u>127.07</u>	\$((132.36)) <u>127.07</u>	\$((131.92)) <u>126.64</u>
E High	\$((154.80)) <u>148.61</u>	\$((160.04)) <u>153.85</u>	\$((154.80)) <u>148.61</u>	\$((154.80)) <u>148.61</u>	\$((154.36)) <u>148.19</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

AMENDATORY SECTION (Amending WSR 09-11-053, filed 5/13/09, effective 6/13/09)

WAC 388-105-0045 Bed or unit hold—Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL). (1) When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL contractor must hold a medicaid eligible resident's bed or unit when:

- (a) Short-term care is needed in a nursing home or hospital;
- (b) The resident is likely to return to the AFH, ARC, EARC, or AL; and
- (c) Payment is made under subsection (3) of this section.

(2)(a) When the department pays the contractor to hold the medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the contractor must hold the bed or unit for up to twenty days. If during the twenty day bed hold period, a department case manager determines that the medicaid resident's hospital or nursing home stay is not short term and the medicaid resident is unlikely to return to the AFH, ARC, EARC or AL facility, the department will cease paying for the bed hold the day the case manager notifies the contractor of his/her decision.

(b) A medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.

(c) When a medicaid resident on bed hold leave returns to an AFH, ARC, EARC, or an AL facility but remains less than twenty-four hours, the bed hold leave on which the resident returned applies after the resident's discharge. A new

bed hold leave will begin only when the returned resident has resided in the facility for more than twenty-four hours before the resident's next discharge.

(d) When an AFH, ARC, EARC, or AL facility discharges a resident to a nursing home or hospital and the resident is out of the facility for more than twenty-four hours, then by using e-mail, fax or telephone, the facility must notify the department of the resident's discharge within twenty-four hours after the initial twenty-four hours has passed. When the end of the initial twenty-four hours falls on a weekend or state holiday, then the facility must notify the department of the discharge within twenty-four hours after the weekend or holiday.

(3) The department will compensate the contractor for holding the bed or unit for the:

(a) First through seventh day at seventy percent of the medicaid daily rate paid for care of the resident before the hospital or nursing home stay; and

(b) Eighth through the twentieth day, at eleven dollars a day.

(4) The AFH, ARC, EARC, or AL facility may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed the medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 388-106 WAC, then the medicaid resident may return to the first available and appropriate bed or unit.

(5) The department's social worker or case manager determines whether the:

(a) Stay in a nursing home or hospital will be short-term; and

(b) Resident is likely to return to the AFH, ARC, EARC, or AL facility.

(6) When the resident's stay in the hospital or nursing home exceeds twenty days or the department's social worker or case manager determines that the medicaid resident's stay in the nursing home or hospital is not short-term and the resident is unlikely to return to the AFH, ARC, EARC, or AL facility, then only subsection (4) of this section applies to any private contractual arrangements that the contractor may make with a third party in regard to the discharged resident's unit or bed.

WSR 09-20-015
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed September 25, 2009, 4:49 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: To adjust the maximum civil penalty amount for inflation and to update the federal regulation reference date in order to remain current.

Citation of Existing Rules Affected by this Order:
Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 09-17-127 on August 19, 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.

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Date Adopted: September 24, 2009.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$16,314.00)~~) \$16,445.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than (~~(\$16,314.00)~~) \$16,445.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ~~((2008))~~ 2009.

WSR 09-20-016 PERMANENT RULES PUGET SOUND CLEAN AIR AGENCY

[Filed September 25, 2009, 4:50 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: To exclude from our Environmental Protection Agency (EPA) delegation request certain newly promulgated EPA regulations.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 5.03 and 6.03 and Regulation III, Section 202.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 09-17-128 on August 19, 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 0.

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

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

Date Adopted: September 24, 2009.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWW, CCCCC, HHH-HHH, ~~((and))~~ WWWWW, XXXXXX, YYYYYY, and ZZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

- (3) Sources with annual emissions:
- (A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);
 - (B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or
 - (C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SO_x), or volatile organic compounds (VOC);
- (4) Sources subject to the following sections of Regulation I, II, or III:
- (A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);
 - (B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;
 - (C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;
 - (D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;
 - (E) Petroleum refineries subject to Section 2.03 of Regulation II;
 - (F) Gasoline loading terminals subject to Section 2.05 of Regulation II;
 - (G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;
 - (H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;
 - (I) Can and paper coating facilities subject to Section 3.03 of Regulation II;
 - (J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;
 - (K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;
 - (L) Polyester, vinyl ester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;
 - (M) Aerospace component coating operations subject to Section 3.09 of Regulation II;
 - (N) Dry cleaners subject to Section 3.03 of Regulation III; or
 - (O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;
- (5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥4" diameter inlet):
- (A) Activated carbon adsorption;
 - (B) Afterburner;
 - (C) Barometric condenser;
 - (D) Biofilter;
 - (E) Catalytic afterburner;
 - (F) Catalytic oxidizer;
 - (G) Chemical oxidation;
 - (H) Condenser;
 - (I) Dry sorbent injection;
 - (J) Flaring;
 - (K) Non-selective catalytic reduction;
 - (L) Refrigerated condenser;

- (M) Selective catalytic reduction; or
 - (N) Wet scrubber;
- (6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥10" diameter inlet):
- (A) Baghouse;
 - (B) Demister;
 - (C) Electrostatic precipitator;
 - (D) HEPA (high efficiency particulate air) filter;
 - (E) HVAF (high velocity air filter);
 - (F) Mat or panel filter;
 - (G) Mist eliminator;
 - (H) Multiple cyclones;
 - (I) Rotoclone;
 - (J) Screen;
 - (K) Venturi scrubber;
 - (L) Water curtain; or
 - (M) Wet electrostatic precipitator;
- (7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥27" diameter inlet);
- (8) Sources with any of the following equipment:
- (A) Asphalt batch plants;
 - (B) Burn-off ovens;
 - (C) Coffee roasters;
 - (D) Commercial composting with raw materials from off-site;
 - (E) Commercial smokehouses with odor control equipment;
 - (F) Concrete batch plants (ready-mix concrete);
 - (G) Galvanizing;
 - (H) Iron or steel foundries;
 - (I) Microchip or printed circuit board manufacturing;
 - (J) Rendering plants;
 - (K) Rock crushers or concrete crushers;
 - (L) Sewage treatment plants with odor control equipment;
 - (M) Shipyards;
 - (N) Steel mills; or
 - (O) Wood preserving lines or retorts; and
- (9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.
- (b) The requirements of this article shall not apply to:
- (1) Motor vehicles;
 - (2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;
 - (3) Sources that require an operating permit under Article 7 of this regulation;
 - (4) Solid fuel burning devices subject to Article 13 of this regulation; or
 - (5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution,

and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

AMENDATORY SECTION

REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) and Subpart OOO (Nonmetallic Mineral Processing Plants) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills) pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ

(Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispensing Facilities), Subpart HHHHH (Paint Stripping and Miscellaneous Surface Coating Operations), (~~and~~) Subpart WWWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferroalloys Production Facilities), and Subpart ZZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that a complete notification is filed with the Agency prior to initial startup:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline and having a rated capacity of 1,001-19,999 gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity \geq 40,000 gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, rock (or concrete) crushers, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with \leq 6% VOC by volume or \leq 8.5% if refrigerated to $<60^{\circ}\text{F}$, and cleaning solvents with a vapor pressure \leq 25mm Hg or a VOC content \leq 30% by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for reverse-air or manual cleaning) or <12:1 (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for mechanical or manual cleaning) or <12:1 (for pulse-jet cleaning).

(9) Replacement of existing paint spray booths. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity ≤1,000 pounds, PROVIDED THAT no

sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity ≤1,000 pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or ≤12% hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of ≤20% by weight and using ≤10,000 amp-hours per day, or phosphoric acid anodizing with a bath concentration of ≤15% by weight of phosphoric acid and using ≤20,000 amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolyti-

cally recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED

THAT it is not used to coat >9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating.

(60) Spray-coating equipment used exclusively for application of automotive undercoating materials with a flash point $>100^{\circ}\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $<1\%$ VOC by weight and $<0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or $<10\%$ VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity $<20,000$ gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity $<40,000$ gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F ; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring $>1,000$ gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains $<1\%$ VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains $<1\%$ VOC by weight.

(88) Batch mixers with a rated working capacity ≤ 55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts $\geq 90\%$ of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for

evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤150 tons per hour.

(113) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤25 tons per hour.

(114) Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤10 tons per hour.

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in

achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤ 2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce < 1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

AMENDATORY SECTION

REGULATION III SECTION 2.02 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

It shall be unlawful for any person to cause or allow the operation of any source in violation of any provision of Part 61 or Part 63, Title 40, of the Code of Federal Regulations (excluding Part 61, Subparts B, H, I, K, Q, R, T, and W; and Part 63, Subpart LL, the provisions of Subpart M pertaining to area source perchloroethylene dry cleaners, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, and Subparts WWWW, CCCCC, HHHHH, ~~((and))~~ WWWW, XXXXX, YYYYY, and ZZZZZ) in effect as of the federal regulation reference date listed in Section 3.25 of Regulation I herein incorporated by reference.

**WSR 09-20-017
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed September 28, 2009, 4:50 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: To incorporate ecology's newly promulgated update to WAC 173-400-110 and chapter 173-460 WAC into agency regulations.

Citation of Existing Rules Affected by this Order: Repealing Regulation III, Appendix A; and amending Regulation I, Section 6.01 and Regulation III, Sections 1.08, 1.11, 2.05, and 2.07.

Statutory Authority for Adoption: Chapter 70.94 RCW. Adopted under notice filed as WSR 09-17-129 on August 19, 2009.

Changes Other than Editing from Proposed to Adopted Version: In Section 6.01, changed tier "analysis" to tier "review" and reworded exclusion under WAC 173-460-040 for clarity.

In Section 2.07, changed tier "analysis" to tier "review" and reformatted subsections (c)(1), (2), (3), and (4) into subsections (c)(1)(A), (B), (C) and (c)(2) and reworded subsection (c)(2) for clarity.

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

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

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

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

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

Date Adopted: September 24, 2009.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 6.01 COMPONENTS OF NEW SOURCE REVIEW PROGRAM

(a) In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions of the new source review program established by the Washington State Department of Ecology:

WAC 173-400-030 Definitions. (effective 6/08/07)

WAC 173-400-081 Startup and shutdown. (effective 9/20/93)

WAC 173-400-110 (3) and (6)-(10) New source review (NSR). (effective ~~((6/08/07))~~ 6/20/09)

WAC 173-400-112 Requirements for new sources in nonattainment areas. (effective 2/10/05)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. (effective 2/10/05)

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (effective 9/15/01)

WAC 173-400-117 Special protection requirements for federal Class I areas. (effective 2/10/05)

WAC 173-400-171 Public involvement. - excluding references to chapter 173-460 WAC (effective 6/08/07)

WAC 173-400-200 Creditable stack height and dispersion techniques. (effective 2/10/05)

WAC 173-400-560 General order of approval. (effective 2/10/05)

WAC 173-400-700 Review of major stationary sources of air pollution. (effective 2/10/05)

WAC 173-400-710 Definitions. (effective 6/08/07)

WAC 173-400-720 Prevention of significant deterioration (PSD). (effective 6/08/07)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (effective 2/10/05)

WAC 173-400-740 PSD permitting public involvement requirements. (effective 2/10/05)

WAC 173-400-750 Revisions to PSD permits. (effective 2/10/05)

WAC 173-460-020 Definitions. (effective ((2/14/94) 6/20/09))

WAC 173-460-030 Applicability. (effective 6/20/09)

WAC 173-460-040 ~~(2)-(3)~~ ~~((3)-(10))~~ New source review. (effective ((2/14/94) 6/20/09))

WAC 173-460-050 Requirement to quantify emissions. (effective ((2/14/94) 6/20/09))

WAC 173-460-060 ~~(1)~~ Control technology requirements. (effective ((8/21/98) 6/20/09))

WAC 173-460-070 Ambient impact requirement. (effective ((9/18/94) 6/20/09))

WAC 173-460-071 Voluntary limits on emissions. (effective 6/20/09)

WAC 173-460-080 ~~(2)-(4)~~ First tier review. ~~((Demonstrating ambient impact compliance.))~~ (effective ((2/14/94) 6/20/09))

WAC 173-460-090 Second tier ~~((analysis))~~ review. (effective ((2/14/94) 6/20/09))

WAC 173-460-100 Third tier review. (effective 6/20/09)

WAC 173-460-150 Table of ASIL, SQER and de minimus emission values. - excluding references to de minimus emission values (effective 6/20/09)

(b) The Washington State Department of Ecology is the permitting agency for the Prevention of Significant Deterioration (PSD) program under WAC 173-400-700 through WAC 173-400-750 (as delegated by agreement with the US Environmental Protection Agency, Region 10), and for primary aluminum smelters, kraft pulp mills, and sulfite pulp mills.

(c) The Washington State Department of Health is the permitting agency for radionuclides under chapter 246-247 WAC.

(d) The Energy Facility Site Evaluation Council (EFSEC) is the permitting agency for large natural gas and oil pipelines, electric power plants above 350 megawatts, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields under chapter 463-78 WAC.

AMENDATORY SECTION

REGULATION III SECTION 1.08 SPECIAL DEFINITIONS

~~((a) **ACCEPTABLE SOURCE IMPACT LEVEL (ASIL)** means a concentration of a toxic air contaminant in the outdoor atmosphere in any area that does not have restricted or controlled public access that is used to evaluate the air quality impacts of a single source. There are three types of acceptable source impact levels: risk-based, threshold-based, and special. Concentrations for these three types of ASILs are established by the Board after public hearing and are listed in Appendix A of this Regulation III.))~~

~~((b))~~ ~~(a)~~ **ETHYLENE OXIDE AERATOR** means any equipment, space, or room in which air is used to remove residual ethylene oxide from sterilized materials.

~~((c))~~ ~~(b)~~ **ETHYLENE OXIDE STERILIZER** means any chamber or related piece of equipment that uses ethylene oxide or an ethylene oxide mixture in any sterilization or fumigation process.

~~((d))~~ ~~(c)~~ **TOXIC AIR CONTAMINANT (TAC)** means any air contaminant listed in WAC 173-460-150 ~~((Appendix A of this Regulation III)).~~

AMENDATORY SECTION

REGULATION III SECTION 1.11 REPORTING REQUIREMENTS

(a) This section applies to all sources of toxic air contaminants that are subject to Article 5 or Article 7 of Regulation I.

(b) In addition to the reporting requirements of Article 5 or Article 7 of Regulation I, the owner or operator of an air contaminant source shall make reports to the Agency concerning the types and amounts of toxic air contaminants emitted and other relevant information needed to calculate such emissions.

(c) The owner or operator of an air contaminant source shall, upon request of the Agency, provide such existing or reasonably available information as necessary to assist the Agency to determine if the emissions of toxic air contaminants from the source may result in the exceedance of an ASIL contained in WAC 173-460-150 ~~((Appendix A of this Regulation III)).~~

AMENDATORY SECTION

REGULATION III SECTION 2.05 SOURCES OF TOXIC AIR CONTAMINANTS

(a) This section applies to all sources of toxic air contaminants that are subject to Article 5 or Article 7 of Regulation I, unless covered by specific rules referenced in Section 2.01 above.

(b) The Control Officer shall have the authority to conduct a screening evaluation of any source in accordance with Section 2.07 of this Regulation to determine if the toxic air contaminant emissions from the source would result in the exceedance of an ASIL contained in WAC 173-460-150 ~~((Appendix A of this Regulation III)).~~ The owner or operator of the source shall be informed of the results of any such screening evaluation.

(c) If, as a result of the screening evaluation conducted under (b) above, the Control Officer determines that the toxic air contaminant emissions from a source may result in the exceedance of an ASIL contained in WAC 173-460-150 ~~((Appendix A of this Regulation III))~~, the Control Officer may issue an order requiring the owner or operator of the source to perform an analysis in accordance with Section 2.07 of this Regulation and may establish a schedule for submission of the analysis.

(d) It shall be unlawful for any person required to perform an analysis under (c) above, to cause or allow the continued operation of the source after the submission date

established by the Control Officer, unless one of the following conditions is met:

(1) A dispersion modeling analysis demonstrates to the Control Officer that the toxic air contaminant emissions from the source will not result in the exceedance of any ASIL contained in WAC 173-460-150 (~~Appendix A of this Regulation III~~); or

(2) A dispersion modeling analysis demonstrates to the Control Officer that the toxic air contaminant emissions from the source will not result in the exceedance of any ASIL contained in WAC 173-460-150 (~~Appendix A of this Regulation III~~) after the installation of the Best Available Control Technology (BACT) and a compliance schedule for employing BACT is approved by the Control Officer; or

(3) BACT is employed on the source or a compliance schedule for employing BACT is approved by the Control Officer, and a risk analysis demonstrates to the Control Officer that the toxic air contaminant emissions from the source will not cause air pollution as defined in Section 1.07 of Regulation I.

AMENDATORY SECTION

REGULATION III SECTION 2.07 EVALUATING THE IMPACTS OF TOXIC AIR CONTAMINANTS

(a) Applicability. This section describes the procedures that shall be used for quantifying emissions and analyzing impacts of toxic air contaminants in order to meet the requirements for new or modified toxic air contaminant sources (see Article 6 of Regulation I) and for existing toxic air contaminant sources (see Section 2.05 of this regulation). In addition, definitions and procedures contained in chapter 173-460 WAC and adopted by reference in Regulation I, Section 6.01(a) apply to this section.

(b) Quantifying Emissions of Toxic Air Contaminants.

(1) The owner or operator of a new or modified toxic air contaminant source subject to Article 6 of Regulation I shall quantify toxic air contaminant emissions that may be discharged to the atmosphere after applying the required control technology, and shall submit this information as part of a Notice of Construction and Application for Approval.

(2) The owner or operator of an existing toxic air contaminant source subject to Section 2.05 of this regulation shall, upon request by the Agency, quantify toxic air contaminant emissions emitted by the facility and submit that information within 30 days.

(3) ~~((The following assumptions shall be made when quantifying toxic air contaminant emissions:))~~ When quantifying toxic air contaminant emissions, the owner or operator shall assume that each

~~((A) Each))~~ toxic air contaminant is introduced into the atmosphere in an unaltered form continuously, at the maximum concentration known to exist at the source unless there is reliable data to the contrary or there is a physical or legal restriction.

~~((B) Dioxin and furan emissions shall be combined as one toxic air contaminant, equivalent in potency to 2,3,7,8-tetrachlorodi-benzo-p-dioxin.~~

~~((C) Benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene,~~

~~indeno(1,2,3-cd)pyrene, and benzo(a)pyrene shall be combined as one toxic air contaminant, equivalent in potency to benzo(a)pyrene.))~~

(c) Analyzing Impacts of Toxic Air Contaminants. The air quality impact analysis for toxic air contaminant sources shall be performed using one of the following procedures:

(1) First Tier Review.

(A) Emissions of each toxic air contaminant discharged to the atmosphere shall be shown to be below the corresponding SOER listed in WAC 173-460-150; or

(B) The EPA guideline dispersion model, TSCREEN, shall be used to demonstrate that the predicted concentration of each contaminant is below the corresponding ((Acceptable Source Impact Level listed in Appendix A of this regulation)) ASIL listed in WAC 173-460-150. Stack parameters shall be submitted with the notice of construction application, or, for existing sources, within 30 days after the Agency requests the information. The maximum 1-hour concentration calculated by the model shall be converted with a persistence factor of 0.4 to a 24-hour average concentration or 0.08 to an annual average concentration; or

~~((2))~~ (C) The owner or operator shall submit a more comprehensive evaluation including the use of other EPA guideline models and more accurate emission estimation techniques to demonstrate that the predicted concentration of each contaminant is below the corresponding ((Acceptable Source Impact Level listed in Appendix A of this regulation)) ASIL listed in WAC 173-460-150 in all areas where the general public has access; or

~~((3) If predicted ambient concentrations are not below the Acceptable Source Impact Levels listed in Appendix A of this regulation, the owner or operator shall submit a risk analysis following the procedures in WAC 173-460-090(4), which demonstrates that emissions from the source will not cause air pollution. New or modified sources shall also comply with supplemental requirements of the Department of Ecology as specified in WAC 173-460-090 and 173-460-100.))~~

(2) Second and Third Tier Reviews. If predicted ambient concentrations from the first tier review are not below the ASILs listed in WAC 173-460-150, the owner or operator shall submit a petition to the Department of Ecology requesting a second tier or third tier review, and must receive Ecology's recommendation of approval for either the second or third tier petition. Second tier petitions shall follow the procedures in WAC 173-460-090. Third tier petitions shall follow the procedures in WAC 173-460-100.

REPEALER

REGULATION III, APPENDIX A: ACCEPTABLE SOURCE IMPACT LEVELS

WSR 09-20-019

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed September 28, 2009, 7:59 a.m., effective October 29, 2009]

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

Purpose: Amend WAC 308-100-031 to extend period in which the department may issue a commercial driver's

license restricted to operation of a commercial motor vehicle for agribusiness purposes until June 30, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 308-100-031.

Statutory Authority for Adoption: RCW 46.25.140 and 46.01.110.

Adopted under notice filed as WSR 09-17-111 on August 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 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 28, 2009.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-017, filed 7/25/08)

WAC 308-100-031 Skill and training requirements for commercial driver's license. (~~On or after January 2, 2009,~~) An applicant for a commercial driver's license must complete the minimum training requirements specified under WAC 308-100-033, unless waived under RCW 46.25.060(3). The department also may issue a commercial driver's license to an applicant certified by an employer under WAC 308-100-035 as having the skills and training necessary to operate a commercial motor vehicle safely. Until (~~January 2, 2010~~) June 30, 2011, the department may issue a commercial driver's license that is restricted to the operation of a commercial motor vehicle for agribusiness purposes under WAC 308-100-038 to an applicant who does not otherwise meet the requirements of this section.

WSR 09-20-020

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 09-06—Filed September 28, 2009, 9:40 a.m., effective October 29, 2009]

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

Purpose: Increase fees for some categories of permit holders by 5.20% for fiscal year (FY) 2010 (state fiscal growth factor) and 4.61% for FY 2011. Eliminate the proration of fees to the fiscal quarter for permits terminated during the fiscal year. Increase fees for municipalities up to the fiscal growth factor limits listed above for FYs 2010 and 2011.

Citation of Existing Rules Affected by this Order: Amending chapter 173-224 WAC, Wastewater discharge permit fees.

Statutory Authority for Adoption: RCW 90.48.465 Water pollution control.

Adopted under notice filed as WSR 09-15-128 on July 20, 2009.

Changes Other than Editing from Proposed to Adopted Version: Amended existing language for small business/extreme hardship reduction criteria per comment received requesting further clarity.

A final cost-benefit analysis is available by contacting Bev Poston, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6425, fax (360) 407-7151, e-mail bpos461@ecy.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 2, 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 1, Repealed 0.

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

Date Adopted: September 28, 2009.

Jay J. Manning
Director

AMENDATORY SECTION (Amending Order 08-05, filed 8/5/08, effective 9/5/08)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
Aluminum Alloys	\$16,713.00	\$ ((17,614.00)) <u>16,713.00</u>
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	98,554.00	((103,866.00)) <u>98,554.00</u>
b. State Permit	49,279.00	((51,935.00)) <u>49,279.00</u>
Aluminum Forming	50,136.00	((52,838.00)) <u>50,136.00</u>
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,876.00	((3,031.00)) <u>2,876.00</u>
2. Nonoperating aggregate site (fee per site)	118.00	((124.00)) <u>118.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,198.00	((1,263.00)) <u>1,198.00</u>
2. 50,000 - < 300,000 tons/yr.	2,877.00	((3,032.00)) <u>2,877.00</u>
3. 300,000 tons/yr. and greater	3,598.00	((3,792.00)) <u>3,598.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,198.00	((1,263.00)) <u>1,198.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	2,877.00	((3,032.00)) <u>2,877.00</u>
3. 200,000 cu. yds/yr. and greater	3,598.00	((3,792.00)) <u>3,598.00</u>
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,876.00	((3,031.00)) <u>2,876.00</u>
2. Asphalt	2,876.00	((3,031.00)) <u>2,876.00</u>
3. Concrete	2,876.00	((3,031.00)) <u>2,876.00</u>
Aggregate Production - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,012.00	((2,120.00)) <u>2,012.00</u>
2. Nonoperating aggregate site (fee per site)	83.00	((87.00)) <u>83.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	840.00	((885.00)) <u>840.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) <u>2010</u> ANNUAL PERMIT FEE	FY ((2010)) <u>2011</u> ANNUAL PERMIT FEE ((*))
2.	50,000 - < 300,000 tons/yr.	2,013.00	((2,122.00)) <u>2,013.00</u>
3.	300,000 tons/yr. and greater	2,517.00	((2,653.00)) <u>2,517.00</u>
c. Concrete Production			
1.	0 - < 25,000 cu. yds/yr.	840.00	((885.00)) <u>840.00</u>
2.	25,000 - < 200,000 cu. yds/yr.	2,013.00	((2,122.00)) <u>2,013.00</u>
3.	200,000 cu. yds/yr. and greater	2,517.00	((2,653.00)) <u>2,517.00</u>
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.			
d. Portable Operations			
1.	Rock Crushing	2,013.00	((2,122.00)) <u>2,013.00</u>
2.	Asphalt	2,013.00	((2,122.00)) <u>2,013.00</u>
3.	Concrete	2,013.00	((2,122.00)) <u>2,013.00</u>
Aquaculture			
a.	Finfish hatching and rearing - Individual Permit	5,012.00	((5,282.00)) <u>5,012.00</u>
b.	Finfish hatching and rearing - General Permit Coverage	3,511.00	((3,700.00)) <u>3,511.00</u>
c.	Shellfish hatching	((173.00)) <u>182.00</u>	((182.00)) <u>190.00</u>
Aquatic Pest Control			
a.	Irrigation Districts	((377.00)) <u>397.00</u>	((397.00)) <u>415.00</u>
b.	Mosquito Control Districts	((377.00)) <u>397.00</u>	((397.00)) <u>415.00</u>
c.	Invasive Moth Control	((377.00)) <u>397.00</u>	((397.00)) <u>415.00</u>
d.	Aquatic Species Control & Eradication	((377.00)) <u>397.00</u>	((397.00)) <u>415.00</u>
e.	Oyster Growers	((377.00)) <u>397.00</u>	((397.00)) <u>415.00</u>
f.	Rotenone Control	((377.00)) <u>397.00</u>	((397.00)) <u>415.00</u>
Boat Yards - Individual Permit Coverage			
a.	With storm water only discharge	428.00	((451.00)) <u>428.00</u>
b.	All others	856.00	((902.00)) <u>856.00</u>
Boat Yards - General Permit Coverage			
a.	With storm water only discharge	((298.00)) <u>313.00</u>	((314.00)) <u>327.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2009)) 2010	FY ((2010)) 2011
	ANNUAL PERMIT FEE	ANNUAL PERMIT FEE ((*))
b. All others	((602.00)) <u>633.00</u>	((634.00)) <u>662.00</u>
Coal Mining and Preparation		
a. < 200,000 tons per year	6,680.00	((7,040.00)) <u>6,680.00</u>
b. 200,000 - < 500,000 tons per year	15,042.00	((15,853.00)) <u>15,042.00</u>
c. 500,000 - < 1,000,000 tons per year	26,739.00	((28,180.00)) <u>26,739.00</u>
d. 1,000,000 tons per year and greater	50,136.00	((52,838.00)) <u>50,136.00</u>
Combined Industrial Waste Treatment		
a. < 10,000 gpd	3,342.00	((3,522.00)) <u>3,342.00</u>
b. 10,000 - < 50,000 gpd	8,354.00	((8,804.00)) <u>8,354.00</u>
c. 50,000 - < 100,000 gpd	16,713.00	((17,614.00)) <u>16,713.00</u>
d. 100,000 - < 500,000 gpd	33,422.00	((35,223.00)) <u>33,422.00</u>
e. 500,000 gpd and greater	50,136.00	((52,838.00)) <u>50,136.00</u>
Combined Food Processing Waste Treatment Facilities	16,000.00	((16,862.00)) <u>16,000.00</u>
Combined Sewer Overflow System		
a. < 50 acres	3,342.00	((3,522.00)) <u>3,342.00</u>
b. 50 - < 100 acres	8,354.00	((8,804.00)) <u>8,354.00</u>
c. 100 - < 500 acres	10,030.00	((10,571.00)) <u>10,030.00</u>
d. 500 acres and greater	13,368.00	((14,089.00)) <u>13,368.00</u>
Commercial Laundry	428.00	((451.00)) <u>428.00</u>
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((171.00)) <u>180.00</u>	((180.00)) <u>188.00</u>
b. 200 - < 400 Animal Units	((428.00)) <u>450.00</u>	((451.00)) <u>471.00</u>
c. 400 - < 600 Animal Units	((856.00)) <u>901.00</u>	((902.00)) <u>943.00</u>
d. 600 - < 800 Animal Units	((1,284.00)) <u>1,351.00</u>	((1,353.00)) <u>1,413.00</u>
e. 800 Animal Units and greater	((1,714.00)) <u>1,803.00</u>	((1,806.00)) <u>1,886.00</u>
Crop Preparing - Individual Permit Coverage		

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) <u>2010</u> ANNUAL PERMIT FEE	FY ((2010)) <u>2011</u> ANNUAL PERMIT FEE ((⌘))
a.	0 - < 1,000 bins/yr.	333.00	((351.00)) <u>333.00</u>
b.	1,000 - < 5,000 bins/yr.	669.00	((705.00)) <u>669.00</u>
c.	5,000 - < 10,000 bins/yr.	1,337.00	((1,409.00)) <u>1,337.00</u>
d.	10,000 - < 15,000 bins/yr.	2,676.00	((2,820.00)) <u>2,676.00</u>
e.	15,000 - < 20,000 bins/yr.	4,425.00	((4,664.00)) <u>4,425.00</u>
f.	20,000 - < 25,000 bins/yr.	6,183.00	((6,516.00)) <u>6,183.00</u>
g.	25,000 - < 50,000 bins/yr.	8,271.00	((8,717.00)) <u>8,271.00</u>
h.	50,000 - < 75,000 bins/yr.	9,192.00	((9,687.00)) <u>9,192.00</u>
i.	75,000 - < 100,000 bins/yr.	10,694.00	((11,270.00)) <u>10,694.00</u>
j.	100,000 - < 125,000 bins/yr.	13,368.00	((14,089.00)) <u>13,368.00</u>
k.	125,000 - < 150,000 bins/yr.	16,712.00	((17,613.00)) <u>16,712.00</u>
l.	150,000 bins/yr. and greater	20,055.00	((21,136.00)) <u>20,055.00</u>
Crop Preparing - General Permit Coverage			
a.	0 - < 1,000 bins/yr.	232.00	((245.00)) <u>232.00</u>
b.	1,000 - < 5,000 bins/yr.	468.00	((493.00)) <u>468.00</u>
c.	5,000 - < 10,000 bins/yr.	937.00	((988.00)) <u>937.00</u>
d.	10,000 - < 15,000 bins/yr.	1,873.00	((1,974.00)) <u>1,873.00</u>
e.	15,000 - < 20,000 bins/yr.	3,100.00	((3,267.00)) <u>3,100.00</u>
f.	20,000 - < 25,000 bins/yr.	4,328.00	((4,561.00)) <u>4,328.00</u>
g.	25,000 - < 50,000 bins/yr.	5,788.00	((6,100.00)) <u>5,788.00</u>
h.	50,000 - < 75,000 bins/yr.	6,433.00	((6,780.00)) <u>6,433.00</u>
i.	75,000 - < 100,000 bins/yr.	7,481.00	((7,884.00)) <u>7,481.00</u>
j.	100,000 - < 125,000 bins/yr.	9,360.00	((9,865.00)) <u>9,360.00</u>
k.	125,000 - < 150,000 bins/yr.	11,698.00	((12,329.00)) <u>11,698.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2009)) <u>2010</u> ANNUAL PERMIT FEE	FY ((2010)) <u>2011</u> ANNUAL PERMIT FEE ((*))
l. 150,000 bins/yr. and greater	14,037.00	((14,794.00)) <u>14,037.00</u>
Dairies \$.50 per Animal Unit not to exceed ((1,199.00 for FY 2009 and \$1,264.00)) \$1,261.00 for FY 2010 and \$1,319.00 for FY 2011		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	1,671.00	((1,761.00)) <u>1,671.00</u>
b. 1,000 - < 10,000 gpd	3,342.00	((3,522.00)) <u>3,342.00</u>
c. 10,000 - < 50,000 gpd	8,355.00	((8,805.00)) <u>8,355.00</u>
d. 50,000 - < 100,000 gpd	13,368.00	((14,089.00)) <u>13,368.00</u>
e. 100,000 - < 500,000 gpd	26,606.00	((28,040.00)) <u>26,606.00</u>
f. 500,000 - < 1,000,000 gpd	33,422.00	((35,223.00)) <u>33,422.00</u>
g. 1,000,000 gpd and greater	50,135.00	((52,837.00)) <u>50,135.00</u>
Facilities Not Otherwise Classified - General Permit Coverage		
a. < 1,000 gpd	1,172.00	((1,235.00)) <u>1,172.00</u>
b. 1,000 - < 10,000 gpd	2,425.00	((2,556.00)) <u>2,425.00</u>
c. 10,000 - < 50,000 gpd	5,851.00	((6,166.00)) <u>5,581.00</u>
d. 50,000 - < 100,000 gpd	9,360.00	((9,865.00)) <u>9,360.00</u>
e. 100,000 - < 500,000 gpd	18,715.00	((19,724.00)) <u>18,715.00</u>
f. 500,000 - < 1,000,000 gpd	23,394.00	((24,655.00)) <u>23,394.00</u>
g. 1,000,000 gpd and greater	35,095.00	((36,987.00)) <u>35,095.00</u>
Flavor Extraction		
a. Steam Distillation	171.00	((180.00)) <u>171.00</u>
Food Processing		
a. < 1,000 gpd	1,670.00	((1,760.00)) <u>1,670.00</u>
b. 1,000 - < 10,000 gpd	4,259.00	((4,489.00)) <u>4,259.00</u>
c. 10,000 - < 50,000 gpd	7,604.00	((8,014.00)) <u>7,604.00</u>
d. 50,000 - < 100,000 gpd	11,948.00	((12,592.00)) <u>11,948.00</u>
e. 100,000 - < 250,000 gpd	16,712.00	((17,613.00)) <u>16,712.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
f.	250,000 - < 500,000 gpd	21,977.00	((23,162.00)) <u>21,977.00</u>
g.	500,000 - < 750,000 gpd	27,572.00	((29,058.00)) <u>27,572.00</u>
h.	750,000 - < 1,000,000 gpd	33,422.00	((35,223.00)) <u>33,422.00</u>
i.	1,000,000 - < 2,500,000 gpd	41,175.00	((43,394.00)) <u>41,175.00</u>
j.	2,500,000 - < 5,000,000 gpd	45,957.00	((48,434.00)) <u>45,957.00</u>
k.	5,000,000 gpd and greater	50,136.00	((52,838.00)) <u>50,136.00</u>
Fuel and Chemical Storage			
a.	< 50,000 bbls	1,671.00	((1,761.00)) <u>1,671.00</u>
b.	50,000 - < 100,000 bbls	3,342.00	((3,522.00)) <u>3,342.00</u>
c.	100,000 - < 500,000 bbls	8,354.00	((8,804.00)) <u>8,354.00</u>
d.	500,000 bbls and greater	16,713.00	((17,614.00)) <u>16,713.00</u>
Hazardous Waste Clean Up Sites			
a.	Leaking Underground Storage Tanks (LUST)		
1.	State Permit	4,383.00	((4,619.00)) <u>4,383.00</u>
2.	NPDES Permit Issued pre 7/1/94	4,383.00	((4,619.00)) <u>4,383.00</u>
3.	NPDES Permit Issued post 7/1/94	8,765.00	((9,237.00)) <u>8,765.00</u>
b.	Non-LUST Sites		
1.	1 or 2 Contaminants of concern	8,570.00	((9,032.00)) <u>8,570.00</u>
2.	> 2 Contaminants of concern	17,140.00	((18,064.00)) <u>17,140.00</u>
Ink Formulation and Printing			
a.	Commercial Print Shops	2,571.00	((2,710.00)) <u>2,571.00</u>
b.	Newspapers	4,286.00	((4,517.00)) <u>4,286.00</u>
c.	Box Plants	6,856.00	((7,226.00)) <u>6,856.00</u>
d.	Ink Formulation	8,571.00	((9,033.00)) <u>8,571.00</u>
Inorganic Chemicals Manufacturing			
a.	Lime Products	8,354.00	((8,804.00)) <u>8,354.00</u>
b.	Fertilizer	10,058.00	((10,600.00)) <u>10,058.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
c.	Peroxide	13,368.00	((14,089.00)) <u>13,368.00</u>
d.	Alkaline Earth Salts	16,713.00	((17,614.00)) <u>16,713.00</u>
e.	Metal Salts	23,393.00	((24,654.00)) <u>23,393.00</u>
f.	Acid Manufacturing	33,416.00	((35,217.00)) <u>33,416.00</u>
g.	Chlor-alkali	66,846.00	((70,449.00)) <u>66,846.00</u>
Iron and Steel			
a.	Foundries	16,713.00	((17,614.00)) <u>16,713.00</u>
b.	Mills	33,453.00	((35,256.00)) <u>33,453.00</u>
Metal Finishing			
a.	< 1,000 gpd	2,004.00	((2,112.00)) <u>2,004.00</u>
b.	1,000 - < 10,000 gpd	3,341.00	((3,521.00)) <u>3,341.00</u>
c.	10,000 - < 50,000 gpd	8,353.00	((8,803.00)) <u>8,353.00</u>
d.	50,000 - < 100,000 gpd	16,712.00	((17,613.00)) <u>16,712.00</u>
e.	100,000 - < 500,000 gpd	33,420.00	((35,221.00)) <u>33,420.00</u>
f.	500,000 gpd and greater	50,133.00	((52,835.00)) <u>50,133.00</u>
Noncontact Cooling Water With Additives - Individual Permit Coverage			
a.	< 1,000 gpd	1,046.00	((1,102.00)) <u>1,046.00</u>
b.	1,000 - < 10,000 gpd	1,459.00	((1,538.00)) <u>1,459.00</u>
c.	10,000 - < 50,000 gpd	3,136.00	((3,305.00)) <u>3,136.00</u>
d.	50,000 - < 100,000 gpd	7,314.00	((7,708.00)) <u>7,314.00</u>
e.	100,000 - < 500,000 gpd	12,531.00	((13,206.00)) <u>12,531.00</u>
f.	500,000 - < 1,000,000 gpd	17,758.00	((18,715.00)) <u>17,758.00</u>
g.	1,000,000 - < 2,500,000 gpd	22,982.00	((24,221.00)) <u>22,982.00</u>
h.	2,500,000 - < 5,000,000 gpd	28,082.00	((29,596.00)) <u>28,082.00</u>
i.	5,000,000 gpd and greater	33,422.00	((35,223.00)) <u>33,422.00</u>
Noncontact Cooling Water With Additives - General Permit Coverage			

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
a.	< 1,000 gpd	733.00	((773.00)) <u>733.00</u>
b.	1,000 - < 10,000 gpd	1,461.00	((1,540.00)) <u>1,461.00</u>
c.	10,000 - < 50,000 gpd	2,195.00	((2,313.00)) <u>2,195.00</u>
d.	50,000 - < 100,000 gpd	5,120.00	((5,396.00)) <u>5,120.00</u>
e.	100,000 - < 500,000 gpd	8,773.00	((9,246.00)) <u>8,773.00</u>
f.	500,000 - < 1,000,000 gpd	12,432.00	((13,102.00)) <u>12,432.00</u>
g.	1,000,000 - < 2,500,000 gpd	16,086.00	((16,953.00)) <u>16,086.00</u>
h.	2,500,000 - < 5,000,000 gpd	19,739.00	((20,803.00)) <u>19,739.00</u>
i.	5,000,000 gpd and greater	23,394.00	((24,655.00)) <u>23,394.00</u>
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	838.00	((883.00)) <u>838.00</u>
b.	1,000 - < 10,000 gpd	1,671.00	((1,761.00)) <u>1,671.00</u>
c.	10,000 - < 50,000 gpd	2,509.00	((2,644.00)) <u>2,509.00</u>
d.	50,000 - < 100,000 gpd	5,851.00	((6,166.00)) <u>5,851.00</u>
e.	100,000 - < 500,000 gpd	10,030.00	((10,571.00)) <u>10,030.00</u>
f.	500,000 - < 1,000,000 gpd	14,203.00	((14,969.00)) <u>14,203.00</u>
g.	1,000,000 - < 2,500,000 gpd	18,310.00	((19,297.00)) <u>18,310.00</u>
h.	2,500,000 - < 5,000,000 gpd	22,559.00	((23,775.00)) <u>22,559.00</u>
i.	5,000,000 gpd and greater	26,739.00	((28,180.00)) <u>26,739.00</u>
Noncontact Cooling Water Without Additives - General Permit Coverage			
a.	< 1,000 gpd	586.00	((618.00)) <u>586.00</u>
b.	1,000 - < 10,000 gpd	1,172.00	((1,235.00)) <u>1,172.00</u>
c.	10,000 - < 50,000 gpd	1,757.00	((1,852.00)) <u>1,757.00</u>
d.	50,000 - < 100,000 gpd	4,095.00	((4,316.00)) <u>4,095.00</u>
e.	100,000 - < 500,000 gpd	7,019.00	((7,397.00)) <u>7,019.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
f.	500,000 - < 1,000,000 gpd	9,944.00	((10,480.00)) <u>9,944.00</u>
g.	1,000,000 - < 2,500,000 gpd	12,868.00	((13,562.00)) <u>12,868.00</u>
h.	2,500,000 - < 5,000,000 gpd	15,793.00	((16,644.00)) <u>15,793.00</u>
i.	5,000,000 gpd and greater	18,715.00	((19,724.00)) <u>18,715.00</u>
Nonferrous Metals Forming		16,713.00	((17,614.00)) <u>16,713.00</u>
Ore Mining			
a.	Ore Mining	3,342.00	((3,522.00)) <u>3,342.00</u>
b.	Ore mining with physical concentration processes	6,682.00	((7,042.00)) <u>6,682.00</u>
c.	Ore mining with physical and chemical concentration processes	26,739.00	((28,180.00)) <u>26,739.00</u>
Organic Chemicals Manufacturing			
a.	Fertilizer	16,713.00	((17,614.00)) <u>16,713.00</u>
b.	Aliphatic	33,422.00	((35,223.00)) <u>33,422.00</u>
c.	Aromatic	50,136.00	((52,838.00)) <u>50,136.00</u>
Petroleum Refining			
a.	< 10,000 bbls/d	33,422.00	((35,223.00)) <u>33,422.00</u>
b.	10,000 - < 50,000 bbls/d	66,266.00	((69,838.00)) <u>66,266.00</u>
c.	50,000 bbls/d and greater	133,699.00	((140,905.00)) <u>133,699.00</u>
Photofinishers			
a.	< 1,000 gpd	1,337.00	((1,409.00)) <u>1,337.00</u>
b.	1,000 gpd and greater	3,342.00	((3,522.00)) <u>3,342.00</u>
Power and/or Steam Plants			
a.	Steam Generation - Nonelectric	6,680.00	((7,040.00)) <u>6,680.00</u>
b.	Hydroelectric	6,680.00	((7,040.00)) <u>6,680.00</u>
c.	Nonfossil Fuel	10,028.00	((10,569.00)) <u>10,028.00</u>
d.	Fossil Fuel	26,739.00	((28,180.00)) <u>26,739.00</u>
Pulp, Paper and Paper Board			
a.	Fiber Recyclers	16,711.00	((17,612.00)) <u>16,711.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
b.	Paper Mills	33,422.00	((35,223.00)) <u>33,422.00</u>
c.	Groundwood Pulp Mills		
1.	< 300 tons per day	50,136.00	((52,838.00)) <u>50,136.00</u>
2.	> 300 tons per day	100,270.00	((105,675.00)) <u>100,270.00</u>
d.	Chemical Pulp Mills w/o Chlorine Bleaching	133,692.00	((140,898.00)) <u>133,692.00</u>
e.	Chemical Pulp Mills w/Chlorine Bleaching	150,400.00	((158,507.00)) <u>150,400.00</u>
Radioactive Effluents and Discharges (RED)			
a.	< 3 waste streams	32,332.00	((34,075.00)) <u>32,332.00</u>
b.	3 - < 8 waste streams	56,147.00	((59,173.00)) <u>56,147.00</u>
c.	8 waste streams and greater	92,478.00	((97,463.00)) <u>92,478.00</u>
RCRA Corrective Action Sites		23,490.00	((24,756.00)) <u>23,490.00</u>
Seafood Processing			
a.	< 1,000 gpd	1,671.00	((1,761.00)) <u>1,671.00</u>
b.	1,000 - < 10,000 gpd	4,259.00	((4,489.00)) <u>4,259.00</u>
c.	10,000 - < 50,000 gpd	7,604.00	((8,014.00)) <u>7,604.00</u>
d.	50,000 - < 100,000 gpd	11,948.00	((12,592.00)) <u>11,948.00</u>
e.	100,000 gpd and greater	16,713.00	((17,614.00)) <u>16,713.00</u>
Shipyards			
a.	Per crane, travel lift, small boat lift	3,342.00	((3,552.00)) <u>3,342.00</u>
b.	Per drydock under 250 ft in length	3,342.00	((3,552.00)) <u>3,342.00</u>
c.	Per graving dock	3,342.00	((3,552.00)) <u>3,342.00</u>
d.	Per marine way	5,012.00	((5,282.00)) <u>5,012.00</u>
e.	Per sycrolift	5,012.00	((5,282.00)) <u>5,012.00</u>
f.	Per drydock over 250 ft in length	6,682.00	((7,042.00)) <u>6,682.00</u>
g.	In-water vessel maintenance	6,682.00	((7,042.00)) <u>6,682.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstorm water)		
a. Nonputrescible	6,682.00	((7,042.00)) <u>6,682.00</u>
b. < 50 acres	13,367.00	((14,087.00)) <u>13,367.00</u>
c. 50 - < 100 acres	26,739.00	((28,180.00)) <u>26,739.00</u>
d. 100 - < 250 acres	33,422.00	((35,223.00)) <u>33,422.00</u>
e. 250 acres and greater	50,136.00	((52,838.00)) <u>50,136.00</u>
Textile Mills	66,846.00	((70,449.00)) <u>66,846.00</u>
Timber Products		
a. Log Storage	3,342.00	((3,522.00)) <u>3,342.00</u>
b. Veneer	6,682.00	((7,042.00)) <u>6,682.00</u>
c. Sawmills	13,368.00	((14,089.00)) <u>13,368.00</u>
d. Hardwood, Plywood	23,393.00	((24,654.00)) <u>23,393.00</u>
e. Wood Preserving	32,094.00	((33,824.00)) <u>32,094.00</u>
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	110.00	((116.00)) <u>110.00</u>
b. 1,000 - < 5,000 gpd	224.00	((236.00)) <u>224.00</u>
c. 5,000 - < 10,000 gpd	440.00	((464.00)) <u>440.00</u>
d. 10,000 - < 20,000 gpd	887.00	((935.00)) <u>887.00</u>
e. 20,000 and greater	1,464.00	((1,543.00)) <u>1,464.00</u>
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	3,342.00	((3,522.00)) <u>3,342.00</u>
b. 0.5 - < 1.0 acre	6,682.00	((7,042.00)) <u>6,682.00</u>
c. 1.0 acre and greater	10,028.00	((10,569.00)) <u>10,028.00</u>
Water Plants - Individual Permit Coverage	4,180.00	((4,405.00)) <u>4,180.00</u>
Water Plants - General Permit Coverage	2,925.00	((3,083.00)) <u>2,925.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2009)) 2010 ANNUAL PERMIT FEE	FY ((2010)) 2011 ANNUAL PERMIT FEE ((*))
Wineries		
a. < 500 gpd	341.00	((359.00)) <u>341.00</u>
b. 500 - < 750 gpd	684.00	((721.00)) <u>684.00</u>
c. 750 - < 1,000 gpd	1,367.00	((1,441.00)) <u>1,367.00</u>
d. 1,000 - < 2,500 gpd	2,734.00	((2,881.00)) <u>2,734.00</u>
e. 2,500 - < 5,000 gpd	4,362.00	((4,597.00)) <u>4,362.00</u>
f. 5,000 gpd and greater	5,987.00	((6,310.00)) <u>5,987.00</u>

(*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.)

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized general partner;

(C) In the case of a general partnership, by an authorized partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((2009)) 2010	FY ((2010)) 2011
	Annual Permit Fee	Annual Permit Fee(=)
< 250,000	\$((1.80)) <u>1.89</u>	\$((1.80)) <u>1.98</u>
> 250,000	((1.25)) <u>1.32</u>	((1.32)) <u>1.38</u>

(=*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the state fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.)*

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

- (i) Holds more than one permit for domestic wastewater facilities; and
- (ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

- (i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and
- (ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((2009)) 2010	FY ((2010)) 2011
	Annual Permit Fee	Annual Permit Fee(=)
.1 MGD and Greater	\$((8,354.00)) <u>8,788.00</u>	\$((8,804.00)) <u>9,193.00</u>
.05 MGD to < .1 MGD	((3,342.00)) <u>3,516.00</u>	((3,522.00)) <u>3,678.00</u>
.0008 MGD to < .05 MGD	((1,671.00)) <u>1,758.00</u>	((1,761.00)) <u>1,839.00</u>
< .0008 MGD	((504.00)) <u>530.00</u>	((531.00)) <u>554.00</u>

(=*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.)*

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from

the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

	FY ((2009)) 2010 Annual Permit Fee	FY ((2010)) 2011 Annual Permit Fee (*)
a. Individual Construction or Industrial Storm Water Permits		
1. < 50 acres	\$(3,342.00) <u>3,516.00</u>	\$(3,522.00) <u>3,678.00</u>
2. 50 -< 100 acres	\$(6,680.00) <u>7,027.00</u>	\$(7,040.00) <u>7,351.00</u>
3. 100 -< 500 acres	\$(10,028.00) <u>10,549.00</u>	\$(10,569.00) <u>11,035.00</u>
4. 500 acres and greater	\$(13,368.00) <u>14,063.00</u>	\$(14,089.00) <u>14,711.00</u>
b. Facilities Covered Under the Industrial Storm Water General Permit		
1. Municipalities and state agencies	\$(1,094.00) <u>1,151.00</u>	\$(1,153.00) <u>1,204.00</u>
2. New permit holders without historical gross revenue information	\$(575.00) <u>605.00</u>	\$(606.00) <u>633.00</u>
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		

	FY ((2009)) 2010 Annual Permit Fee	FY ((2010)) 2011 Annual Permit Fee (*)
Gross Revenue		
Less than \$100,000	\$(406.00) <u>112.00</u>	\$(412.00) <u>117.00</u>
\$100,000 -< \$1,000,000	\$(461.00) <u>485.00</u>	\$(486.00) <u>507.00</u>
\$1,000,000 -< \$2,500,000	\$(552.00) <u>581.00</u>	\$(582.00) <u>608.00</u>
\$2,500,000 -< \$5,000,000	\$(921.00) <u>969.00</u>	\$(971.00) <u>1,014.00</u>
\$5,000,000 -< \$10,000,000	\$(1,382.00) <u>1,454.00</u>	\$(1,456.00) <u>1,521.00</u>
\$10,000,000 and greater	\$(1,669.00) <u>1,756.00</u>	\$(1,759.00) <u>1,837.00</u>

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

- (a) In the case of a corporation, by an authorized corporate officer;
- (b) In the case of a limited partnership, by an authorized general partner;

- (c) In the case of a general partnership, by an authorized partner; or
 - (d) In the case of a sole proprietorship, by the proprietor.
- The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Storm Water General Permit(s)

1. Less than 5 acres disturbed area	\$(432.00) <u>454.00</u>	\$(455.00) <u>475.00</u>
2. 5 -< 7 acres of disturbed area	\$(703.00) <u>740.00</u>	\$(741.00) <u>774.00</u>
3. 7 -< 10 acres of disturbed area	\$(950.00) <u>999.00</u>	\$(1,001.00) <u>1,045.00</u>
4. 10 -< 20 acres of disturbed area	\$(1,295.00) <u>1,362.00</u>	\$(1,365.00) <u>1,425.00</u>
5. 20 acres and greater of disturbed area	\$(1,611.00) <u>1,695.00</u>	\$(1,698.00) <u>1,773.00</u>

(*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.)

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((2009)) 2010 Annual Permit Fee	FY ((2010)) 2011 Annual Permit Fee(*)
King County	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>
Snohomish County	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>
Pierce County	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>
Tacoma, City of	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>

Name of Entity	FY ((2009)) 2010 Annual Permit Fee	FY ((2010)) 2011 Annual Permit Fee(*)
Seattle, City of	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>
Washington Department of Transportation	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>
Clark County	\$(38,067.00) <u>40,046.00</u>	\$(40,119.00) <u>41,892.00</u>

(*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.)

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and

(d) of this subsection, will be determined in the following manner: For fiscal year ~~((2009))~~ 2010, ecology will charge ~~((\$1.14))~~ \$1.17 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~((\$0.53))~~ \$0.56 per housing unit inside the geographic area covered by the permit. ~~((If, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor))~~ For fiscal year 2011, ecology will charge ~~((\$1.17))~~ \$1.22 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~((\$0.56))~~ \$0.59 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~((\$38,067.00))~~ \$40,046.00 for fiscal year ~~((2009))~~ 2010 and ~~((\$40,119.00))~~ \$41,892.00 for fiscal year ~~((2010))~~ 2011. ~~((If ecology's request for the FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.))~~ The minimum annual fee will not be lower than ~~((\$1,584.00))~~ \$1,666.00 for fiscal year 2010 and \$1,742.00 for fiscal year 2011 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ~~((\$0.53))~~ \$0.56 per housing unit for fiscal year ~~((2009))~~ 2010. The fee amount for ~~((FY 2010))~~ FY 2011 will be ~~((\$0.56))~~ \$0.59 per housing unit ~~((if, and only if, the state legislature approves ecology's request to increase fees by the fiscal growth factor. If ecology's request for a FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.))~~.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2009)) <u>2010</u> Annual Permit Fee	FY ((2010)) <u>2011</u> Annual Permit Fee (#)
Less than \$100,000	\$(<u>111.00</u>) <u>117.00</u>	\$(<u>117.00</u>) <u>122.00</u>
\$100,000 -< \$1,000,000	\$(<u>446.00</u>) <u>469.00</u>	\$(<u>470.00</u>) <u>491.00</u>
\$1,000,000 -< \$5,000,000	\$(<u>1,114.00</u>) <u>1,172.00</u>	\$(<u>1,174.00</u>) <u>1,226.00</u>
\$5,000,000 -< \$10,000,000	\$(<u>1,670.00</u>) <u>1,757.00</u>	\$(<u>1,760.00</u>) <u>1,838.00</u>
\$10,000,000 and greater	\$(<u>2,784.00</u>) <u>2,929.00</u>	\$(<u>2,934.00</u>) <u>3,064.00</u>

~~((#FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.))~~

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ~~((2009))~~ 2010 annual fee for a permit written for a specific entity shall be ~~((\$7,918.00))~~ \$8,330.00. ~~((If, and only if, the state legislature approves ecology's request to increase fees in))~~ For FY ~~((2010))~~ 2011, the annual fee will be ~~((\$8,345.00. However, if a fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.))~~ \$8,714.00.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending Order 08-05, filed 8/5/08, effective 9/5/08)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the

sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will ~~((have their fees prorated as follows unless it results in an annual fee assessment of less than one hundred dollars. Ecology will not process refunds of one hundred dollars or less:~~

~~(a) Permit coverage for up to three months will pay twenty five percent of the annual permit fee;~~

~~(b) Permit coverage for three to six months will pay fifty percent of the annual permit fee;~~

~~(c) Permit coverage for six to nine months will pay seventy five percent of the annual permit fee; and~~

~~(d) Permit coverage for nine months or greater will pay one hundred percent of the annual permit fee.~~

~~(3) Permit fee computation for general permits. Computation of fees for permittees covered under a general permit begins on the permit coverage date. Any facility that obtains permit coverage is obligated to pay the annual permit fee regardless of whether or not the facility has ever operated until the permit has been terminated by the department. Permits terminated during the fiscal year excluding permits issued for aquatic pest control will have their fees prorated as described in subsection (2)(a), (b), (c), (d) of this section unless it results in an annual fee assessment of less than one hundred dollars. Ecology will not process refunds of one hundred dollars or less)) pay the annual fee assessment regardless of the permit termination date.~~

~~((4)) (3) Permit fees for sand and gravel (aggregate) general permit holders will be assessed as in subsection (3) of this section and:~~

~~(a) Nonoperating aggregate sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.~~

~~(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.~~

~~(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the average of the three previous calendar years production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous three calendar years or for the number of full calendar years of operation if less than three. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels~~

reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection (3) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.

~~((5)) (4) Fees for crop preparation general permit holders will be assessed as in subsection (3) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(d). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.~~

~~((6)) (5) Facilities with construction and industrial storm water general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.~~

~~((7)) (6) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction storm water general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.~~

~~((8)) (7) Computation of fees shall end on June 30th, the last day of the state's fiscal year ~~(, or in the case of a terminated permit, during the quarter the termination took place))~~ regardless of the permit termination date.~~

~~((9)) (8) The applicable permit fee shall be paid by check or money order payable to the "Department of Ecology" and mailed to the Wastewater Discharge Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.~~

~~((10)) (9) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.~~

~~((11)) (10) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:~~

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending Order 08-05, filed 8/5/08, effective 9/5/08)

WAC 173-224-090 ((Small-business)) Permit fee reductions. ~~((Except as noted in subsection (6) of this section, a small))~~ With the exception of facilities covered under the industrial storm water general permit who are not eligible to apply for a fee reduction, any business required to pay a ~~((permit))~~ fee under an industrial ~~((facility))~~ or construction fee category may receive a reduction of its permit fee.

Small business fee reduction.

(1) To qualify for the fee reduction, a business must:

(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or storm water discharge permit; and

~~((Pay an annual wastewater discharge permit fee greater than))~~ Have an original annual fee assessment totaling five hundred dollars or greater.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

(3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

~~((5))~~ Extreme hardship fee reduction. Any industrial or construction small business with annual gross revenue totaling one hundred thousand dollars or less of the goods and

services produced using the processes regulated by the waste discharge or storm water discharge permit ~~((is one hundred thousand dollars or less, and the annual permit fee assessed imposes an extreme hardship to the business, the small business))~~ may ~~((request))~~ apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below ~~(((\$106.00 for fiscal year 2009 and))~~ \$112.00 for fiscal year 2010 and \$117.00 for fiscal year 2011.

~~((6))~~ Facilities covered under the industrial storm water general permit are not eligible for a small business fee reduction under this section.

WSR 09-20-027

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 29, 2009, 9:17 a.m., effective October 30, 2009]

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

Purpose: Per federal statute, effective January 1, 2010, the resource standards for medicare savings programs change to match the resource standards for the medicare Part D low-income subsidy. The resource standards will be adjusted yearly after that.

Citation of Existing Rules Affected by this Order: Amending WAC 388-517-0310.

Statutory Authority for Adoption: Public Law 110-275, Section 113 (Medicare Improvements for Patients and Providers Act).

Other Authority: RCW 74.04.050, 74.04.057, 74.08-090, and 74.09.500.

Adopted under notice filed as WSR 09-17-104 on August 18, 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: September 25, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-032, filed 7/12/07, effective 8/12/07)

WAC 388-517-0310 Eligibility for federal medicare savings and state-funded medicare buy-in programs. (1)

Persons eligible for any medicare savings programs (MSP) must:

(a) Be entitled to or receiving medicare Part A. Qualified disabled working individuals (QDWI) clients must be under age sixty-five;

(b) Meet program income standards, see WAC 388-478-0085; and

(c) Have resources (~~(at or below twice the resource standards for SSI and SSI related programs, see WAC 388-478-0080(4))~~ equal to or less than the medicare Part D low-income subsidy resource standard found at: <http://hrsa.dshs.wa.gov/Eligibility/images/Standards%20Chart%20July%202008%20Final.pdf>).

(2) MSP follow categorically needy program rules for SSI related persons in chapter 388-475 WAC.

(3) MSP clients are entitled to a fair hearing when the department takes an adverse action such as denying or terminating MSP benefits.

(4) The department subtracts the allocations and deductions described under WAC 388-513-1380 from a long-term care client's countable income and resources when determining MSP eligibility:

(a) Allocations to a spouse and/or dependent family member; and

(b) Client participation in cost of care.

(5) Medicaid eligibility may affect MSP eligibility, as follows:

(a) Qualified medicare beneficiaries (QMB) and specified low income beneficiaries (SLMB) clients can receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) Qualified individuals (QI-1) and qualified disabled working individuals (QDWI) clients who begin to receive medicaid are no longer eligible for QI-1 or QDWI benefits.

(6) Every year, when the federal poverty level changes:

(a) The department adjusts income standards for MSP and state funded medicare buy-in programs, see WAC 388-478-0085.

(b) The department begins to count the annual Social Security cost-of-living (COLA) increase on April 1st each year when determining eligibility for MSP and state funded medicaid buy-in programs.

(7) There is no income limit for the state-funded medicare buy-in program. The state-funded medicare buy-in program is for clients who receive medicaid but do not qualify for the federal MSP.

WSR 09-20-031

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 29, 2009, 2:41 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: The purpose of the rule change is to eliminate the forty-five day processing timeframe for general assis-

tance applications filed by a person in confinement in a correctional facility or institution.

In addition, the rule change will correct a typographical error in subsection (2)(d) that currently reads, "your applied" and should read "you applied."

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0055.

Statutory Authority for Adoption: RCW 74.08.060, 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Other Authority: SSB 6024 (chapter 198, Laws of 2009).

Adopted under notice filed as WSR 09-17-101 on August 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 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 25, 2009.

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-406-0055 When do my benefits start? The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) Cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day for TANF, SFA, or RCA; or

(c) No later than the forty-fifth day for general assistance ~~((GAU))~~ (GA) unless you are confined in a Washington State public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case your benefits will start on the date you are released from confinement.

(2) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the first day of the month following the month you applied for benefits. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date (~~you~~) you applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible for Basic Food, the date we approve Basic Food is the date your AU became CE.

(e) You are approved for transitional food assistance under chapter 388-489 WAC. We determine the date transitional benefits start as described under WAC 388-489-0015.

(f) You receive transitional food assistance with people you used to live with, and are now approved to receive Basic Food in a different assistance unit:

(i) We must give the other assistance unit ten days notice as described under WAC 388-458-0025 before we remove you from the transitional food assistance benefits.

(ii) Your Basic Food benefits start the first of the month after we remove you from the transitional benefits. For example, if we remove you from transitional benefits on November 30th, you are eligible for Basic Food on December 1st.

(3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.

fees, 296-46B-907 Provisional permits, 296-46B-908 Class B permits, 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, temporary electrician permit, copy, and miscellaneous fees, 296-46B-915 Civil penalty schedule, 296-46B-935 Administrator certificate, 296-46B-940 Electrician/training/temporary certificate of competency or permit required, 296-46B-945 Qualifying for master, journeyman, specialty electrician examinations, 296-46B-960 Administrator and electrician certificate of competency examinations, 296-46B-965 Training certificate required, 296-46B-970 Continuing education, 296-46B-980 Enforcement—Installations, licensing, and certification requirements, 296-46B-985 Penalties for false statements or material misrepresentations, 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws, 296-46B-995 Electrical board—Appeal rights and hearings, and 296-46B-997 Engineer approval.

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

Adopted under notice filed as WSR 09-15-146 on July 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: The following amendments were made to the proposed rules:

- WAC 296-46B-906 Inspection fees.
 - o The fee in subsection (2)(a) for ampacity 801 to 1000 had a typo, the correct fee is \$148.70.
 - o The fees in subsection (4)(b) for the additional feeder were omitted, the fees were added back into the rule.
 - o The fee in subsection (4)(d)(i) was omitted, the correct fee is \$50.60.
 - o The fee in subsection (4)(d)(ii) was omitted, the correct fee is \$5.50.
- WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate or examination, master electrician certificates and examination, electrician certificate and examination, copy, and miscellaneous fees.
 - o The nonrefundable fee in subsection (2)(c)(iii) had a typo, the correct fee is \$30.80.
 - o The nonrefundable fee in subsection (2)(c)(iv) had a typo, the correct fee is \$30.80.
 - o The nonrefundable fee in subsection (2)(c)(v)(C) had a typo, the correct fee is \$47.20.
 - o The late renewal of a journeyman or specialty electrician certificate fee in subsection (2)(d)(vi)(A) had a typo, the correct fee is \$147.60.
- WAC 296-46B-965 Training certificate required. In subsection (1) the word "or" was added between subsections (b) and (c).
- WAC 296-46B-970 Continuing education.

WSR 09-20-032

PERMANENT RULES DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed September 29, 2009, 4:43 p.m., effective October 31, 2009]

Effective Date of Rule: October 31, 2009.

Purpose: The department has reviewed the electrical rule for additions and revisions. The electrical rules are reviewed on a regular basis to: Ensure the rules are consistent with the national consensus standards, industry practice, clarify the rules, and make fee changes.

The rule making also includes a fee increase of 5.20%, which is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2010. We evaluated the program's budget and projected revenue. The fee increase is necessary to help cover the cost of ongoing services of the electrical program.

Citation of Existing Rules Affected by this Order: WAC 296-46B-100 General definitions, 296-46B-445 Wind driven generator equipment, 296-46B-690 Solar photovoltaic systems, 296-46B-901 General—Electrical work permits and

- o Subsection (4)(b)(ii)(D) the following language was deleted: Supplementary written instruction material appropriate to the type and length of the class.
- (iv) Class material may include:
 - Supplementary internet material;
 - Supplementary texts;
 - Other material as appropriate.
- o Subsection (4)(b)(iv)(A) will read "for classroom instruction except first aid training."
- WAC 296-46B-970 Continuing education. The following language was added in subsection (7)(d): A class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (c) of this section.
- WAC 296-46B-970 Continuing education. The following language was added in subsection (8)(d): A class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (c) of this section.
- WAC 296-46B-995 Electrical board—Appeal rights and hearings. The following language was added in subsection (11): The total appeal fee for each entity seeking an appeal hearing is one thousand dollars maximum for all violation types.
- WAC 296-46B-995 Electrical board—Appeal rights and hearings. In subsection (11), the comma was deleted after "briefs."

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 19, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, 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 19, Repealed 0.

Date Adopted: September 29, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-100 General definitions. (1) All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

(2) "Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is

therefore authorized to evaluate electrical products that are for sale in the state of Washington.

(3) "Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

(4) "ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

(5) "Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

(6) "Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

(7) "Appliance" means household appliance.

(8) "ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

(9) "AWG" means American Wire Gauge.

(10) "Basement" means that portion of a building that is partly or completely below grade plane. A basement shall be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than 1829 mm (six feet) above grade plane;

(b) More than 1829 mm (six feet) above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 3658 mm (twelve feet) above the finished ground level at any point. Also see "mezzanine" and "story."

(11) "Board" means the electrical board established and authorized under chapter 19.28 RCW.

(12) "Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

(13) "Category list" is a list of ~~((nonspecific))~~ manufacturing safety standards or product types determined by the department.

(14) A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

(15) A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

(16) "Certificate of competency" includes the certificates of competency for master journeyman electrician, master specialty electrician, journeyman, and specialty electrician.

(17) A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

(18) A "complete application" includes the submission of all appropriate fees, documentation, and forms.

(19) "Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

(20) "Coordination (selective)" as defined in NEC 100 shall be determined and documented by a professional engineer registered under chapter 18.43 RCW.

(21) "Department" means the department of labor and industries of the state of Washington.

(22) "Director" means the director of the department, or the director's designee.

(23) "Egress - unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

(24) "Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.-006(9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

(25) An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

(26) An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

(27) "Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

(28) "Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

(29) A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

(30) The "filing" is the date the document is actually received in the office of the chief electrical inspector.

(31) "Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

(32) "Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

(33) "Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more functions such as cooking and other equipment installed in a kitchen, clothes drying, clothes washing, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

(34) HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems) (see Figure 920-1 and Figure 920-2).

(35) "IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

(36) An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

(37) An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925.

(38) An "identification plate" is a phenolic or metallic plate or other similar material engraved in block letters at least 1/4" (6 mm) high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, or methods specifically described in

this chapter must be used to affix an identification plate to the equipment or enclosure.

(39) "License" means a license required under chapter 19.28 RCW.

(40) "Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

(41) A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

(42) A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

(43) "Like-in-kind" means having similar characteristics such as voltage requirement, current draw, circuit overcurrent and short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

(44) For the purpose of WAC 296-46B-940(6), a "line-man" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved lineman's apprenticeship course; or

(b) Are currently registered in a department-approved lineman's apprenticeship course and are working under the direct one hundred percent supervision of a journeyman electrician or a graduate of a lineman's apprenticeship course approved by the department. The training received in the lineman's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

(45) "Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

(46) "Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

(47) "Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

(48) "NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

(49) "NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

(50) "NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

(51) "NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

(52) "NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

(53) "NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 CFR 1910.7.

(54) "Point of contact" or "point of connection" means the service point.

(55) "Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

(56) "Public area or square" is an area where the public has general, clear, and unrestricted access.

(57) A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

(58) "RCW" means the Revised Code of Washington. Copies of electrical RCWs are available from the department and the office of the code reviser.

(59) "Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

(60) Service specific definitions replacing those found in NEC Article 100:

(a) "Service drop" means the overhead service conductors from the service point to the connection to the service-entrance conductors at the building or other structure.

(b) "Service-entrance conductors, overhead system" means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop or service point.

(c) "Service-entrance conductors, underground system" means the service conductors between the terminals of the service equipment and the point of connection to the service lateral or service point. Where the service equipment is located outside the building walls, there may be no service-entrance conductors or they may be entirely outside the building.

(d) "Service lateral" means the underground service conductors from the service point to the point of connection to the service-entrance conductors in a terminal box, meter, or other enclosure. Where there is not a terminal box, meter, or other enclosure, the point of connection is the point of entrance of the service conductors into the building.

(61) A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification,

and reproduction. This definition does not apply to telecommunications installations.

(62) "Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

(63) A "sign," when required by the NEC, for use as an identification method means "identification plate."

(64) "Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

(65) "Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

(66) A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

(67) "TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

(68) A "training school" is a public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(69) "Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

(70) "UL" means Underwriters Laboratory.

(71) "Utility" means an electrical utility.

(72) "Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2(b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

(73) "Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

(74) "Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives

can be achieved by establishing and maintaining effective safety.

(75) "WAC" means the Washington Administrative Code. Copies of this chapter of the WACs are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-445 Wind driven generator equipment. This equipment includes alternators or generators that produce electrical current through the conversion of wind energy into electrical energy. Wind driven generation equipment must demonstrate conformance to applicable safety standards recognized by the department.

Installation.

(1) A wind driven generator system design review must be submitted at the time of the first inspection ((request)). The design review must be available to the inspector on the job site. Permit holders must submit a copy of the wind driven generator equipment manufacturer's installation information and a legible one-line diagram of the wind driven generator design and calculations used to determine voltage and current within the generation system to the electrical inspector. This diagram must show the wind driven generator equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.

(2) For utility interactive systems, any person making interconnections between the generator system and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

(3) All wind driven generator equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages and type of current within the system with an identification plate.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-690 Solar photovoltaic systems.
002 Definitions.

(1) Photovoltaic system. The photovoltaic system may conduct alternating current, direct current, or both and will comprise all interconnected circuits to the point of connection with the building distribution circuits or utility service conductors.

(2) Support structure, foundation, and tracker. For the purposes of this section, those portions of the array or tracker that are exclusively mechanical and are built specifically for the purpose of physically supporting the modules or panels will not be considered part of the photovoltaic system as defined by this article.

004 Installation.

(3) A photovoltaic system design review must be submitted at the time of the first inspection ((request)). The design review must be available to the inspector on the job site. Permit holders must submit, to the electrical authority having jurisdiction, copies of the photovoltaic equipment manufacturer's installation information, accompanied by a legible one-line diagram of the photovoltaic design and calculations

used to determine voltage and current within the photovoltaic system. This diagram must show the photovoltaic equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.

(4) For utility interactive systems, persons making interconnections between solar photovoltaic system and the utility distribution network must consult the serving utility and are required to meet all additional utility standards.

007 Maximum voltage.

(5) The open-circuit voltage temperature coefficients supplied in the instructions of listed photovoltaic modules will be used to determine the maximum direct current photovoltaic system voltage. Otherwise the voltage will be calculated using Table 690.7 of the NEC. For the purposes of this calculation, a temperature correction factor of 1.25 will be used unless another factor can be justified and is approved by the authority having jurisdiction.

053 Direct-current photovoltaic power source.

(6) All photovoltaic equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages, and type of current within the system with an identification plate. All photovoltaic circuits must be identified at each overcurrent protection device(s) and panel directory(ies).

(7) Required "WARNING" labels as specified by NEC 690 are required to be an identification plate on or immediately adjacent to the pertinent equipment.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-901 General—Electrical work permits and fees. (1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

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

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

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

(d) Driving directions are provided for the inspectors' use.

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

(3) Except as provided in subsection (8) of this section, a valid electrical work permit must be posted on the job site at a readily accessible and conspicuous location prior to beginning electrical work and at all times until the electrical inspection process is completed.

Permit - responsibility for.

(4) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the permitted work is performed solely or in part by another entity, the electrical work permit purchaser must request approval from the chief electrical inspector or the city that is authorized to do

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

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

(6) Posting of permits: Where an electrical work permit is required, the work permit must be obtained and posted at the job site prior to beginning any electrical work. Exceptions:

(a) For an owner, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted at the job site no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional and a Class B permit system, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted at the job site no later than the next business day after the work is begun.

(7) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

Permit - requirements for.

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

(a) Travel trailers;

(b) Class A basic electrical work which includes:

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

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

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and

comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label. See WAC 296-46B-907(2) for provisional label requirements.

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

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

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

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

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

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

Permit - inspection and approval.

(10) Requests for inspections.

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any part of the installation has been energized, whichever occurs first.

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

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

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

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

Permit - duration/refunds.

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

(a) Expired electrical work permits;

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

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

Permit - annual telecommunications.

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

Permit - annual electrical.

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

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

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

Permit - temporary installations.

(15) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

- (a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;
- (b) The total service size does not exceed 200 amperes, 250 volts nominal;
- (c) The service supplies no feeders;
- (d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;
- (e) The general contractor owns the electrical equipment;
- (f) The general contractor has been hired by the property owner as the general contractor for the project;
- (g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

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

(1) **Residential.**

(a) **Single- and two-family residential (New Construction).**

Notes:

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

(i) First 1300 sq. ft.	\$((73.00)) <u>76.70</u>
Each additional 500 sq. ft. or portion of	\$((23.40)) <u>24.60</u>
(ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property	\$((30.50)) <u>32.00</u>
(iii) Each outbuilding or detached garage - inspected separately	\$((48.10)) <u>50.60</u>
(iv) Each swimming pool - inspected with the service	\$((48.10)) <u>50.60</u>
(v) Each swimming pool - inspected separately	\$((73.00)) <u>76.70</u>
(vi) Each hot tub, spa, or sauna - inspected with the service	\$((30.50)) <u>32.00</u>
(vii) Each hot tub, spa, or sauna - inspected separately	\$((48.10)) <u>50.60</u>
(viii) Each septic pumping system - inspected with the service	\$((30.50)) <u>32.00</u>
(ix) Each septic pumping system - inspected separately	\$((48.10)) <u>50.60</u>

(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).

Each service and/or feeder		
Ampacity	Service/Feeder	<u>Additional Feeder</u>
0 to 200	\$((78.70)) <u>82.70</u>	<u>\$24.60</u>
201 to 400	\$((97.80)) <u>102.80</u>	<u>\$50.60</u>
401 to 600	\$((134.30)) <u>141.20</u>	<u>\$70.30</u>
601 to 800	\$((172.30)) <u>181.20</u>	<u>\$96.50</u>
801 and over	\$((245.70)) <u>258.40</u>	<u>\$193.80</u>

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

(i) Each altered service and/or altered feeder		
Ampacity	Service/Feeder	
0 to 200	\$((66.90)) <u>70.30</u>	
201 to 600	\$((97.80)) <u>102.80</u>	
601 and over	\$((147.40)) <u>155.00</u>	
(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)		\$((36.30)) <u>38.10</u>

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

Note:

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

(i) 1 to 4 circuits (see note above)	<u>\$50.60</u>
(ii) Each additional circuit (see note above)	<u>\$5.50</u>

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

(i) Mobile home or modular home service or feeder only	\$((48.10)) <u>50.60</u>
(ii) Mobile home service and feeder	\$((78.70)) <u>82.70</u>

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

Note:

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

(i) First site service or site feeder	\$((48.10)) <u>50.60</u>
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	\$((30.50)) <u>32.00</u>

(2) Commercial/industrial.

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

Note:

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

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$((78.70)) <u>82.70</u>	\$((48.10)) <u>50.60</u>
101 to 200	\$((95.80)) <u>100.70</u>	\$((61.30)) <u>64.40</u>
201 to 400	\$((184.30)) <u>193.80</u>	\$((73.00)) <u>76.70</u>
401 to 600	\$((214.80)) <u>225.90</u>	\$((85.80)) <u>90.20</u>
601 to 800	\$((277.70)) <u>292.10</u>	\$((116.90)) <u>122.90</u>
801 to 1000	\$((339.00)) <u>356.60</u>	\$((141.40)) <u>148.70</u>
1001 and over	\$((369.80)) <u>389.00</u>	\$((197.30)) <u>207.50</u>

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

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	\$((78.70)) <u>82.70</u>
201 to 600	\$((184.30)) <u>193.80</u>
601 to 1000	\$((277.70)) <u>292.10</u>
1001 and over	\$((308.40)) <u>324.40</u>

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) 70.30

(c) Circuits only.

Note:

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

- (i) First 5 circuits per branch circuit panel 64.40
- (ii) Each additional circuit per branch circuit panel 5.50
- (d) **Over 600 volts surcharge per permit.** 64.40

(3) Temporary service(s).

Note:

(1) See WAC 296-46B-590 for information about temporary installations. (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$((42.20)) <u>44.30</u>	\$((21.60)) <u>22.70</u>
61 to 100	\$((48.10)) <u>50.60</u>	\$((23.40)) <u>24.60</u>
101 to 200	\$((61.30)) <u>64.40</u>	\$((30.50)) <u>32.00</u>
201 to 400	\$((73.00)) <u>76.70</u>	\$((36.40)) <u>38.20</u>
401 to 600	\$((97.80)) <u>102.80</u>	\$((48.10)) <u>50.60</u>
601 and over	\$((110.90)) <u>116.60</u>	\$((55.30)) <u>58.10</u>

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

- (a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL 5.50
- (b) Towers - when not inspected at the same time as a service and feeder - 1 to 6 towers 76.70
- (c) Each additional tower 5.50

(5) Miscellaneous - commercial/industrial and residential.

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

- (i) First thermostat 38.20
- (ii) Each additional thermostat inspected at the same time as the first 11.90

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less 44.30
- (ii) Each additional 2500 sq. ft. or portion thereof 11.90

(c) Signs and outline lighting.

- (i) First sign (no service included) 38.20
- (ii) Each additional sign inspected at the same time on the same building or structure 18.10

(d) Berth at a marina or dock.

Note:

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

- (i) Berth at a marina or dock 50.60
- (ii) Each additional berth inspected at the same time 32.00

(e) Yard pole, pedestal, or other meter loops only.

- (i) Yard pole, pedestal, or other meter loops only 50.60
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations 11.90

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

Regular fee plus surcharge of: \$((91-80))
96.50

(g) Generators.

Note:

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

Portable generators: Permanently installed transfer equipment for portable generators \$((66-90))
70.30

(h) Electrical - annual permit fee.

Note:

See WAC 296-46B-901(14).

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

	Inspections	Fee
1 to 3 plant electricians	12	\$((1,765-50)) <u>1,857.30</u>
4 to 6 plant electricians	24	\$((3,532-80)) <u>3,716.50</u>
7 to 12 plant electricians	36	\$((5,298-90)) <u>5,574.40</u>
13 to 25 plant electricians	52	\$((7,066-20)) <u>7,433.60</u>
More than 25 plant electricians	52	\$((8,833-50)) <u>9,292.80</u>

(i) Telecommunications - annual permit fee.

Notes:

(1) See WAC 296-46B-901(13).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

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

2-hour minimum \$((146-10))
153.60

Each additional hour, or portion thereof, of portal-to-portal inspection time \$((73-00))
76.70

(j) Permit requiring ditch cover inspection only.

Each 1/2 hour, or portion thereof \$((36-40))
38.20

(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor. \$((61-30))
64.40

(6) Carnival inspections.

(a) First carnival field inspection each calendar year.

(i) Each ride and generator truck \$((17-30))
18.10

(ii) Each remote distribution equipment, concession, or gaming show \$((5-30))
5.50

(iii) If the calculated fee for first carnival field inspection above is less than \$89.00, the minimum inspection fee shall be: \$((91-80))
96.50

(b) Subsequent carnival inspections.

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$((91-80))
96.50

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$((5-30))
5.50

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

(i) First field inspection each year of a single concession or ride, not part of a carnival \$((73-00))
76.70

(ii) Subsequent inspection of a single concession or ride, not part of a carnival \$((48-10))
50.60

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) \$((73-00))
76.70

(b) Submitter notifies the department that work is ready for inspection when it is not ready. \$((36-40))
38.20

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. \$((36-40))
38.20

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. \$((36-40))
38.20

(e) Each trip necessary to remove a noncompliance notice. \$((36-40))
38.20

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. \$((36-40))
38.20

(g) Installations that are covered or concealed before inspection. \$((36-40))
38.20

(8) Progress inspections.

Note:

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour. \$((36-40))
38.20

(9) Plan review.

Fee is thirty-five percent of the electrical work permit fee as determined by WAC 296-46B-906, plus a plan review submission and shipping/handling fee of: \$((61-30))
64.40

(a) Supplemental submissions of plans per hour or fraction of an hour of review time. \$((73-00))
76.70

(b) Plan review shipping and handling fee. \$((17-30))
18.10

(10) Out-of-state inspections.

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses: All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) Other inspections.

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: \$((73-00))
76.70

(12) Variance request processing fee.

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. \$((73-00))
76.70

(13) Marking of industrial utilization equipment.

(a) Standard(s) letter review (per hour of review time). \$((73-00))
76.70

(b) Equipment marking - charged portal-to-portal per hour: \$((73-00))
76.70

(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.

(14) Class B basic electrical work labels.

(a) Block of twenty Class B basic electrical work labels (not refundable).	\$((200.00)) <u>210.40</u>
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	\$((36.40)) <u>38.20</u>
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	\$((36.40)) <u>38.20</u>

(15) Provisional electrical work permit labels.

Block of twenty provisional electrical work permit labels.	\$((200.00)) <u>210.40</u>
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AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-907 Provisional permits.

Provisional electrical work permit - use/duration/refunds.

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

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

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

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

- (i) Date the work is begun;
- (ii) Contractor's name;
- (iii) Contractor's license number; and
- (iv) Short description of the work.

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

- (i) Date the work is begun;
- (ii) Contractor's license number;
- (iii) Job site address;
- (iv) Owner's name; and
- (v) Short description of the work.

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

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

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

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

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

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

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

(6) An electrical work permit must be obtained within two working days after posting the provisional work permit label. See WAC 296-46B-907 (2)(e).

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-908 Class B permits.

Class B electrical work permit - use.

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

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

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

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

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

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

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's name;
- (iii) Electrical/telecommunication contractor's license number;

(iv) Installing electrician's certificate number, except for telecommunication work. For thermostat installations described in WAC 296-46B-965(15), the installing trainee may enter their training certificate number; and

(v) Short description of the work.

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

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's license number;
- (iii) Installing electrician's certificate number, except for telecommunication work;
- (iv) Job site address;

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

(vi) Short description of the work.

(b) Renewal fully completed using the on-line web process	\$221.00	(B) Renewal fully completed using the on-line web process	\$84.00
(c) Reinstatement of a general or specialty contractor's license after a suspension	\$(47.30) 49.70	(iii) Late renewal of master electrician or administrator certificate	
(2) Master electrician/administrator/electrician/trainee certificate.		(A) Renewal made in person, by mail, or by fax	\$(266.40) 280.20
(a) Examination application (nonrefundable)		(B) Renewal fully completed using the on-line web process	\$254.00
Administrator certificate examination application.	\$(29.30)	(iv) Late renewal of telecommunications (09) administrator certificate	
(Required only for department administered examinations.) (Not required when testing with the department's contractor.)	30.80	(A) Renewal made in person, by mail, or by fax	\$(177.60) 186.80
(b) Examination fees (nonrefundable)		(B) Renewal fully completed using the on-line web process	\$168.00
Note:		(v) Journeyman or specialty electrician certificate renewal	
Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.		(A) Renewal made in person, by mail, or by fax	\$(70.20) 73.80
(i) Master electrician or administrator first-time examination fee (when administered by the department)	\$(70.50) 74.10	(B) Renewal fully completed using the on-line web process	\$67.00
(ii) Master electrician or administrator retest examination fee (when administered by the department)	\$(82.50) 86.70	(vi) Late renewal of journeyman or specialty electrician certificate	
(iii) Journeyman or specialty electrician examination fee (first test or retest when administered by the department)	\$(53.00) 55.70	(A) Renewal made in person, by mail, or by fax	\$(140.40) 147.60
(iv) Certification examination review fee	\$(109.20) 114.80	(B) Renewal fully completed using the on-line web process	\$134.00
(c) Original certificates (nonrefundable after certificate has been issued)		(vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC 296-46B-965 (7)(d))	\$(44.90) 47.20
(i) Electrical administrator original certificate (except 09 telecommunication)	\$(105.40) 110.80	(viii) Trainee certificate renewal	
(ii) Telecommunications administrator original certificate (for 09 telecommunications)	\$(70.20) 73.80	(A) Renewal made in person, by mail, or by fax	\$(44.90) 47.20
(iii) Master electrician exam application (includes original certificate and application processing fee) (\$(29.30)) 30.80 is nonrefundable after application is submitted	\$(134.70) 141.70	(B) Renewal fully completed using the on-line web process when the affidavit of experience is submitted per WAC 296-46B-965 (7)(d)	\$43.00
(iv) Journeyman or specialty electrician application (includes original certificate and application processing fee) (\$(29.30)) 30.80 is nonrefundable after application is submitted	\$(75.60) 79.50	(ix) Late trainee certificate renewal	
(v) Training certificate		(A) Renewal made in person, by mail, or by fax	\$(63.00) 66.20
(A) Initial application made in person, by mail, or by fax	\$(37.10) 39.00	(B) Renewal fully completed using the on-line web process	\$60.00
(B) Initial application fully completed on-line using the on-line web process	\$35.00	(e) (Reciprocal certificate (nonrefundable after certificate has been issued))	
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) (\$(44.90)) 47.20 is nonrefundable after application is submitted	\$(67.40) 70.90	(i) Master electrician reciprocal certificate (includes original certificate and application processing fee) (\$29.30 is nonrefundable after application is submitted)	\$133.30
(D) 75% supervision modified training certificate.	\$(44.90) 47.20	(ii) Journeyman or specialty electrician reciprocal certificate (includes original certificate and application processing fee) (\$29.30 is nonrefundable after application is submitted)	\$75.60
(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	\$(22.40) 23.50	(f) Certificate - reinstatement (nonrefundable)	
(vi) Temporary electrician permit (valid as allowed and described in WAC 296-46B-940(27))	\$23.40)	(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	\$(47.30) 49.70
(d) Certificate renewal (nonrefundable)		(ii) Reinstatement of suspended journeyman, or specialty electrician certificate (in addition to normal renewal fee)	\$(22.40) 23.50
(i) Master electrician or administrator certificate renewal		(g) Assignment/unassignment of master electrician/administrator designation (nonrefundable)	\$(35.00) 36.80
(A) Renewal made in person, by mail, or by fax	\$(133.20) 140.10	(3) Certificate/license.	
(B) Renewal fully completed using the on-line web process	\$127.00	(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	\$(15.40) 16.20
(ii) Telecommunications (09) administrator certificate renewal		(b) Optional display quality General Master Electrician certificate.	\$(25.00) 26.30
(A) Renewal made in person, by mail, or by fax	\$(88.80) 93.40		

(4) Continuing education courses or instructors. (Nonrefundable.)

(a) If the course or instructor review is performed by the electrical board or the department
 The course or instructor review \$((45.00))
47.30

(b) If the course or instructor review is contracted out by the electrical board or the department
 (i) Continuing education course or instructor submittal and approval (per course or instructor) As set in
 contract
 (ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial \$((109.50))
115.10

(5) Copy fees. (Nonrefundable.)

(a) **Certified copy of each document (maximum charge per file):** \$((49.80))
52.30
 (i) First page: \$((22.40))
23.50
 (ii) Each additional page: \$((2.00))
2.10
 (b) Replacement RCW/WAC printed document: \$((5.00))
5.20

(6) Training school program review fees. Initial training school program review fee. (Nonrefundable.)

(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)). \$((516.00))
542.80
 (b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)). \$((258.00))
271.40

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

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

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

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

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

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

(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:

(a) That convey or utilize electrical current without having a valid electrical contractor's license.
 (b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.
 First offense: \$500
 Second offense: \$1,500
 Third offense: \$3,000
 Each offense thereafter: \$6,000

(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.

First offense: \$250
 Each offense thereafter: \$500

(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.

First offense: \$250
 Each offense thereafter: \$500

(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense: \$250
 Each offense thereafter: \$500

(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense: \$250
 Each offense thereafter: \$500

(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.

First offense: \$50
 Second offense: \$250
 Each offense thereafter: \$500

(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.

First offense: \$500
 Second offense: \$1,500
 Third offense: \$3,000
 Each offense thereafter: \$6,000

(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.

First offense: \$500
 Second offense: \$1,000
 Each offense thereafter: \$2,000

Definition:

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

(9) Covering or concealing installations prior to inspection.

First offense: \$250
 Second offense: \$1,000
 Each offense thereafter: \$2,000

(10) Failing to make corrections within fifteen days of notification by the department.

Exception:

Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(11) Failing to obtain or post an electrical/telecommunications work permit or provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.

Exception:

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.

(a) Failing to be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator or master electrician.

First offense:	\$1,000
Second offense:	\$1,500
Each offense thereafter:	\$3,000

(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.

First offense:	\$100
Second offense:	\$250
Third offense:	\$1,000
Each offense thereafter:	\$3,000

(c) Failing to ensure that the proper electrical safety procedures are used.

First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000

(d) Failing to ensure that all electrical labels, permits, and certificates required to perform electrical work are used.

First offense:	\$250
Each offense thereafter:	\$500

(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.

Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.

First offense:	\$500
Second offense:	\$1,000

Each offense thereafter: \$3,000

(13) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.

RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.

First offense:	\$250
Each offense thereafter:	\$500

All other chapter 19.28 RCW provisions and the rules developed pursuant to them.

First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-935 Administrator certificate. General.

(1) The department will deny application or renewal of a certificate if an individual owes money as a result of an outstanding final judgment(s) to the department.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

Qualifying for examination.

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

Original - administrator certificates.

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

Combination - specialty administrator certificate.

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indi-

cate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators. ~~((Temporary administrator certificates will not be issued as a part of a combination certificate.))~~

Renewal - administrator certificate.

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

- (a) Submit a complete renewal application;
- (b) Pay all appropriate fees as listed in WAC 296-46B-909; and
- (c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate, the individual's certificate may be suspended or revoked.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked ~~((or temporary))~~ administrator's certificate.

~~((Temporary specialty administrator certificate.~~

~~(14) See WAC 296-46B-930 for additional information.))~~

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-940 Electrician/training/~~((temporary))~~ certificate of competency or permit required.

Electrician - general.

(1) The department will deny application or renewal of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) to the department.

Electrician - scope of work.

(2) The scope of work for electricians and trainees is described in WAC 296-46B-920.

Electrician - certificate of competency required.

(3) To work in the electrical construction trade, an individual must possess a current valid:

- (a) Master journeyman electrician certificate of competency issued by the department;
- (b) Journeyman electrician certificate of competency issued by the department;
- (c) Master specialty electrician certificate of competency issued by the department;
- (d) Specialty electrician certificate of competency issued by the department; or
- (e) ~~((Temporary electrician permit. Unless continually supervised by an appropriately certified electrician, no temporary electrician can install, repair, replace, or maintain any electrical wiring or equipment where the system voltage is more than 600 volts, whether the system is energized or deenergized; or~~

~~(f))~~ Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journeyman electrician, journeyman electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

- (a) General journeyman **(01)**;
- (b) Specialties:
 - (i) Residential **(02)**;
 - (ii) Pump and irrigation **(03)**;
 - (iii) Domestic pump **(03A)**;
 - (iv) Signs **(04)**;
 - (v) Limited energy system **(06)**;
 - (vi) HVAC/refrigeration **(06A)**;
 - (vii) HVAC/refrigeration - restricted **(06B)**;
 - (viii) Nonresidential maintenance **(07)**;
 - (ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;
 - (x) Residential maintenance **(07B)**;
 - (xi) Restricted nonresidential maintenance **(07C)**;

- (xii) Appliance repair **(07D)**;
- (xiii) Equipment repair **(07E)**; and
- (xiv) Door, gate, and similar systems **(10)**.

Exemptions - linemen.

(5) When performing the work described and allowed in WAC 296-46B-925 (17)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineman is exempt from the requirements of chapter 19.28 RCW.

(6) When performing the work described and allowed in WAC 296-46B-925 (17)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineman must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineman in WAC 296-46B-100.

Exemptions - plumbers.

(7) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

Original - master electrician, journeyman, and specialty electrician certificates of competency.

(8) The department will issue an original certificate of competency to master, journeyman, or specialty electricians who meet the eligibility requirements listed in:

- (a) RCW 19.28.191 (1)(a) or (b); and
 - (i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and
 - (ii) Pay all appropriate fees, as listed in WAC 296-46B-909;
 - (b) RCW 19.28.191 (1)(d) through (e);
 - (i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and
 - (ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or
 - (c) RCW 19.28.191 (1)(f) through (g);
 - (i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and
 - (ii) Pay all appropriate fees, as listed in WAC 296-46B-909.
- (9) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

Renewal - master electrician, journeyman, and specialty electrician certificates of competency.

(10) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(11) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(12) All applications for renewal received more than ninety days after the expiration date of the certificate of com-

petency require that the electrician pass the appropriate competency examination before being recertified.

(13) All applicants for certificate of competency renewal must:

- (a) Submit a complete renewal application;
- (b) Pay all appropriate fees; and
- (c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(14) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(15) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(16) An individual may not renew a revoked (~~or temporary~~) certificate of competency.

~~((Reciprocal agreements between Washington and other states.~~

~~(17) The department negotiates reciprocal agreements with states that have equivalent requirements for certification of master electricians, journeymen, or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.~~

~~(18) An individual coming into the state of Washington from a reciprocal state will be issued a reciprocal electrician certificate of competency if all the following conditions are met:~~

- ~~(a) The department has a valid reciprocal agreement with the other state in the master electrician category requested; journeyman, or specialty category requested;~~
- ~~(b) The individual makes a complete application for the reciprocity certificate on the form provided by the department. A complete application includes:~~
 - ~~(i) Application for reciprocal certificate of competency;~~
 - ~~(ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a valid~~

journeyman or specialty electrician certificate or certified letter from the issuing state; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

~~(e) The individual obtained the reciprocal state's certificate of competency as a master electrician, journeyman, or specialty electrician by examination and the individual held the reciprocal state's certificate for a period of at least one year;~~

~~(19) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:~~

~~(a) Has failed to renew a similar Washington master electrician or electrician certificate of competency as required in RCW 19.28.211;~~

~~(b) Has a similar Washington master electrician or electrician certificate of competency in suspended, revoked, or inactive status under this chapter;~~

~~(c) Has ever taken and failed a Washington exam; or~~

~~(d) Was a resident of the state of Washington at the time the examination was taken in the other state.)~~

Military/shipyard experience.

~~((20)) (17) An individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a journeyman or specialty electrician. Credit may be allowed for hours worked or training received.~~

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

Experience in another country.

~~((21)) (18) If an individual has a journeyman electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman electrician examination.~~

No more than two years of the required training to become a Washington journeyman electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master journeyman electrician or journeyman electrician.

Documentation substantiating the individual's out-of-country experience must be submitted in English.

~~((22)) (19) Out-of-country experience credit is not allowed toward a specialty electrician certificate.~~

Training school credit.

~~((23)) (20) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).~~

~~((24)) (21) See RCW 19.28.191 (1)(h) for training school credit allowed for journeyman applicants.~~

~~((25)) (22) See WAC 296-46B-971 for additional information on training schools.~~

~~(Temporary electrician permit.~~

~~(26) Temporary permits are not allowed for master electricians.~~

~~(27) Temporary electrician permit when coming from out of state. An individual coming from out of state must either obtain a reciprocal electrician certificate, valid training certificate, or make application and receive approval for a temporary electrician permit to perform electrical work in the state, or otherwise obtain an electrician certificate of competency.~~

~~(a) Initial temporary electrician permit when coming from out of state.~~

~~(i) If an individual can show evidence of work experience in another state similar to RCW 19.28.191, the department may issue the individual one initial temporary journeyman or specialty electrician permit. The individual must present appropriate evidence at the time of application showing work experience equivalent to that required by RCW 19.28.191.~~

~~The initial temporary electrician permit allows the individual to work as an electrician between the date of filing a completed application for the certification examination and the notification of the results of the examination. This initial permit will be issued for one twenty-day period and will become invalid on the expiration date listed on the temporary electrician permit or the date the individual is notified they have failed the examination, whichever is earlier.~~

~~(ii) To qualify for an initial temporary electrician permit, an individual must:~~

~~(A) Meet the eligibility requirements of RCW 19.28.191; and~~

~~(B) Submit a complete application for an initial temporary electrician permit and original certification including:~~

~~• Date of birth, mailing address, Social Security number; and~~

~~• All appropriate fees as listed in WAC 296-46B-909.~~

~~(iii) The individual must not have ever possessed a Washington master electrician, journeyman electrician, specialty electrician, or temporary electrician certificate of competency in the specialty requested.~~

~~(iv) If the initial temporary electrician permit becomes invalid, it will not be extended or renewed. To continue to work in the electrical trade, the individual must apply for and receive a:~~

~~(A) Second temporary electrician permit; or~~

~~(B) Training certificate and work in the proper ratio, per RCW 19.28.161, under the direct supervision of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in the appropriate specialty, or a specialty electrician working in the appropriate specialty.~~

~~(b) Second temporary electrician permit.~~

~~(i) If the individual fails the certification examination during the initial temporary electrician period and provides verification of enrollment in an approved journeyman refresher course or approved appropriate specialty electrician refresher course, as prescribed in RCW 19.28.231, application may be made for a second temporary electrician permit.~~

~~A complete second application must include proof of enrollment in the refresher course and all appropriate fees as listed in WAC 296-46B-909.~~

~~(ii) The second temporary electrician permit will be issued for one ninety-day period and will become invalid. Upon withdrawal from the electrician refresher course, on the expiration date listed on the temporary electrician permit, or the date the individual is notified they have failed the examination, whichever is earlier;~~

~~(iii) After successfully completing the electrician refresher course, the individual must provide appropriate course completion documentation to the department and will be eligible to retake the appropriate competency exam.~~

~~(iv) If the second temporary electrician permit becomes invalid, it will not be extended or renewed. To continue to work in the electrical trade, the individual must apply for and receive a training certificate and work in the proper ratio, per RCW 19.28.161, under the direct supervision of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in the appropriate specialty, or a specialty electrician working in the appropriate specialty.)~~

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-945 Qualifying for master, journeyman, specialty electrician examinations. Qualifying for master, journeyman, specialty electrician examinations.

(1) All applicants must be at least sixteen years of age.

Qualifying for the master electrician examination.

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1)(d) or (e).

Qualifying for the master electrician examination from out-of-state.

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

Qualifying for the journeyman electrician competency examination.

(4) An individual may take the journeyman electrician's certificate of competency examination if the individual held a

current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journeyman, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journeyman electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journeyman electrician or journeyman electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journeyman or journeyman electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journeyman electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journeyman electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) will not be credited towards qualification for journeyman electrician.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship graduation certificates used to verify eligibility for the examination.

Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state requiring electrician certification.

(5) An individual may take the journeyman/specialty electrician's competency examination when the appropriate state having authority certifies to the department that:

(a) The work was legally performed under the other state's licensing and certification requirements;

(i) For journeyman applicants who meet the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants who meet the minimum hour requirements described in WAC 296-46B-945(9).

(b) The other state's certificate of competency was obtained by examination.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours)

may not be credited towards qualification for journeyman electrician.

Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state that does not require electrician certification.

(6) If the other state requires electrical contractor licensing:

(a) An individual may take the journeyman/specialty electrician's competency examination when an appropriately licensed electrical contractor(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter of experience with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(b) An individual may take the journeyman/specialty electrician's competency examination when an employer(s), acting under a property owner exemption, files a notarized letter of experience from the property owner with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(7) If the other state does not require electrical contractor licensing or registration: An individual may take the journeyman/specialty electrician's competency examination when the individual's employer(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter(s) of experience with the department accompanied by payroll documentation which certifies and shows that:

(a) For journeyman applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(4).

(b) For specialty applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(9).

(8) The letter of experience described in subsections (6) and (7) of this section should include a complete list of the individual's usual duties with percentages attributed to each.

Qualifying for a specialty electrician certificate of competency or examination.

(9) An individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journeyman electrician, journeyman electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾	Minimum Hours of Work Experience Required for Certification
Residential certificate (02)	4,000 ⁽³⁾	4,000
Pump and irrigation certificate (03)	4,000 ⁽³⁾	4,000
Domestic pump certificate (03A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Signs certificate (04)	4,000 ⁽³⁾	4,000
Limited energy system certificate (06)	4,000 ⁽³⁾	4,000
HVAC/refrigeration system certificate (06A)	4,000 ⁽³⁾	4,000 ⁽⁷⁾
HVAC/refrigeration - restricted (06B)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Nonresidential maintenance certificate (07)	4,000 ⁽³⁾	4,000
Nonresidential lighting maintenance and lighting retrofit certificate (07A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Residential maintenance certificate (07B)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Restricted nonresidential maintenance certificate (07C)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Appliance repair certificate (07D)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Equipment repair certificate (07E)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Door, gate, and similar systems certificate (10)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾

- Notes:**
- ⁽¹⁾Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.
 - ⁽²⁾The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.
 - ⁽³⁾This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.
 - ⁽⁴⁾The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.
 - ⁽⁵⁾Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours

under direct supervision are provided as required in RCW 19.28.191 (1) (g)(ii).

⁽⁶⁾Electrical construction training hours gained in specialties requiring less than two years for certification may not be credited towards qualification for journeyman electrician.

⁽⁷⁾The 2,000 minimum hours of work experience required for certification as a HVAC/refrigeration-restricted **(06B)** specialty electrician may be credited as 2,000 hours towards the 4,000 minimum hours of work experience required for certification as a HVAC/refrigeration **(06A)** specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted **(06B)** specialty cannot be credited towards qualification for taking the general electrician **(01)** examination or minimum work experience requirements.

⁽⁸⁾Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(v).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

(10) To receive credit for electrical work experience that is exempted in RCW 19.28.261, an individual must provide the department with verification from the employer or owner according to WAC 296-46B-965 (i.e., affidavit(s) of experience). For the purposes of this section, exempt work does not include work performed on property owned by the individual seeking credit.

(11) All exempt individuals learning the electrical trade must obtain an electrical training certificate from the department and renew it biennially in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(12) The department may require verification of supervision in the proper ratio from the certified supervising electrician(s).

(13) Telecommunications work experience:

(a) Credit may be verified only by employers exempted by RCW 19.28.261, general electrical **(01)** contractors, and limited energy system **(06)** electrical contractors for limited energy experience for telecommunications work done:

(i) Under the supervision of a certified journeyman or limited energy electrician; and

(ii) In compliance with RCW 19.28.191.

(b) Individuals who want to obtain credit for hours of experience toward electrician certification for work experience doing telecommunications installations must:

(i) Obtain an electrical training certificate;

(ii) Renew the training certificate biennially in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(c) Telecommunications contractors may not verify telecommunications work experience toward electrician certification.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-960 Administrator and electrician certificate of competency examinations. General.

(1) The minimum passing score on any examination or examination section is seventy percent. If examination is requested to be administered by the department, an application is required and the examination must be successfully completed within one year of application or the individual must submit a new application for exam including all appropriate fees.

(2) All examinations are open book.

(a) Candidates may use:

(i) Any original copyrighted material;

(ii) A silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations;

(iii) Copies of chapter 19.28 RCW and this chapter; or

(iv) A foreign language dictionary that does not contain definitions.

(b) Candidates may not use:

(i) Copies of copyrighted material;

(ii) Copies of internet publications, except for RCWs or WACs;

(iii) Personal notes; or

(iv) A personal computing device of any type other than the calculator in (a)(ii) of this subsection.

(3) Administrator, master electrician, and electrician examinations may consist of multiple sections. All sections must be successfully completed within a one-year examination period after beginning the examination. Within the one-year examination period, the candidate does not have to retake any sections successfully completed within the examination period. If all sections are not successfully completed within the one-year period, the candidate must begin a new examination period and retake all sections.

Special accommodations for examination.

(4) An applicant for an examination who, due to a specific physical, mental, or sensory impairment, requires special accommodation in examination procedures, may submit a written request to the chief electrical inspector for the specific accommodation needed.

(a) The applicant must also submit to the department a signed and notarized release, authorizing the specifically identified physician or other specialist to discuss the matter with the department representative. The applicant must also submit an individualized written opinion from a physician or other appropriate specialist:

(i) Verifying the existence of a specific physical, mental, or sensory impairment;

(ii) Stating whether special accommodation is needed for a specific examination;

(iii) Stating what special accommodation is necessary; and

(iv) Stating if extra time for an examination is necessary and if so, how much time is required. The maximum allowance for extra time is double the normal time allowed.

(b) The written request for special accommodation and individualized written opinion must be submitted to the

department at least six weeks in advance of the examination date and must be accompanied by a completed application and fees as described in WAC 296-46B-909.

(c) Only readers and interpreters provided from the administrative office of the courts and/or approved by the department may be used for reading or interpreting the examination. The applicant will be required to bear all costs associated with providing any reading or interpretive services used for an examination.

(d) Applicants who pass the examination with the assistance of a reader or interpreter will be issued a certificate with the following printed restriction: "Requires reading supervision for product usage." A competent reader or interpreter must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

Applicants who pass the examination with the assistance of a mechanical device (e.g., magnifier, etc.) will be issued a certificate with the following printed restriction: "Requires mechanical reading assistance for product usage." Appropriate mechanical reading assistance must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

If a candidate successfully retakes the examination without the assistance of a reader or translator, a new certificate will be issued without the restriction.

(5) Applicants who wish to use a foreign language dictionary during an examination must obtain approval at the examination site prior to the examination. Only dictionaries without definitions will be approved for use.

Failed examination appeal procedures.

(6) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

(7) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the chief electrical inspector and must be received within twenty days of the date of the examination and must request a rescore of the examination. The written request must include the appropriate fees for examination review described in WAC 296-46B-909.

(b) The following procedures apply to a review of the results of the examination:

(i) The candidate will be allowed one hour to review their examination.

(ii) The candidate must identify the challenged questions of the examination and must state the specific reason(s) why the results should be modified with multiple published reference material supporting the candidate's position.

(iii) Within fifteen days of the candidate's review, the department will review the examination and candidate's justifi-

fication and notify the candidate in writing of the department's decision.

Subjects included in administrator certificate, or master electrician, journeyman, or specialty electrician competency examinations.

(8) The following subjects are among those that may be included in the examination for an administrator certificate or electrician certificate of competency. The list is not exclusive. The examination may also contain subjects not on the list.

(a) For general administrators, master journeyman, and journeyman electricians:

AC - Generator; 3-phase; meters; characteristics of; power in AC circuits (power factor); mathematics of AC circuits.

Administration - Chapter 19.28 RCW and this chapter.

Air conditioning - Basic.

Blueprints - Surveys and plot plans; floor plans; service and feeders; electrical symbols; elevation views; plan views.

Building wire.

Cable trays.

Calculations.

Capacitive reactance.

Capacitor - Types; in series and parallel.

Circuits - Series; parallel; combination; basic; branch; outside branch circuits; calculations.

Conductor - Voltage drop (line loss); grounded.

Conduit - Wiring methods.

DC - Generator; motors; construction of motors; meters.

Definitions - Electrical.

Electrical units.

Electron theory.

Fastening devices.

Fire alarms - Introduction to; initiating circuits.

Fuses.

Generation - Electrical principles of.

Grounding.

Incandescent lights.

Inductance - Introduction to; reactance.

Insulation - Of wire.

Mathematics - Square root; vectors; figuring percentages.

Motors/controls - Motors vs. generators/CEMF; single phase; capacitor; repulsion; shaded pole; basic principles of AC motors.

Ohm's Law.

Power.

Power factor - AC circuits; correction of; problems.

Rectifiers.

Resistance - Of wire.

Rigging.

Safety - Electrical shock.

Services.

3-wire system.

Tools.

Transformers - Principles of; types; single-phase; 3-phase connections.

Voltage polarity across a load.

Wiring methods - Conduit; general.

Wiring systems - Less than 600 volts; 480/277 volts; single-and 3-phase delta or wye; distribution systems over 600 volts.

Note: The general administrator, master journeyman, and journeyman electrician examinations may also include the subjects listed below for specialty electrician examinations.

(b) For specialty administrators, master specialty and specialty electricians, the following subjects are among those that may be included in the examination. Examination subjects are restricted to those subjects related to the scope of work of the specialty described in WAC 296-46B-920. The list is not exclusive. The examination may also contain subjects not on the list.

AC - Meters.

Administration - Chapter 19.28 RCW and this chapter.

Appliance circuits or controls.

Blueprints - Floor plans; service and feeders.

Cables - Wiring methods.

Calculations.

Circuits - Series; parallel; combination; basic; outside branch.

Conductor - Voltage drop (line loss); grounded; aluminum or copper.

Conduit - Wiring methods.

Electrical signs, circuits, controls, or services.

Electrical units.

First aid.

Fuses.

General lighting.

Grounding of conductors.

Insulation of wire.

Limited energy circuits or systems.

Maintenance of electrical systems.

Mathematics - Figuring percentage.

Motor circuits, controls, feeders, or services.

Ohm's Law.

Overcurrent protection.

Resistance of wire.

Safety - Electrical shock.

Services.

Sizes of building wire.

3-wire system.

Tools.

Transformer - Ratios; single-phase/3-phase connections.

Failing an administrator certificate exam or electrician certificate of competency examination.

(9) Anyone failing an administrator or electrician competency examination may retake the examination by making arrangements with the testing agency and paying the retesting fee.

(10) If the individual makes a failing score (~~of less than sixty percent~~), the individual must wait two weeks before being eligible to retest.

(11) (~~If the individual makes a score of sixty to sixty-nine percent, the individual must wait one day before being eligible to retest.~~

(12)) If the individual fails an electrician examination or a part of an administrator or master electrician examination

three times within a one-year period, the individual must wait three months to retake the failed portion of the examination.

~~((13))~~ (12) Anyone failing an electrician competency examination may continue to work in the electrical trade if they have a valid electrical training certificate and work under the direct supervision of a certified journeyman or specialty electrician in the proper ratio, per RCW 19.28.161.

Cheating on an examination.

~~((14))~~ (13) Anyone found cheating on an examination, attempting to bribe a proctor or other agent involved in administering an examination, or using inappropriate materials/equipment during an examination will be required to wait at least eleven months before being allowed to reexamine. All such reexaminations will be administered by the department in Tumwater, Washington and the candidate will be required to apply and schedule for the examination with the chief electrical inspector.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-965 Training certificate required. General.

(1) A training certificate is required for all individuals throughout the individual's enrollment and matriculation in an approved construction electrician training school program described in RCW 19.28.191. A training certificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current journeyman certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work; or

(c) ~~(Possess a valid temporary electrician permit;~~

~~(d) Possess a valid temporary specialty electrician permit while working in that specialty's scope of work; or~~

(e)) Is not working in exempt status as allowed by chapter 19.28 RCW.

(2) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

Original training certificates.

(3) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC 296-46B-909.

All applicants for an electrical training certificate must be at least sixteen years of age. The original training certificate will be valid for two years.

(c) If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

Specialty specific - zero percent and seventy-five percent supervision modified training certificates.

(4) For specialties as allowed in Table 945-1 (i.e., specialties with seven hundred twenty minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate (~~or temporary specialty electrician permit obtained as described in WAC 296-46B-940(28)~~), the individual must submit a complete application for a seventy-five percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-46B-909.

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

Renewal of training certificates.

(5) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for two years.

(6) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC 296-46B-909.

(7) All applicants for training certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a training certificate, the individual's training certificate may be suspended.

Continuing education for trainees seeking pump and irrigation **(03)** and domestic pump **(03A)** experience credit may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(d) Within thirty days after renewing an electrical training certificate, the individual, if not enrolled in a department approved apprenticeship program, must submit a completed, signed, and notarized affidavit(s) of experience for all hours of experience gained since the individual's last training certificate was effective.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within twenty days after the trainee requests the affidavit. See WAC 296-46B-965(6). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

(i) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;

(ii) The correct electrical category the individual worked in; and

(iii) The actual number of hours worked in each category worked under the proper supervision of a Washington certified, master journeyman electrician, journeyman electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be submitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual.

(8) An individual who has not completed the required hours of continuing education can renew a training certificate if the individual applies for renewal before the training certificate expires and pays the appropriate renewal fee. However, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to current status upon validation, by the department, of the required continuing education.

(9) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(10) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(11) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW when the individual renews an electrical training

certificate, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master journeyman electrician, journeyman electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the applicant and the training director are the only authorized signatures the department will accept on affidavits of experience.

(12) The individual and their employer(s) and/or apprenticeship training director(s) must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

Trainees without supervision present on the job site.

(13) When the supervising electrician is found to not be present on the job site, the trainee will be given a form by the inspector that must be returned or postmarked within twenty-four hours to the inspector. If the supervising electrician fails or refuses to assist the trainee in completing the form, the trainee must return the form with a signed and dated statement stating the supervising electrician's name and saying that the supervising electrician refused to assist. The form will require the following information:

(a) Date and time the form was given to the trainee;

(b) Job site address;

(c) Contractor's name and contractor's license number;

(d) Electrical work permit number;

(e) The times the supervising electrician left and returned to the job site;

(f) The trainee's beginning and ending times for that day for each job;

(g) The trainee's name, training certificate number, and signature;

(h) The supervising electrician's name, electrician certificate number, and signature.

(14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 and 296-46B-990 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

Trainees seeking a journeyman electrician certificate - working with no supervision.

(15) Trainee seeking a general (01) journeyman electrician certificate of competency. After review by the department, a trainee may be issued a six-month, nonrenewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

(a) Has submitted a complete application for an unsupervised electrical training certificate;

(b) Has worked over seven thousand hours properly supervised not to include more than four thousand of specialty experience;

(c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;

(d) Has paid all appropriate training certificate fees listed in WAC 296-46B-909; and

(e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified journeyman or specialty electrician in the appropriate specialty.

Trainees seeking certain specialty electrician certificates - working with reduced or no supervision.

(16) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (4) of this section.

(17) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-family dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-970 Continuing education. General requirements - continuing education classes requirements for administrator, master electrician, and electrician renewal.

(1) DEFINITIONS - for purposes of this section.

(a) "Applicant" means the entity submitting an application for review.

(b) "Application" means a submittal made by an applicant seeking instructor or class approval.

(c) "Calendar day" means each day of the week, including weekends and holidays.

(d) "Class" means continuing education class or course.

(e) "Contractor" means the entity who has contracted with the department to review and approve/deny continuing education classes and instructors.

(f) "Date of notification" means the date of a request for additional information from the contractor or the approval/denial letter sent to the applicant by the contractor.

(g) "Individual" means an administrator or electrician seeking credit for continuing education.

(h) "Instructor" means an individual who is authorized to instruct an approved continuing education class.

(i) "Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval or course length or instructor qualifications, the department may revoke the class or instructor approval and reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for those classes are automatically approved and do not need to be sent to the contractor for review.

(c) Instructors who meet the minimum requirements using subsection (5)(b)(i)(D) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications under subsection (5)(b)(i)(D) of this section.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic electrical classroom training class that have similar class content given during the same class session). No credit will be granted for any class not approved per this section.

(e) Telecommunications administrators do not require continuing educations.

(f) Other administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the 2008 National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the prior electrician certificate period. The individual is not required to take the classes in separate years.

(A) Eight hours of the required continuing education must be on the changes in the currently adopted National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing educations.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(g) Training certificates:

(i) To be eligible for renewal of a training certificate, the individual must have completed:

(A) At least sixteen hours of approved basic classroom electrical training classes. The individual cannot use a basic classroom electrical training class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(B) Equivalent electrical training courses taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or

- Electrical training program under RCW 19.28.191

(1)(h).

Note that only trainees seeking experience credit in the pump and irrigation (03) or domestic pumping (03A) specialties may take pumping industry basic classroom training classes;

In addition, trainees working in the pump and irrigation (03) or domestic pump (03A) specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).

(h) A continuing education class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal requirements.

(i) If neither the electrical board nor the department has a contract in effect as described in this section, the department may, at its option, elect to act as the contractor. If a contractor is not in place and the department elects not to act as the contractor, the electrical board will act as the contractor. If either the electrical board or the department acts as the contractor, the following will apply:

(i) The fee for class or instructor submittal is as set in WAC 296-46B-909.

(ii) The electrical board or the department will:

(A) Review the application for completeness within fifteen working days after receipt.

(B) If the application is incomplete, notify the applicant within seven working days of the status of the review and what additional information is required.

(C) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(iii) An appeal of a denial by the department will be heard by the full electrical board in accordance with WAC 296-46B-995.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The contractor will review submitted class and instructor applications to determine whether the application meets the minimum requirements for approval.

(b) The contractor will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Minimum requirements:

(i) Application review fees:

(A) The contractor may charge a fee for review of an application. Such fees, paid by the applicant, are nonrefundable.

(B) The fee will be as set by contractor between the department and the contractor.

(C) The fee will be set for a minimum of one year.

(D) Upon mutual agreement between the department and the contractor, the fee may be raised or lowered.

(ii) Application:

(A) The applicant must submit a complete application to the contractor at least thirty calendar days prior to offering or instructing a class.

(B) The contractor will only consider material included with the application when reviewing an application.

(C) All applications will consist of:

- One copy of all material;
- Applicant's name, address, contact name, and telephone number;
- All required fees;
- Any other information the applicant wants to consider during the review; and
- Class applications will include:
 - Sponsor's name, address, contact name, and telephone number;
 - Class title;
 - Number of continuing education hours requested for the class;

– Category of class for which approval is sought (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);

- Any required examinations;
- Statement of whether the class is open to the public;
- Class syllabus (e.g., general description of the training, specific NEC articles referenced, time allowed for various subject matter, etc.). Note that for all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction;

– List of resources (e.g., texts, references, etc.);

– Copies of all visual aids;

– Sample of the completion certificate.

• Instructor application will include:

- Instructor's name, address, telephone number;
- Copies of credentials or other information showing conformance with the instructor minimum qualifications.

• The sponsor of a distance learning (i.e., correspondence and internet classes) class will provide the following information with the application:

– How will the sponsor provide an orientation session with the instructor or an affiliated representative of the sponsor.

– The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material. Provide an assessment of the availability and adequacy of the equipment, software, or other technologies. In the case of computer-

based instruction, describe how the class software addresses automatic shutdown after a period of inactivity.

– How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.

– The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.

– The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.

– The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.

– The application must demonstrate how you determined the number of clock hours requested.

– The application must demonstrate how mastery of the material is provided by: Describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction.

(e) Contractor's review process:

(i) When the application is received, the contractor must:

(A) Date stamp the application;

(B) Review the application for completeness within seven working days after receipt.

(ii) If the application is incomplete, the contractor must within two working days notify the applicant of the status of the review and what additional information is required.

(A) The applicant must provide any additional information requested by the contractor within five working days after the date of notification.

(B) The contractor will deny the application if the additional required information is not received within the five working days after the date of notification.

(iii) When the contractor has received a complete application, the contractor must review and evaluate the application for compliance with the minimum requirements.

The contractor must complete the review and approval/denial process within seven working days upon receipt of a complete application or additional requested information and within two working days notify:

• The applicant in writing; and

• The chief electrical inspector in writing and electronically. The contractor's electronic notification to the chief electrical inspector must be made in a format approved by the chief electrical inspector.

(iv) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(v) A notification of approval:

(A) For classes must include:

- Applicant's name and telephone number;
- Sponsor's name and telephone number;
- Class title;
- Class number;

• Number of hours approved for the class. Note that the contractor may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

- Effective date for this class;
- Expiration date of class;
- Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);

• Sample of written class roster and attendance sheet;

• Type of class (i.e., classroom, correspondence, internet); and

• Whether the class is open to the public.

(B) For instructors must include:

- Applicant's name and telephone number;
- Instructor's name and telephone number;
- Effective date for the approval; and
- Expiration date of the approval.

(vi) Applicant's request for review of the contractor's decision:

The applicant's may request a review of the contractor's decision to deny or modify an application:

- All requests for review must be:
- Made in writing;
- Received by the chief electrical inspector within twenty calendar days of the contractor's denial; and
- Accompanied by a review fee of \$109.50. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(b) Minimum requirements:

(i) Class content:

(A) Industry-related classes must be based on:

- Codes or rules included in the NEC chapters 19.28 RCW or 296-46B WAC;
- Electrical theory based on currently published documents that are readily available for retail purchase; and/or
- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace health and safety such as NFPA 70E - Handbook for Electrical Safety in the Workplace. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the latest adopted version of the NEC and must specify the NEC articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic classroom electrical training classes and pumping industry basic classroom training classes must be classroom instruction only and based upon basic electrical theory, use of the NEC, and/or use of the electrical laws and rules. Correspondence and internet classes are not allowed. All basic classroom electrical training classes must include an appropriate written examination to ensure the participant understands the basic concepts of the class. To successfully complete the class, the participant must score at least seventy percent on the examination.

(E) In addition, for pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(ii) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic classroom electrical trainee classroom training or pumping industry basic classroom trainee classroom training is eight hours that can be delivered in multiple classroom sessions of not less than two hours each.

(B) The maximum allowed credit for a class is twenty-four hours.

(C) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.).

(D) Class length must be based on the following:

- Classroom instruction will be based on the total hours the individual is in the classroom. A class may be divided into multiple sections so long as each section is not less than two hours in length and all sections are taken within a one month period.

- ~~((Correspondence instruction))~~ Distance learning (i.e., correspondence and internet classes) will be based on(=

- ~~—A written examination (i.e., twenty five questions will equal one hour of classroom instruction). Individuals must be responsible to determine the correct answer without the assistance of the sponsor.~~

- ~~• Internet instruction will be based on:~~

- ~~—A written examination (i.e., twenty five questions will equal one hour of classroom instruction);~~

- ~~• Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor.~~

- ~~• To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.~~

(iii) ~~Class material must include:~~

~~Supplementary written instruction material appropriate to the type and length of the class.~~

(iv) ~~Class material may include:~~

- ~~• Supplementary internet material;~~

- ~~• Supplementary texts;~~

- ~~• Other material as appropriate))~~ clock hours necessary to complete the class if it was presented in a classroom set-

ting. See the application process in subsection (3)(d)(ii) of this section for distance learning classes for additional information.

~~((v))~~ (iii) Certificates of completion:

(A) The sponsor must award a completion certificate to each individual successfully completing the approved class. To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(B) The completion certificate must include the:

- Name of participant;
- Participant's Washington certificate number;
- Name of sponsor;
- Name of class;
- Date of class;
- Name of instructor;
- Location of the class:

– If a classroom-type class, the city and state in which the class was given;

– If a correspondence class, state the class is a correspondence class;

– If an internet class, state the class is an internet class;

- Class approval number;
- Number of continuing units; and
- Type of continuing education units.

~~((vi))~~ (iv) Instructors:

(A) For classroom instruction except first-aid training, all instructors must be approved per this section; and

(B) For correspondence and internet instruction, the applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section.

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(b) Minimum requirements:

(i) The application must show that the instructor meets one of the following:

(A) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(B) Is an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(C) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(D) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education.

(ii) Any other information the applicant wants to be considered during the review.

(6) FORMS:

(a) The contractor will:

Develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the contractor's form when submitting an application for review.

(7) PUBLICATIONS:

The contractor will provide the department with appropriate material for use by the department on the electrical program web site and may post the application process, review, and approval requirements on the contractor's web site.

(8) CLASS ATTENDANCE:

(a) The contractor is not responsible for monitoring any individual's attendance or class completion.

(b) The department is not responsible for providing verification of an individual's continuing education or basic electrical classroom training history with the class sponsor;

(c) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate ~~((and typed))~~ course attendance/completion roster for each class given. Class attendance will only be verified based on the attendance/completion roster provided by the sponsor. Completion certificates are not an acceptable method of verifying attendance at a class approved in Washington under this chapter.

~~(A) ((The typed attendance/completion roster must be provided within thirty days of class completion.~~

~~(B) In addition,))~~ Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

~~((C))~~ (B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, location of class, date of completion, and instructor's name. ~~((The typed roster must contain the signature of the class sponsor's authorized representative.))~~

(ii) The sponsor must provide the individual a certificate of completion within fifteen days after successful class completion for the individual's personal records. See subsection (4) of this section.

(iii) Individuals will not be granted credit for ~~((continuing education classes))~~ a class unless the sponsor's attendance/completion roster shows the individual successfully completed the class.

~~((iv) The department will keep submitted class rosters on file for four years.))~~

(d) For classes approved under chapter 18.106 RCW for the pumping industry ~~((will be verified through the normal roster reporting method for those classes.~~

~~(e) Classes offered in other states:~~

~~(i) For individuals to apply continuing education units earned from out of state classes, one of the following conditions must be met:~~

~~(A) The individual must request that the class sponsor submit a complete continuing education class application and gain approval for the class as described in this section for classes and instructors. Application for class or instructor~~

approval will not be considered more than three years after the date the class was offered; or

~~(B) The department must have entered into a reciprocal agreement with the state providing class approval.~~

~~(ii) The individual must provide a copy of an accurate and completed award or certificate from the class sponsor identifying the class location, date of completion, individual's names, and Washington certificate number. The department will only accept a copy of the sponsor's certificate or form as evidence that the individual attended and completed the class. The department must verify all out-of-state sponsor's certificates or forms with the issuing state prior to accepting them as evidence of class completion), a class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (c) of this section.~~

(9) Contractor requirements:

(a) The contractor cannot be a sponsor or instructor.

(b) The contractor cannot be an employee of the department.

(c) The contractor must:

(i) Be an independent entity with no organizational, managerial, financial, design, or promotional affiliation with any sponsor or instructor covered under the contractor's review and approval/denial process;

(ii) Employ at least one staff member having a valid 01-General Administrator or 01-General Master Electrician Certificate. This staff member:

(A) Is responsible for reviewing and determining an application's approval or denial; and

(B) Must sign the written notification provided to applicants for all approvals and denials:

(iii) Receive, review, and process all applications as required in this section;

(iv) Allow the department access to the contractor's facilities during normal working hours to audit the contractor's ability to conform to the contract requirements;

(v) Treat all applications as proprietary information;

(vi) Respond to and attempt to resolve complaints contesting the review or approval/denial process performed by the applicant;

(vii) Notify the department within ten working days of any change in business status or ability to conform to this section;

(viii) Maintain one copy, original or electronic, of all applications and associated materials for a period of three years from the date of receipt.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-980 Enforcement—Installations, licensing, and certification requirements. (1) The department inspects the electrical worksites of individuals, employers, and employees with respect to the methods and installation requirements of chapter 19.28 RCW and this chapter. The department's electrical inspectors and electrical auditors make electrical work inspections. The department's electrical inspectors, electrical auditors, and compliance officers make electrical licensing/certification inspections.

(2) The department ensures that individuals, employers, and employees comply with the electrical licensing and certification requirements of chapter 19.28 RCW and this chapter. To do this, inspections are made by the department's electrical inspectors/auditors and compliance officers.

Compliance officers or electrical inspectors/auditors determine whether:

(a) Each person or entity advertising to do electrical work or doing electrical work on an electrical worksite has a proper license(;) or certificate(, ~~or temporary electrician permit~~);

(b) The ratio, per RCW 19.28.161, of certified journeyman/specialty electricians to the certified trainees on the job site is correct; and

(c) Each certified trainee is directly supervised by an individual who possesses an appropriate certificate of competency (~~or temporary electrician permit~~) for the type of electrical work being performed.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-985 Penalties for false statements or material misrepresentations. (1) A person who (~~knowingly~~) makes a false statement or material misrepresentation on an application, statement of hours, or signed statement to the department may be referred to the county prosecutor for criminal prosecution under RCW 9A.72.020, 9A.72.030, and 9A.72.040. The department may also file a civil action under RCW 19.28.131 or 19.28.271 and may revoke or suspend a certificate under RCW 19.28.241 or 19.28.341.

(2) The department may file a civil action under RCW 19.28.131 or 19.28.271 and may revoke or suspend a certificate of competency under RCW 19.28.341 or 19.28.241 for inaccurate or false reporting of continuing education units on the administrator, master electrician, electrician, or training certificate renewal form.

(3) If the department determines that a course sponsor has issued an inaccurate or incomplete course application or attendance/completion roster, the department may suspend or revoke the course approval and deny future approval of a continuing education course(s) by the course sponsor.

(4) The department may file a civil action under RCW 19.28.271 against both the trainee and the contractor, apprentice training director, or other entity verifying the training hours and may subtract up to two thousand hours of employment from a trainee's total hours if the department determines a false statement or material misrepresentation has been made in an affidavit of experience.

AMENDATORY SECTION (Amending WSR 04-12-049, filed 5/28/04, effective 6/30/04)

WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws. General.

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

Suspension or revocation - of an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, ~~((temporary electrician's permit,))~~ or training certificate.

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, ~~((temporary electrician's permit, temporary specialty electrician's permit,))~~ or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as a master electrician, journeyman electrician, specialty electrician, electrical technician, ~~((temporary electrician, temporary specialty electrician,))~~ or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

~~((d)) (d) ((A temporary electrician permit or temporary specialty electrician permit holder has violated any of the provisions of chapter 19.28 RCW or any rule adopted under chapter 19.28 RCW;~~

~~((e)) (e)) The license or certificate holder incompletely or inaccurately reported continuing education units on an application for renewal; or~~

~~((f)) (f) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.~~

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) Failure to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where

it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license~~((;))~~ or certificate~~((; or temporary electrician permit))~~ is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

Confiscation - of an electrical contractor's license, administrator certificate, electrician certificate of competency, ~~((temporary electrician permit,))~~ or training certificate.

(5) The department may confiscate a license~~((;))~~ or certificate~~((; or temporary electrician permit))~~ that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-995 Electrical board—Appeal rights and hearings. General.

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW the Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW the Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised.*"

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "e-mail," if the member has provided an e-mail address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board shall set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may occur by U.S. mail, facsimile or by electronic mail and shall be determined by the board at the hearing; the members' votes shall be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. Twenty copies of filings and documents must be submitted by ordinary mail, certified or registered mail, or by personal delivery. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

(10) All hearings before the board as a whole shall be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.

(11) All notices of appeal, with a certified check payable to the department in the sum of two hundred dollars if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before the regularly scheduled board meeting at which the hearing would occur. A separate two hundred dollar fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5)(a) - designated administrator not available, RCW 19.28.061 (5)(d) - designated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5)(e) - designated administrator fails to ensure corrections are made would require a six hundred dollar appeal fee). The total appeal fee for each entity seeking an appeal hearing is one thousand dollars maximum

for all violation types. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs testimony or documents for the board's consideration at least forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting.

Appeals

~~((11))~~ (12) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal shall be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars.

~~((12))~~ (13) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least ~~((thirty))~~ forty-five days before a regularly scheduled board meeting. ~~((All parties must submit any))~~ If you want the board to consider written argument, briefs testimony or other documents ((for the board's consideration)), it must be submitted at least ((twenty)) forty-five days prior to the scheduled hearing.

~~((13))~~ (14) Appeals of suspension, revocation, or non-renewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license, must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

~~((14))~~ (15) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

~~((15))~~ (16) Appeals of a continuing education class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)(vi), if the department acts as the contractor pursuant to WAC 296-46B-970 (2)(i) to the superior court per RCW 34.05.542(3).

~~((16))~~ (17) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

~~((17))~~ (18) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

~~((18))~~ (19) If appeal(s) according to subsections ~~((11))~~ (12), (13), ~~((and))~~ (15), and (16) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

~~((19))~~ (20) Appeals - general requirements.

(a) Appeals according to subsections ~~((11))~~ (12), ~~((or))~~ (15), or (16) of this section must specify the contentions of the appellant, and must for subsection ~~((12))~~ (13) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board shall not grant a hearing *duo novo*.

(b) In appeals under subsections ~~((12))~~ (13), (14), ~~((and))~~ (15), and (16) of this section, the issues to be adjudi-

cated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

Appearance and practice before board.

~~((20))~~ (21) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

~~((21))~~ (22) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-997 Engineer approval. (1) This section describes the methods required to obtain recognition and accreditation of professional engineers registered under chapter 18.43 RCW to approve industrial utilization equipment. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) Industrial utilization equipment is considered to be safe when it is certified by an engineer accredited by the department.

(a) The department may declare industrial utilization equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares industrial utilization equipment unsafe, the department will notify the product owner and the certifying engineer in writing.

Accreditation - general.

(3) The department's chief electrical inspector's office reviews requests for accreditation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of an engineer will be valid for the period of three years.

(5) On-site inspection of an engineer's facilities.

(a) On-site inspection of the facility(ies) may be required during the initial application process or the renewal process. Representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all engineers who certify industrial utilization equipment offered for sale in the state of Washington must be accredited by the department.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The engineer must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period of three years or notify the renewing engineer of the department's reason(s) of refusal following receipt of the completed form and renewal fee.

(9) The department accepts or denies engineer accreditation for engineers seeking to evaluate industrial utilization equipment within the state. Accreditation is determined when an engineer provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the engineer.

(a) Accreditation is subject to review when deemed necessary by the department. The engineer must pay all costs associated with on-site review.

(b) Every accredited engineer must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. An engineer must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of industrial utilization equipment items approved;

(ii) Organizational structure of the engineer's company;

(iii) Statement of ownership of the engineer's company; and

(iv) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter.

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of the engineer.

(10) The engineer will be approved to certify industrial utilization equipment.

Suspension or revocation.

(11) The department may suspend, revoke, or refuse to renew the department's accreditation of any engineer found to be in noncompliance with requirements of this chapter, the laws of the state of Washington, or submitting false information.

(12) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of an engineer.

(13) An engineer, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. An engineer, whose accreditation has been revoked, may reapply for accreditation no sooner than two years after the date of revocation of accreditation.

Business structure, practices, and personnel.

(14) The engineer must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with owners, manufacturers, suppliers, installers, or vendors of products covered under the engineer's certification or evaluation programs.

The engineer must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the engineer.

(15) The engineer must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond to and attempt to resolve complaints concerning certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the engineer's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(16) Engineers accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited; or

(c) Change in independent status.

(17) The engineer must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Verification and maintenance of facilities and/or equipment; or

(d) Sample selection as applicable for product certifications, and for component testing as necessary for evaluations.

The plan must demonstrate that the engineer has adequate facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the engineer's operations control manual.

(18) The engineer must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The engineer's quality control system must include a quality control or engineer's operations control manual;

(b) The quality control or engineer's operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the engineer's certification and/or evaluation program(s); and

(c) The engineer must have a current copy of the quality control or engineer operations control manual available for the engineer's use.

(19) The engineer must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought.

(20) The engineer must:

(a) Provide adequate safeguards protecting the engineer's status from the influence or control of manufacturers, vendors, owners, or installers of electrical products certified or tested by the engineer; and

(b) Develop and maintain an adequate training program assuring that the engineer will be able to perform tasks properly and uniformly.

Recordkeeping and reporting - general.

(21) The engineer must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each piece of industrial utilization equipment. The engineer must retain these records for a minimum of three years.

(22) The engineer must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

(23) Before beginning the work, the engineer must notify the department of the intent to evaluate using forms provided by the department. See WAC ((~~296-46B-905~~) 296-46B-906) for fee information. The engineer's evaluation report must include:

(a) Name and address of the engineer;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(e) Description of the overall product evaluated to include full nameplate data and equipment type;

(f) A statement as to whether or not the results comply with the requirements of the standard;

(g) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(h) The engineer's stamp; and

(i) Any condition of acceptability or restrictions on use/relocation.

(24) Within ten calendar days after affixing the evaluation mark, the engineer must submit a copy of the evaluation report to:

(a) The department's chief electrical inspector submitted electronically in a format approved by the department;

(b) Local electrical inspection office submitted electronically in a format approved by the department; and

(c) Client submitted in any format acceptable to the client and engineer.

WSR 09-20-033

PERMANENT RULES

HIGHER EDUCATION

COORDINATING BOARD

[Filed September 30, 2009, 8:43 a.m., effective October 31, 2009]

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

Purpose: To correct typographical and grammatical errors made in the previous revision, which went into effect on January 29, 2009.

Citation of Existing Rules Affected by this Order: Amending chapter 250-61 WAC.

Statutory Authority for Adoption: RCW 28B.76.120 and 28B.85.020.

Adopted under notice filed as WSR 09-11-035 on May 12, 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 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: September 30, 2009.

Michael J. Ball
Associate Director

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-020 Applicability. A degree-granting institution shall not operate, conduct business, grant or offer to grant any academic courses or degree programs unless the institution has obtained authorization from the board, been

granted a waiver of the requirements of authorization, or (~~has~~) been determined by the board to be exempt.

The act applies to:

(1) Institutions granting or offering to grant degree programs and/or academic credit courses either at or from a location within the state; and

(2) Institutions maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose or any function of a degree-granting institution other than contact with the institution's former students; and

(3) Institutions specifically targeting Washington citizens with promotion of their degree programs and/or academic credit courses.

The act does not apply to degree programs and academic credit courses offered exclusively from outside the state through individual and private interstate communication.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-050 Definitions. The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

(1) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(2) "Board" means the Washington higher education coordinating board.

(3) "Executive director" means the executive director of the board or the executive director's designee.

(4) "Accrediting association" means a national or regional accrediting association that is recognized by the board and the Secretary of the U.S. Department of Education.

(5) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(6) "College" means an institution which offers two-year and/or four-year programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(7) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(8) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(9) "Seminary" means an institution which offers one or more professional programs to candidates for the ministry, rabbinate, or priesthood.

(10) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(11) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(12) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(13) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(14) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a board-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the board; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the board.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a board-recognized accrediting association; authorized by the board; or that has been exempted or granted a waiver by the board.

(16) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.

(17) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

(18) "Distance learning" means a form of educational instruction other than classroom instruction, to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(19) "Credit" means the unit by which an institution measures its course work. The number of credit assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(20) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(21) "To operate" means but is not limited to the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, telecommunications number or internet server for any purpose or any other function of a degree-granting institution, other than contact with the institution's former students for any legitimate purpose related to their having attended.

(d) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(22) "Suspend" means that, due to deficiencies, the board interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the board.

(23) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the board has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

(24) "~~((Accrediting))~~ Accredited institution" means an institution that has been accredited by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-060 Exemption criteria. No exemption from the requirements for degree authorization is considered to be permanent. The exemption granted is dependent upon the institution's maintenance of the conditions under which the exemption was granted.

The provisions of this chapter do not apply to:

(1) Honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Any public college, public university, public community college, or public technical college or institute operating as part of the public higher education system of this state.

(3) Institutions that have received institutional accreditation from an association recognized by the board and the Secretary of the U.S. Department of Education, Provided:

(a) The institution has been continuously offering degree program(s) in Washington for fifteen years or more; and

(b) The institution was established originally within the state of Washington and has operated as the same organization continuously from that date until the present. An institution is considered to have operated as the same organization continuously if it has no significant alteration of primary location, ownership, or incorporation and no closure involving cessation of substantially all organized instructional and administrative activity; and

(c) The institution has been accredited as a degree-granting institution for ten years or more by an accrediting association recognized by the board and the Secretary of the U.S.

Department of Education, and maintains such accreditation status; and

(d) The institution maintains eligibility to participate in Title IV financial aid programs.

(4) A branch campus, extension center, or off-campus facility operating within the state of Washington, which is affiliated with an institution domiciled outside this state, Provided:

(a) It has continuously offered degree programs in Washington for fifteen years or more; and

(b) It has held separate institutional accreditation as a free-standing institution for ten years or more by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(c) It maintains eligibility to participate in Title IV financial aid programs.

(5) Institutions offering instruction on a federal enclave solely to federal employees and their dependents. If the institution offers or advertises instruction for other persons, the institution shall be subject to authorization.

(6) Tribally controlled Native American colleges.

(7) Institutions which offer program(s) of study whose sole stated objective is training in the religious beliefs of the controlling religious organization and/or preparation of students for occupations that are primarily church-related, Provided:

(a) The institution's mission reflects its religious nature; and

(b) The institution's degree program(s) in title and abbreviation, curriculum content, and objectives reflect the strictly religious nature of the institution; and

(c) The institution's program(s) ~~((of study))~~ require a prescribed program of study, which must be successfully completed prior to the granting of a degree; and

(d) The institution's program(s) of study are represented in an accurate manner in institutional catalogs, web sites, and other official published materials; and

(e) The institution does not claim or publicize accreditation from an accrediting association that is not recognized by the board and the Secretary of the U.S. Department of Education.

(8) In the case of institutions which offer both religious and secular programs, the secular programs shall be subject to the requirements of chapter 28B.85 RCW.

(9) Institutions not otherwise exempt which offer only workshops and seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-085 Accreditation requirements. An institution ~~((seeking initial degree authorization))~~ operating in Washington shall:

(1) Be accredited by a board-recognized accrediting association; or

(2) Have applied for accreditation and such application is pending before the accrediting association; or

(3) Have been granted a temporary waiver by the board of the requirement for accreditation based upon submission of a plan for accreditation as outlined in the initial authorization application; or

(4) Have been granted an exemption by the board of the requirement for accreditation based upon the following condition: The school has filed, and kept current with appropriate amendments, at the higher education coordinating board an affidavit by each president of two separate accredited colleges or universities accredited by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education stating that the majority of course credits offered by the unaccredited institution are generally acceptable or transferable to the accredited college or university which each president represents.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-090 Administrative requirements. (1) Name. The official name of the institution shall be consistent with, and appropriate to, the program(s) of study offered.

(2) Purpose. The institution shall clearly define its purpose or mission in an official statement which describes its role in higher education. The statement shall reflect the practices of the institution.

(3) Administration and governance. The institution shall be governed by bylaws or policies defining a chain of authority and responsibility.

(a) Administrators shall normally be graduates of accredited institutions and have academic credentials and prior higher education administrative experience for their area of responsibility.

(b) The main campus of the institution shall have, as a minimum, personnel to adequately staff the following roles: A chief executive officer, academic officer, registrar, business officer, student services officer, library director, and, if financial aid services are offered, financial aid officer. These officers shall be accessible to students, faculty, and other personnel located at the main campus and at educational sites or centers in Washington. In the event that the proposed Washington site is a branch campus of an out-of-state institution, the branch campus shall also have sufficient personnel to adequately serve the students at that location.

(i) The chief executive and academic officers shall have at least ~~(the)~~ a master's degree and experience in college-level management, teaching, and academic administration, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(ii) The registrar shall have at least a baccalaureate degree from an accredited institution and college-level experience in admissions and student records, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(iii) The business, student services, and financial aid officers and library director shall have at least ~~(the)~~ a baccalaureate degree from an accredited institution and experience in their assigned areas, unless the institution can demonstrate

that these are not the normally accepted standards for an institution offering the same level of instruction.

(c) The institution shall specify an individual who will serve as the principal contact person for each educational site or academic center in Washington.

(d) The institution shall have policies and provisions for the involvement of faculty in the academic affairs, curriculum development, and governance of the institution.

(e) The institution ~~((also))~~ shall have policies and provisions for faculty selection, orientation, teaching load, supervision, evaluation, and professional development.

(4) The following conditions shall disqualify individuals as an administrator of a degree-granting institution:

(a) Conviction of a felony within the past ten years;

(b) Involuntary surrender of authorization or a license to operate a school in Washington;

(c) Having been served with a cease and desist order for activities in violation of the current *Washington Administrative Code*; or

(d) Denial of renewal of authorization or a license because of violation of the current *Washington Administrative Code*.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-100 Academic requirements. (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the board and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

(I) Communications;

(II) Computation; and

(III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of the Washington inter-college relations commission.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science ~~(s)~~ (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education require-

ments for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc.(s) for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) Distance learning program(s) of study must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings.

(f) Noncollegiate learning.

(i) Undergraduate credit for noncollegiate learning may be awarded when validated through a portfolio or similar procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process. Noncollegiate learning credit shall constitute no more than twenty-five percent of an undergraduate degree program.

(ii) Credit awarded for noncollegiate learning at the graduate level must be consistent with the minimum standards as published by the school's accrediting association.

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or

implied in the statute. The results of those evaluations shall be submitted to board staff upon request.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-120 Catalog requirements. (1) An institution granted authorization shall publish a catalog supplemented as necessary by other published materials, providing sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

(2) An institution granted authorization shall print a statement in a prominent position in the catalog and on its web site that reads: "~~(The)~~ (Name of institution) is authorized by the Washington Higher Education Coordinating Board (HECB) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer the following degree programs: (List). Authorization by the HECB does not carry with it an endorsement by the board of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the HECB at P.O. Box 43430, Olympia, WA 98504-3430."

(3) The catalog shall include elements as required by the board in application materials such that a prospective student may become reasonably informed about the institution, its offerings, policies and procedures.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-130 Cancellation and refund requirements. (1) Each institution shall publish its cancellation and refund policies in clear language that can be easily understood by prospective students. No student shall be enrolled without having received the explanatory materials. These policies shall apply to all terminations for any reason, by either party.

(2) The refund policy shall comply with the federal guidelines established by the U.S. Department of Education and the standards established by the accrediting association which accredits the institution((s)) or from which the institution is seeking accreditation.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-170 Application requirements. (1) Initial application((s)).

(a) Institutions seeking initial authorization shall contact the board staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by board staff. The application packet will not be considered complete until all required elements have been received by the board.

(c) An initial application fee in the amount of two thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington state treasurer.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by board staff.

(b) No later than the due date provided by the board, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by board staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) A renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington state treasurer.

(3) Additional program(s).

(a) If an institution proposes to offer additional program(s) of study during the current authorization period, the institution shall submit a new program application well in advance of the proposed offering.

(b) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(4) Additional site(s).

(a) If an institution proposes to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Change of ownership or control. A significant change of ownership or control of an institution shall nullify any previous authorization. The chief administrator, representing the new owner(s), shall notify the board as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the executive director may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the board no later than sixty days prior to the expiration of the temporary certificate of authorization.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-210 Hearing process. (1) A party subject to the following actions may request a hearing:

(a) A denial of exemption from the Degree-Granting Institutions Act;

(b) A denial of authorization under the Degree-Granting Institutions Act;

(c) A cease and desist order issued under chapter 28B.85 RCW; or

(d) Other final action as defined in chapter 34.05 RCW, by the executive director that adversely affects the institution or student and which is contrary to the intent and purpose of the Degree-Granting Institutions Act or this chapter.

(2) A party must submit a request for a hearing to the executive director at the board office no later than thirty days following receipt of the notice of final agency action. In the written request, the party must identify the final action in dispute and state that a hearing is requested.

(3) Any hearing called for under the act shall be conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW, as follows:

(a) The presiding officer, who shall be the executive director or the hearing officer designated by the executive director, shall conduct the hearing under the provisions of chapter 34.05 RCW and shall enter an initial order under RCW 34.05.461 (2) through (9).

(b) The board shall review the initial order under RCW 34.05.464 and either enter a final order or remand the matter for further proceedings under RCW 34.05.464(7).

(c) If the challenged agency action is upheld, the party that initiated the hearing process shall pay the costs of the administrative hearing within sixty days following final disposition of the matter.

(d) Any further review of final action must be taken in accordance with RCW 34.05.510 et seq.

WSR 09-20-039
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 30, 2009, 9:48 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The following amendments will clarify our rules and make them easier to administer and understand: WAC 296-17A-6306, stores, furniture creates a subclassification for businesses providing audio visual services; WAC 296-17A-6601, detective agencies, adding a subclassification for businesses providing process services and legal messenger services; WAC 296-17A-5301, accounting or bookkeeping services, correct reference to establishments engaged in providing process services and legal messenger services to classification 6601; and WAC 296-17A-6303, outside sales personnel, NOC messengers, add reference to establishments providing process and legal messenger services are to be reported in classification 6601.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-6306, 296-17A-6601, 296-17A-5301, and 296-17A-6303.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100.

Other Authority: Title 51 RCW.

Adopted under notice filed as WSR 09-16-124 on August 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; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 29, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5301 Classification 5301.

5301-10 Accounting or bookkeeping services

Applies to establishments engaged in providing general accounting or bookkeeping services to others. Types of services contemplated by establishments subject to this classification include, but are not limited to, auditing, tax preparation, medical or dental claims processing and billing, and/or advisory services. This classification includes all employments such as, but not limited to, clerical office, outside sales, and personnel who travel from one office to another.

This classification excludes establishments engaged primarily in management consultant services that are not otherwise classified, which are to be reported separately in classification 5301-12.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-11 Law firms

Applies to establishments engaged in providing legal services to others. Law firms may specialize in one or more areas of law. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

Special note: This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-12 Management consultant services, N.O.C.

Applies to establishments engaged in providing management consulting services not covered by another classification (N.O.C.). Management consultants typically will observe and analyze organizational structures, work processes or work flows, mail distribution, computer or communication systems, and planning or development of related business needs. After a thorough analysis, consultants usually prepare a written report for the customer which identifies problem areas and/or recommends improvements to processes or equipment. Consultants may remain to oversee the implementation of the recommended improvements. Consultants subject to this classification do not sell any product they have recommended although they may act as an agent for their client in purchasing the product. Consulting projects vary from client to client depending upon the contract. Included within this classification are businesses that provide similar consultative services such as, but not limited to, advertising agencies, employer representative organizations, public relations companies, mortgage brokers and financial advisers who do not make purchases on behalf of their clients. This classification includes clerical office staff, outside sales personnel and other staff who travel from one office to another.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-13 Credit bureaus; collection agencies

Applies to establishments that are licensed to provide collection and/or credit investigation services to others. Services include, but are not limited to, the collection of NSF checks or delinquent debts owed to clients of the collection agency and checking the credit backgrounds of their client's potential customers. If debts are not collected, the service agency may initiate legal proceedings against the debtor. This classification includes clerical office and outside sales personnel, and other staff who travel from one office to another ~~((; and process servers, although collection agencies subject to this classification generally employ process servers of other businesses to deliver legal documents))~~.

This classification excludes establishments engaged in providing process ~~((serving))~~ and legal messenger services which ~~((may))~~ are to be reported separately in classification ~~((6303 provided all the conditions of the general reporting rules covering standard exception employees have been met))~~ 6601.

5301-14 Employment agencies

Applies to establishments that are licensed to provide employment services for others. Clients of employment agencies may be persons seeking employment or companies looking for employees. Employment agencies usually conduct preliminary interviews with candidates for positions prior to referring them to their client companies for interviews. Generally, establishments subject to this classifica-

tion place people in permanent positions. This classification includes clerical office and outside sales personnel, and staff who travel from one office to another.

This classification excludes employees of a temporary help agency who are assigned to work in the administrative or branch offices of the agency who are to be reported separately in classification 7104 and employees of a temporary help agency who are assigned on a temporary basis to its customers who are to be reported separately in the appropriate temporary help classification.

5301-15 Court reporting services

Applies to establishments engaged in providing court reporting services to others. Court reporters record verbatim testimony presented in court proceedings, depositions, public hearings or meetings. The most frequently used method to record testimony is by stenotype machine, although it may be recorded by voice recording on audio tape, or by manual shorthand. Transcription of the recorded material may be performed by the court reporter or by "note readers" or typists. The majority of court reporters today use computer-aided transcription systems. Court reporters may also offer notary public services for their clients. This classification includes clerical office and staff who travel from one office to another.

5301-16 Service and professional organizations

Applies to establishments engaged in protecting or furthering the interest of their members and/or the general public. Many of these operate as nonprofit organizations. Service and professional organizations may perform one or many of the following activities: Maintain a membership directory; collect membership dues; publish a newsletter; sponsor educational training programs; administer certification tests; provide job placement assistance; award scholarships; offer insurance programs; research and interpret local, state, and federal regulations and apprise members of the results; manage promotional marketing programs; organize fund raising campaigns; perform charitable community services; sponsor athletic leagues and tournaments; host conventions; disburse funds; perform collective bargaining; arbitrate disputes; provide counseling, adoption, and advocacy services; lobby the legislature; compile, review, and disseminate informational data; operate a tourist information center; issue vehicle license registrations, plates, decals, and certificates of title. Also included in this classification are Economic Development Councils, Boards, or Associations. These nonprofit organizations provide economic consulting services and related statistics to government and industry in the promotion of economic stability, and recruit businesses who will create jobs and provide loans from the grant funds they manage. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

This classification excludes labor unions and employee representative associations which are to be reported separately in classification 6503, and the collection of donated items by truck which is to be reported separately in classification 1101.

Special note: If a charitable organization subject to classification 5301 operates a retail store for the sale of donated items, the collection of those items by truck, and all store

operations, are to be reported separately in classification 6504.

5301-18 Telephone answering services

Applies to establishments engaged in providing telephone answering services for others. Customers include, but are not limited to, medical professionals, attorneys, private businesses, and individuals. Most answering services today use computerized communications systems to identify company names when answering calls for various companies, obtain correct information about the company to respond to questions, record and relay accurate messages in a timely manner. Related services often offered by telephone answering service companies include, but are not limited to, voice mail or paging, rental of office space, telemarketing, dispatching, monitoring alarm systems, placing reminder calls, and scheduling appointments for customers. This classification includes clerical office personnel and staff who travel from one office to another.

5301-19 Travel agencies

Applies to establishments engaged in providing travel arrangement services for others. Travel agencies coordinate all types of travel arrangements for their clients through air, cruise, train, or bus lines, hotels, motels, or resorts, car rental agencies, travel insurance companies, and related travel providers. Services vary and could include delivery of tickets and itineraries to clients, booking reservations and selling tickets for tours, excursions, or other entertainment events, or arrangement of special needs for disabled or elderly travelers. This classification includes clerical office and sales staff who travel from one office to another.

5301-21 Word processing or secretarial services

Applies to establishments engaged in providing word processing or secretarial services to others. Services include, but are not limited to, desktop publishing, dictation and transcription services, typing/compiling reports, proposals, resumes, or correspondence, sending faxes, and making copies of documents. A pickup and delivery service may be offered. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6303 Classification 6303.

6303-00 Outside sales personnel, N.O.C.; messengers

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering outside sales personnel, and who are not covered by another classification (N.O.C.) assigned to the

employer's account. Duties of outside sales personnel contemplated by this classification are limited to soliciting new customers by telephone or in person, showing, selling, and explaining products or services, servicing existing accounts, completing correspondence, placing orders, performing public relations duties, and estimating. Duties of messengers are limited to delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business.

This classification excludes the delivery of products or merchandise or the stocking of shelves which is to be reported separately as applicable; the demonstration or delivery of machinery or equipment which are to be reported separately as applicable, establishments engaged as collection agencies or public relations agencies which are to be reported separately in classification 5301; establishments engaged in providing inspection and valuations exclusively for insurance companies which are to be reported separately in classification 4903; establishments engaged in process and legal messenger services which are to be reported separately in classification 6601.

Special note: When considering this classification care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, collectors, counselors, consultants, or appraisers may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

6303-03 Insurance sales personnel and claims adjusters

Applies to insurance sales personnel and claims adjusters with outside duties. Duties of employees subject to this classification are limited to selling insurance policies at their place of business or at the client's home, or going to the scene of an accident or catastrophe to assess damage. Work may be performed within an office or away from the employer's premises.

Special note: Individuals performing duties as an agent, broker, or solicitor (and hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010, 48.17.020, and 48.17.030. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department.

6303-21 Home health care services: Social workers and dietitians

Applies to social workers and dietitians employed by home health care service establishments who provide care for handicapped individuals. Duties of these employees include teaching physically or developmentally disabled individuals in their own home to manage daily living skills such as caring for themselves, dressing, cooking, shopping, and going to the doctor. This classification also includes dietitians, sometimes called nutritionists, who usually are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, including current food intake, medical background, family history, currently prescribed medications, and social and psychological needs, then develops, a

food plan to meet the patient's needs. Employees subject to this classification do no cooking.

This classification excludes nursing and home health care services which are to be reported separately in classification 6110; therapy services which are to be reported separately in classification 6109; domestic servants who are to be reported separately in classification 6510; and chore workers who are to be reported separately in classification 6511.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met. *This classification is not to be assigned to any account that does not also have classification 6110 and/or 6511.*

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6601 Classification 6601.

6601-00 Detective agencies

Applies to establishments engaged in providing investigative and related services for others. Services include, but are not limited to, investigating corporate embezzlement and fraud, employee theft, insurance fraud, missing person cases, matrimonial or child custody disputes, conducting background checks, tracking and apprehending fugitives, monitoring burglar or fire alarm systems, or provide polygraph testing or fingerprinting services. Investigative methods include checking public records, conducting interviews, surveillance, and undercover operations. As a general rule, the detective agency provides clients with a final report, which includes documentation, photographs, or videotapes.

This classification excludes establishments engaged in providing customer shoplifting surveillance within retail stores which are to be reported separately in classification 6601-01 and surveillance employees hired as direct employees of a nondetective or security agency who are to be reported separately in the classification applicable to the establishment.

6601-01 Merchant police or patrol

Applies to establishments engaged in providing security services to shopping centers, malls, business parks, banks and other businesses. Services include, but are not limited to, monitoring parking lots and garages, maintaining public security in malls, hospitals, and banks, providing surveillance for theft or shoplifting, and monitoring alarm systems.

This classification excludes detective agencies which are to be reported separately in classification 6601-00 and security guard services which are to be reported separately in classification 6601-02.

6601-02 Security guard agencies

Applies to establishments engaged in providing general security guard services for clients such as airports, commercial, industrial, residential and governmental facilities. Services include, but are not limited to, protecting persons or buildings, responding to fire or burglar alarms, protecting and/or transporting executives, providing security at strikes, and conducting electronic sweeps. The clients' security systems may be connected to a central security system of the

security guard agency, where employees of the security guard agency monitor the client's systems and notify the appropriate authorities if necessary. As a general rule, security guards, do not have police powers.

This classification excludes security guards at logging sites who are to be reported separately in classification 6601-03 and security guards at construction sites who are to be reported separately in classification 6601-04 provided the conditions in the special exception section of the general rules have been met.

6601-03 Security guards at logging sites

Applies to employees of logging contractors or landowners who are employed as security guards to maintain security at logging sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at logging sites.

6601-04 Security guards at construction sites

Applies to employees of construction contractors or landowners who are employed as security guards to maintain security at construction sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at construction sites.

6601-05 Armored car services

Applies to establishments engaged in armored car services which transport cash or valuables for businesses such as, but not limited to, banks, supermarkets, and jewelry stores to other destinations. Also included are armored car services which collect or deposit money into or from automatic teller machines.

6601-06 Crowd control services

Applies to establishments engaged in providing crowd control services. Crowd control services is a growing field and may include, but not be limited to, crowd management at sporting events, race tracks, live concerts, rallies, conventions, rodeos, and fairs. This classification includes parking lot staff, and rule enforcement employees such as uniformed or plain clothes security guards who maintain order as well as providing personal protection.

This classification excludes theatre ushers, inside ticket takers, set up crews and stagehands who are to be reported separately in classification 4504.

6601-07 Process/legal messenger services

Applies to establishments engaged in providing process services and legal messenger services for others. Process servers deliver legal documents such as summonses, complaints, subpoenas and writs to individuals. A legal messenger delivers legal papers between legal representatives and the courts. Services may also include checking public

records, surveillance work, and conducting interviews to locate recipients of legal documents. They will provide clients with a final report of service or nonservice on the recipient.

This classification excludes errand and parcel delivery services that are to be reported separately in classification 1101.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6306 Classification 6306.

6306-00 Stores: Furniture - wholesale or retail

Stores: Billiard or pool table - wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of new, used, or antique household furniture. This classification also includes the sale of related items such as, but not limited to, lamps, bedding, pillows, floor and window coverings, framed pictures, art pieces and sculptures when sold in connection with a furniture store operation. This classification includes the delivery and the incidental repair of merchandise sold. Incidental repair in this classification is limited to such activities as the repair or cleaning of upholstery or fixing a small scratch on a table. The installation of carpet and window coverings may be included in this classification if such merchandise is part of the store's inventory and is readily available for sale and delivery to the customer. The contract installation of any merchandise which must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, a furniture store could bid on a job to carpet all units of an apartment complex. If the carpet is ordered from the factory as opposed to carpet carried at the store and in the stores inventory, then the installation is to be reported separately in classification 0502. This classification also applies to stores that sell billiard or pool tables.

Special note: Care should be exercised when considering this classification for antique or used furniture stores since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing, or upholstery work which are to be reported separately in the applicable service or repair classification.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-01 Stores: Furniture - rental

Applies to establishments engaged in the rental of new, used, or antique household furniture. This classification also includes the sales of related items such as, but not limited to, lamps, bedding, pillows, framed pictures, art pieces and

sculptures when sold in connection with a furniture rental store operation. This classification includes the delivery and the incidental repair of merchandise rented. Incidental repair in this classification is limited to such activities as the repair or cleaning of upholstery or fixing a small scratch on a table. This classification also applies to establishments that provide rent-to-own purchasing options, and to establishments engaged in the sale or rental of hospital beds, motorized wheelchairs and similar patient appliances.

Special note: Care should be exercised when considering this classification for an antique or used furniture store since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing, or upholstery work which are to be reported separately in the applicable service or repair classification.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-02 Stores: Appliance - wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of gas, electric, or propane household appliances. Household appliances include, but are not limited to, refrigerators, freezers, stoves, range tops, trash compactors, washing machines, clothes dryers, television consoles, big screen televisions, and television antennas or satellite dish receiving units. Appliance stores will routinely carry smaller appliances which are generally referred to as counter top units which include, but are not limited to, mixers, blenders, microwave ovens, toasters and espresso machines and are included in this classification when sold in connection with the appliance store operation. This classification covers the sale of primarily new appliances although establishments subject to this classification accept trade-ins and sell some used appliances. Also included is the incidental repair of appliances sold by the appliance store, parts departments employees, and the delivery of products sold. The contract installation of any merchandise which must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, an appliance store could bid on a job to supply appliances for all units of an apartment complex. If the appliances are ordered from the factory as opposed to items carried at the store and in the stores inventory then the installation is to be reported separately in classification 0607. Establishments engaged in the sale of commercial appliances may be assigned to this classification provided such establishments operate a bonafide store operation. Generally, however, commercial appliances such as those used to equip bakeries and restaurants are factory ordered items which are made to a customer's specifications from a manufacturer's representative.

Special note: Care should be taken when considering this classification for an antique or used appliance store since such establishments are primarily engaged in reconditioning appliances (service and repair) for resale and are to be reported separately in classification 0607.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-03 Stores: Piano or organ - wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of new pianos and organs. This classification includes all operations associated with the store including service, repair, and delivery. It is common for stores subject to this classification to carry other musical instruments such as, but not limited to, guitars, drums and wind instruments as well as provide instructions on the use of instruments.

This classification excludes establishments engaged exclusively in piano tuning which are to be reported separately in classification 4107; stores that sell musical instruments other than pianos or organs which are to be reported separately in classification 6406; and establishments engaged in the reconditioning of organs and pianos accompanied by the related sales of reconditioned pianos and organs which are to be reported separately in classification 2906.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-06 Stores: Office furniture - wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of new, used, or antique office furniture. This classification also includes the sales of related items such as, but not limited to, lamps, floor and window coverings, framed pictures, art pieces and sculptures when sold in connection with an office furniture store operation. This classification includes the delivery of furniture and related items, and the incidental repair of office furniture items sold by the office furniture store such as upholstery repair and cleaning. The installation of carpet and window coverings may be included in this classification if such merchandise is part of the store's inventory and readily available for sale and delivery to the customer. The contract installation of any merchandise that must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, an office furniture store could bid on a job to supply modular desk units for a large office complex. If the desk units are ordered from the factory as opposed to units carried at the store and in the stores inventory, then the installation is to be reported separately in classification 2002.

Special note: Care should be exercised when considering this classification for an antique or used office furniture store since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on

a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing or upholstery work.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-07 Audio/visual equipment rental and event services

Applies to businesses engaged in renting audio/visual equipment and providing temporary setup or "staging" services at hotels, theaters, events, or businesses. Services may include, but are not limited to, the design, cost estimate, rental, and setup of audio/visual equipment such as projectors, cameras, videos, screens, microphones, sound systems, mixers, lights, or grip equipment. These businesses usually store the equipment in their warehouse, stage it in a loading area, load and transport it in a van or truck, or the customer may pick it up. Employees may be stationed at a customer's site, such as a hotel, and equipment may be stored at the customer's site for daily setup. Services provided are usually scheduling and coordination, delivery, equipment setup, testing, cleaning, and repair. Employees may operate equipment during an event or help troubleshoot problems, or return at the end of the event to disassemble the equipment and return it to the warehouse. Businesses in this classification may also offer sales of accessories or other new and used equipment. Repair is usually limited to the businesses' own equipment, but minimal repair services for customers are included in this classification.

This classification excludes:

- Contractors with a limited energy electrical license providing low voltage wiring with installation of audio/visual equipment, who are to be reported in classification 0608.

- Retail stereo component or camera stores which also rent, but provide no staging services, who are to be reported in classification 6406.

- Firms providing equipment setup or repair only, who are to be reported in classification 0607.

- Musicians and their own employees performing stage setup, who are to be reported in classification 6605.

- Sponsors of exhibitions or shows who are to be reported in classification 6208.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

WSR 09-20-040

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed September 30, 2009, 9:51 a.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: According to RCW 70.14.120, L&I is required to comply with the

coverage determinations of the Washington state health technology clinical committee (HTCC).

Purpose: This rule will implement two HTCC coverage determinations. The determinations state that certain lumbar fusion and artificial intervertebral disc replacement surgeries are covered for the treatment of chronic pain due to uncomplicated degenerative disc disease. The principal condition of coverage is that a noninvasive, structured intensive multidisciplinary program for chronic, noncancer pain (SIMP) must be completed prior to the department or self-insurer authorizing a lumbar fusion or lumbar artificial disc replacement. Also, the department will delete language in WAC 296-20-03002 that says the Charite artificial disc is noncovered.

Although the SIMP program is being established for lumbar surgery candidates, as defined in WAC 296-20-12065, the SIMP program is available for other workers with chronic, noncancer pain.

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-03002.

Statutory Authority for Adoption: RCW 70.14.120, 51-04.020, 51.04.030.

Adopted under notice filed as WSR 09-14-106 on June 30, 2009.

Changes Other than Editing from Proposed to Adopted Version: In response to a comment submitted to the CR-102 proposed language, the department added language to WAC 296-20-12070 that clarifies that advanced registered nurse practitioners and certified physician assistants can perform those medical portions of the pretreatment evaluation that are allowed by the commission on accreditation of rehabilitation facilities (CARF). This addition was made to clarify which providers can perform this task and is considered a nonsignificant change.

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 9, 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 9, Amended 1, Repealed 0.

Date Adopted: September 30, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 06-15-110, filed 7/18/06, effective 8/18/06)

WAC 296-20-03002 Treatment not authorized. The department or self-insurer will not allow nor pay for following treatment:

(1) Use of diapulse, thermatic (standard model only), spectrowave and superpulse machines on workers entitled to benefits under the Industrial Insurance Act.

(2) Iontophoresis; prolotherapy; acupuncture; injections of colchicine; injections of fibrosing or sclerosing agents; and injections of substances other than anesthetic or contrast into the subarachnoid space (intra-thecal injections).

~~(3) ((Lumbar artificial disc replacement with Charite lumbar artificial disc.~~

~~(4))~~ Treatment to improve or maintain general health (i.e., prescriptions and/or injection of vitamins or referrals to special programs such as health spas, swim programs, exercise programs, athletic-fitness clubs, diet programs, social counseling).

~~((5))~~ (4) Continued treatment beyond stabilization of the industrial condition(s), i.e., maintenance care, except where necessary to monitor prescription of medication necessary to maintain stabilization i.e., anti-convulsive, anti-spasmodic, etc.

~~((6))~~ (5) After consultation and advice to the department or self-insurer, any treatment measure deemed to be dangerous or inappropriate for the injured worker in question.

~~((7))~~ (6) Treatment measures of an unusual, controversial, obsolete, or experimental nature (see WAC 296-20-045). Under certain conditions, treatment in this category may be approved by the department or self-insurer. Approval must be obtained prior to treatment. Requests must contain a description of the treatment, reason for the request with benefits and results expected.

NEW SECTION

WAC 296-20-12055 Structured intensive multidisciplinary program (SIMP) for chronic noncancer pain. (1) Injured workers eligible for benefits under Title 51 RCW may be evaluated for and enrolled in a comprehensive treatment program for chronic noncancer pain if it meets the definition of a structured, intensive, multidisciplinary program (SIMP). The goals for this program are to help workers recover their function, reduce or eliminate disability, and improve the quality of their lives by helping them cope effectively with chronic noncancer pain.

(2) Prior authorization is required for all workers to participate in a SIMP for functional recovery from chronic pain.

NEW SECTION

WAC 296-20-12060 SIMP requirements for lumbar fusion and artificial disc replacement candidates. Special conditions and requirements apply to workers who are considering having a lumbar fusion or lumbar intervertebral artificial disc replacement due to uncomplicated degenerative disc disease (referred to as lumbar surgery candidates as defined in WAC 296-20-12065). Lumbar surgery candidates must successfully complete a SIMP to obtain authorization for a lumbar fusion or a lumbar intervertebral artificial disc replacement. Refer to WAC 296-20-12095 for referral and prior authorization information.

NEW SECTION

WAC 296-20-12065 SIMP definitions. The definitions in this section refer to terms used in WAC 296-20-12055 through 296-20-12095.

(1) **SIMP** means a chronic pain management program with the following four components:

Structured means care is delivered through regular scheduled modules of assessment, education, treatment, and follow up evaluation where workers interact directly with licensed health care practitioners. Workers follow a treatment plan designed specifically to meet their needs.

Intensive means the treatment phase is delivered on a daily basis, six to eight hours per day, five days per week, for up to four consecutive weeks. Slight variations can be allowed if necessary to meet the worker's needs.

Multidisciplinary (interdisciplinary) means that structured care is delivered and directed by licensed health care professionals with expertise in pain management in at least the areas of medicine, psychology, and physical therapy or occupational therapy. The SIMP may add vocational, nursing, and additional health services depending on the workers' needs and covered benefits.

Program means an interdisciplinary pain rehabilitation program that provides outcome-focused, coordinated, goal-oriented team services. Care coordination is included within and across each service area. The program benefits workers who have impairments associated with pain that impact their participation in daily activities and their ability to work. This program measures and improves the functioning of persons with pain and encourages their appropriate use of healthcare systems and services.

(2) **Uncomplicated degenerative disc disease (UDDD)** means chronic low back pain of discogenic origin without objective clinical evidence of any of the following conditions:

- Radiculopathy;
- Functional neurologic deficits;
- Spondylolisthesis (> grade 1);
- Isthmic spondylolysis;
- Primary neurogenic claudication associated with stenosis;
- Fracture, tumor, infection, inflammatory disease; or
- Degenerative disease associated with significant deformity.

(3) **Lumbar surgery candidate** means an injured worker who is considering having a lumbar fusion or lumbar intervertebral artificial disc replacement due to uncomplicated degenerative disc disease.

(4) **Important associated conditions** means medical or psychological conditions (often referred to as comorbid conditions) that hinder functional recovery from chronic pain.

(5) **Treatment plan** means an individualized plan of action and care developed by licensed health care professionals that addresses the worker's identified needs and goals. It describes the intensity, duration, frequency, setting, and timeline for treatment and addresses the elements described in the treatment phase. It is established during the evaluation phase and may be revised during the treatment phase.

(6) **Valid tests and instruments** mean those that have been shown to be scientifically accurate and reliable for tracking functional progress over time.

NEW SECTION

WAC 296-20-12070 SIMP evaluation phase. See WAC 296-20-12095 SIMP referral and prior authorization requirements, for information about how and when each phase may be prior authorized by the claim manager.

Evaluation phase:

The Evaluation phase occurs before the treatment phase and includes treatment plan development and a report. Only one evaluation is allowed per authorization but it can be conducted over one to two days. The evaluation phase includes all of the following components:

(1) A history and physical exam along with a medical evaluation by a physician. Advanced registered nurse practitioners and certified physician assistants can perform those medical portions of the pretreatment evaluation that are allowed by the commission on accreditation of rehabilitation facilities (CARF);

(2) Review of medical records and reports, including diagnostic tests and previous efforts at pain management;

(3) Assessment of any important associated conditions that may hinder recovery (e.g., opioid dependence and other substance use disorders, smoking, significant mental health disorders, and unmanaged chronic disease). If such conditions exist, see WAC 296-20-12095 SIMP referral and prior authorization requirements;

(4) Assessment of past and current use of all pain management medications, including over the counter, prescription, scheduled, and illicit drugs;

(5) Psychological and social assessment by a licensed clinical psychologist using valid tests and instruments;

(6) Identification of the worker's family and support resources;

(7) Identification of the worker's reasons and motivation for participation and improvement;

(8) Identification of factors that may affect participation in the program;

(9) Assessment of pain and function using valid tests and instruments; it should include the current levels, future goals, and the estimated treatment time to achieve them for each of the following areas:

- Activities of daily living (ADLs);
- Range of motion (ROM);
- Strength;
- Stamina;
- Capacity for and interest in returning to work.

(10) If the claim manager has assigned a vocational counselor, the SIMP vocational provider must coordinate with the vocational counselor to assess the likelihood of the worker's ability to return to work and in what capacity;

(11) A summary report of the evaluation and a preliminary recommended treatment plan. If there are any barriers preventing the worker from moving on to the treatment phase, the report should explain the circumstances;

(12) For lumbar surgery candidates, the report should address their expectation and interest in having surgery.

NEW SECTION

WAC 296-20-12075 SIMP treatment phase. Treatment phase services may be provided for up to twenty consecutive days (excluding weekends and holidays) depending on individual needs and progress toward treatment goals. Each treatment day lasts six to eight hours. Services are coordinated and provided by an interdisciplinary team of physicians, psychologists, physical or occupational therapists, and may include nurses, vocational counselors, and care coordinators. Treatment must include all the following elements:

(1) Graded exercise: Progressive physical activities guided by a physical or occupational therapist that promote flexibility, strength, and endurance to improve function and independence;

(2) Cognitive behavioral therapy: Individual or group cognitive behavioral therapy with the psychologist, psychiatrist or psychiatric advanced registered nurse practitioner;

(3) Coordination of health services: Coordination and communication with the attending provider, claim manager, family, employer, and community resources as needed to accomplish the goals set forth in the treatment plan;

- For lumbar surgery candidates, communication and consultation with the spine surgeon is recommended;

(4) Education and skill development on the factors that contribute to pain, responses to pain, and effective pain management;

- For lumbar surgery candidates, this includes provision and review of a patient education aid, provided by the insurer, describing the risks associated with lumbar fusion;

(5) Tracking of pain and function: Individual medical assessment of pain and function levels using valid tests and instruments;

(6) Ongoing assessment of important associated conditions, medication tapering, and clinical assessment of progress toward goals; opioid and mental health issues can be treated concomitantly with pain management treatment;

(7) Performance of real or simulated work or daily functional tasks;

(8) SIMP vocational services may include instruction regarding workers' compensation requirements. Vocational services with return to work goals are needed in accordance with the return to work action plan when a vocational referral has been made;

(9) A discharge care plan for the worker to continue exercises, cognitive and behavioral techniques and other skills learned during the treatment phase;

(10) A report at the conclusion of the treatment phase that addresses all the following questions:

- To what extent did the worker meet his or her treatment goals?

- What changes, if any, have occurred in the worker's medical and psycho-social conditions, including dependence on opioids and other medications?

- What changes, if any, have occurred in the worker's pain level and functional capacity as measured by valid tests and instruments?

- What changes, if any, have occurred in the worker's ability to manage pain?

- What is the status of the worker's readiness to return to work or daily activities?

- What is the status of progress in achieving the goals listed in the return to work action plan, if applicable?

- How much and what kind of follow up care does the worker need?

- For lumbar surgery candidates, what is the worker's current expectation and interest in having surgery?

NEW SECTION

WAC 296-20-12080 SIMP follow up phase. (1) So long as the claim remains open, a follow up phase may occur within six months after the treatment phase has concluded. This phase is not a substitute for and cannot serve as an extended treatment phase. The goals of the follow up phase are to:

(a) Improve and reinforce the pain management gains made during the treatment phase;

(b) Help the worker integrate the knowledge and skills gained during the treatment phase into his or her job, daily activities, and family and community life;

(c) Evaluate the degree of improvement in the worker's condition at regular intervals and produce a written report describing the evaluation results;

(d) Address the goals listed in the return to work action plan if one was developed.

(2) Site of the follow up phase. The activities of the follow up phase may occur at the original multidisciplinary clinic (clinic-based) or at the worker's home, workplace, or healthcare provider office (community-based). This approach permits maximum flexibility for workers whose needs may range from intensive, focused follow up care at the clinic to more independent episodes of care closer to home. It also enables workers to establish relationships with providers in their communities so they have increased access to healthcare resources.

(3) Face-to-face vs. nonface-to-face services: Follow up services are payable as "face-to-face" and "nonface-to-face" services. Face-to-face services are when the provider interacts directly with the worker, the worker's family, employer, or other healthcare providers. Nonface-to-face services are when the SIMP provider uses the telephone or other electronic media to communicate with the worker, worker's family, employer, or other healthcare providers for the purpose of coordinating care in the worker's home community. Both are subject to the following limits:

(a) Face-to-face services: Up to twenty-four hours are allowed with a maximum of four hours per day.

(b) Nonface-to-face services: Up to forty hours are allowed.

(4) Reporting requirements.

(a) If a worker has been receiving follow up services, a summary report must be submitted to the insurer that provides the following information:

- The worker's status, including whether the worker returned to work, how pain is being managed, medication use, whether the worker is getting services in his or her community, activity levels, and support systems;

- What was done during the follow up phase;

- What resulted from the follow up care; and

- Measures of pain and function using valid tests and instruments.

(b) This summary report must be submitted at the following intervals:

- For nonlumbar surgery candidates: At one and three months.

- For lumbar surgery candidates (regardless of whether they had lumbar surgery after successfully completing SIMP treatment): At one, three, and six months.

NEW SECTION

WAC 296-20-12085 Requirements the SIMP provider must meet. Refer to department policy on comprehensive treatment for chronic noncancer pain for requirements the SIMP provider must meet.

NEW SECTION

WAC 296-20-12090 Requirements the worker must meet for a SIMP. An injured worker must make a good faith effort to participate and comply with the treatment plan prescribed for him or her by the SIMP provider. To successfully complete a SIMP, the worker must meet all the requirements in this section. The worker must:

(1) Be medically and physically stable enough to safely tolerate and participate in all physical activities and treatments that are part of his or her treatment plan;

(2) Be psychologically stable enough to understand and follow instructions and to put forth an effort to work toward the goals that are part of his or her treatment plan;

(3) Agree to be evaluated and comply with treatment prescribed for any important associated conditions that hinder progress or recovery (e.g., opioid dependence and other substance use disorders, smoking, significant mental health disorders, and other unmanaged chronic disease);

(4) Attend each day and each session that is part of his or her treatment plan. Sessions may be made up if, in the opinion of the provider, they do not interfere with the worker's progress toward treatment plan goals;

(5) Cooperate and comply with his or her treatment plan;

(6) Not pose a threat or risk to himself or herself, to staff, or to others;

(7) Review and sign a participation agreement with the provider;

(8) Participate with coordination efforts at the end of the treatment phase to help him or her transition back to his or her home, community, and workplace.

NEW SECTION

WAC 296-20-12095 SIMP referral and prior authorization requirements. (1) All SIMP services require:

- Prior authorization by the claim manager; and
- A referral from the worker's attending provider.

An occupational nurse consultant, claim manager, or insurer assigned vocational counselor may recommend a SIMP for the worker, but this cannot substitute for a referral from the attending provider.

(2) When the attending provider refers a worker to a chronic pain management program (i.e., a SIMP), the claim

manager may authorize an evaluation if the worker has had unresolved chronic pain for longer than three months despite conservative care and has one or more of the following conditions:

(a) Is unable to return to work due to the chronic pain;

(b) Has returned to work but needs help with chronic pain management;

(c) Has significant pain medication dependence, tolerance, abuse, or addiction;

(d) Is a lumbar surgery candidate. It is recommended that lumbar surgery candidates be evaluated by a SIMP provider prior to requesting surgery.

(3) Prior authorization for the evaluation phase occurs first and includes only one evaluation. Once authorized, the SIMP provider verifies the worker meets the requirements set forth in WAC 296-20-12090 and can fully participate in the program. If the worker:

(a) Meets the requirements and the SIMP provider recommends the worker move on to the treatment phase, the SIMP provider must provide the insurer with a report and treatment plan as described under the evaluation phase.

(b) Does not meet the requirements, the SIMP provider must provide the insurer with a report explaining what requirements are not met and the goals the worker must meet before he or she can return and participate in the program. If the worker is found to have important associated conditions during the evaluation phase that prevent him or her from participating in the treatment phase, the SIMP provider must either treat the worker or recommend to the worker's attending provider and the claim manager what type of treatment the worker needs.

(4) The treatment phase must be prior authorized separately from the evaluation phase. Treatment phase authorization includes authorization for the follow up phase.

(5) SIMP services are authorized on an individual basis. If there are extenuating circumstances that warrant additional treatment or a restart of the program, providers must submit this request along with supporting documentation to the claim manager.

(6) If a lumbar surgery candidate previously participated in a SIMP as a lumbar surgery candidate but did not successfully complete treatment, one additional SIMP may be authorized only if:

(a) The worker obtains an additional surgical recommendation noting clinical changes one year or more after the date first referred to a SIMP; or

(b) The reason the worker did not participate fully or successfully complete a SIMP the first time was because of important associated conditions that are now fully resolved.

(7) If a lumbar surgery candidate successfully completed a SIMP and did not have surgery, and in the future becomes a lumbar surgery candidate again, another SIMP may be authorized but is not required.

(8) If a worker's treatment is interrupted due to significant family or life circumstances such as a death in the family, the claim manager may authorize resuming or restarting the SIMP if recommended by the SIMP provider.

(9) If a SIMP provider plans to travel to the worker's community to deliver face-to-face services, mileage may be reimbursed, but only if it is authorized prior to travel. Lodg-

ing or meals (per diem expenses) are not reimbursable. Actual travel time is not included in the twenty-four-hour limit as stated in WAC 296-20-12080. When requesting prior authorization for mileage, the SIMP provider must explain the reason for the visit and how it will benefit the worker.

WSR 09-20-047

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 1, 2009, 8:12 a.m., effective November 1, 2009]

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

Purpose: This rule-making order amends WAC 16-623-010 by increasing the licensing fees for commission merchants, dealers, limited dealers, brokers, cash buyers, and agents. During the 2009 legislative session, the Washington state legislature authorized (as required by Initiative 960) the Washington state department of agriculture to increase the commission merchant licensing fees as necessary to meet the actual costs of conducting business (see chapter 564, Laws of 2009).

Citation of Existing Rules Affected by this Order: Amending WAC 16-623-010.

Statutory Authority for Adoption: RCW 20.01.020 and 20.01.040; chapter 34.05 RCW; and chapter 564, Laws of 2009.

Adopted under notice filed as WSR 09-17-126 on August 19, 2009.

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

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

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

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

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

Date Adopted: October 1, 2009.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 07-13-097, filed 6/20/07, effective 7/21/07)

WAC 16-623-010 What requirements apply to licenses for commission merchants, dealers, brokers, cash buyers and agents? (1) The following table summarizes the license fee requirements for commission merchants, dealers, brokers, cash buyers, or agents:

License Class	License Fee	Annual Expiration Date	Annual Renewal Date	Penalty Amount for Not Renewing Before January 1
Commission merchant	\$(474.00) <u>560.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Dealer	\$(474.00) <u>560.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Limited dealer	\$(263.00) <u>310.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Broker	\$(316.00) <u>375.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Cash buyer	\$(105.00) <u>125.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Agent	\$(52.00) <u>61.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Additional license per class	\$25.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees

(2) A licensee can be licensed in more than one class for an additional fee of twenty-five dollars per class. The principal license must be in the class requiring the greatest fee and all requirements must be met for each class in which a license is being requested.

(3) All fees and penalties must be paid before the department issues a license.

(4) Applications for licenses are considered incomplete unless an effective bond or other acceptable form of security is also filed with the director.

(5) Licenses may be obtained by contacting the department's commission merchants program at 360-902-1854 or e-mail at: commerch@agr.wa.gov. Application forms, bond forms, and forms for securities in lieu of a surety bond are available on the department's web site at: [http://www.agr.wa.gov/Inspection/CommissionMerchants/\(default.asp\)](http://www.agr.wa.gov/Inspection/CommissionMerchants/(default.asp)).

WSR 09-20-051
PERMANENT RULES
HOME CARE
QUALITY AUTHORITY

[Filed October 1, 2009, 1:48 p.m., effective November 1, 2009]

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

Purpose: To maintain consistency with other WAC, statute and policies related to fingerprint-based background check requirements for individual providers.

Citation of Existing Rules Affected by this Order: Amending WAC 257-10-120.

Statutory Authority for Adoption: RCW 74.39A.280(3) Authority duties.

Adopted under notice filed as WSR 09-16-056 on July 29, 2009.

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

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

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

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

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

Date Adopted: October 1, 2009.

R. A. Hall
 Executive Director

AMENDATORY SECTION (Amending WSR 05-14-113, filed 7/1/05, effective 8/1/05)

WAC 257-10-120 What qualifies individual providers or prospective individual providers to be included on the referral registry? The individual provider or prospective individual provider must:

(1) Satisfactorily complete a Washington state patrol background check and not be convicted of a disqualifying crime (~~listed in RCW 43.43.830 as specified by DSHS home and community services or developmental disabilities or children's administration~~) based on the appropriate department of social and health services list of crimes and negative actions; and

(2) Complete an FBI fingerprint-based background check if the person has lived in the state of Washington fewer than three years(¿). An individual provider or prospective individual providers who has lived in the state fewer than three years may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.

(3) Not be listed on any long-term care abuse and neglect registry used by DSHS;

(4) Be eighteen years of age or older;

(5) Provide picture identification;

(6) Have a Social Security card or authorization to work in the United States; and

(7) Comply with requirements listed in WAC 257-10-180.

WSR 09-20-053
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 1, 2009, 4:31 p.m., effective November 1, 2009]

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

Purpose: To implement changes in federal rules, effective December 1, 2008, relating to a parent's right to revoke consent for continued special education services, add requirements for employment of qualified individuals with disabilities, and clarify processes in place for district compliance with monitoring, funding, significant disproportionality and the determinations processes. To include a procedure for districts to follow when an adult student needs assistance in making educational decisions. To allow districts to consider the provision of federal proportional share services on site of religious private schools in addition to other locations for services. To clarify when parents may request independent educational evaluations, consistent with federal guidance.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-172A-04075; and amending WAC 392-172A-01040, 392-172A-01060, 392-172A-01145, 392-172A-02000, 392-172A-02040, 392-172A-02090, 392-172A-02100, 392-172A-03000, 392-172A-03045, 392-172A-03105, 392-172A-03135, 392-172A-04015, 392-172A-04040, 392-172A-04045, 392-172A-04060, 392-172A-04070, 392-172A-05005, 392-172A-05100, 392-172A-05130, 392-172A-05135, 392-172A-05170, 392-172A-05180, 392-172A-06000, 392-172A-06005, 392-172A-06085, 392-172A-07010, 392-172A-07035, 392-172A-07040, and 392-172A-07055.

Statutory Authority for Adoption: RCW 28A.155.090.

Other Authority: 34 C.F.R. Part 300.

Adopted under notice filed as WSR 09-15-143 on July 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-172A-05005 (1)(a), the agency did not make the proposed change to this section.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 13, 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 17, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 30, Repealed 1.

Date Adopted: October 1, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01040 Consent. (1) Consent means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive. This means that it does not undo an action that occurred after consent was given and before the consent was revoked.

(3) If the parent revokes consent in writing for their child's receipt of special education services after the student is initially provided special education and related services, the school district is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school, including a private school, that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01145 Private school. Private school means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least

grade one, or a program of any combination of grades one through twelve and meeting:

(1) Minimum state board private school approval standards as outlined in chapter 180-90 WAC; and

(2) The definition of elementary and secondary schools in WAC 392-172A-01060.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02000 ((~~Student's~~) Students' rights to a free appropriate public education (FAPE)). (1) Each school district, public agency, and residential or day schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2)(e).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02040 Child find. (1) The school district shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locat-

ing, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing in the district whether or not they are enrolled in the public school system. Students attending private elementary or secondary schools located within the district shall be located, identified and evaluated consistent with WAC 392-172A-04005. Districts will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to activities such as:

(a) Providing written notification to all parents of students in the district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of special education programs;

(c) Offering preschool developmental screening;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Using internal district ((review of students)) child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02090 Personnel qualifications. (1)

In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special educa-

tion shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(d) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement.

(e) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title ((One)) 1 school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC ((181-81-110)) 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 181-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02100 Home/hospital instruction.

Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of ~~((physical))~~ disability or illness. As a condition~~((s))~~ to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a ~~((special education))~~ student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education. It shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations.

(1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide con-

sent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the ~~((public agency))~~ school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-172A-05015 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the ~~((public agency))~~ school district may, but is not required to, pursue the reevaluation by using the due process proce-

dures to override consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

- (i) It made reasonable efforts to obtain such consent; and
- (ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the ~~((public agency))~~ school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03105 When IEPs must be in effect.

(1) At the beginning of each school year, each school district must have an IEP in effect((-)) for each student eligible for

special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district ~~((either))~~:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the ~~((previous))~~ school district in which the student was previously enrolled, pursuant to RCW 28A.225.335 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the individualized education program shall:

(a) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation ~~((to occur no less than four times a school year))~~ at least every three months when school is in session.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must ~~((spend))~~ make available the following ~~((on))~~ amounts for providing special education and related services, including direct services to parentally placed private students eligible for special education.

(a) For students eligible for special education aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education aged three through twenty-one who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school

district, is to the total number of students eligible for special education in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed private school students eligible for special education aged three through five who are enrolled by their parents in a private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school kindergarten level or above.

(c) If a school district has not expended ~~((for equitable services))~~ all of the funds for equitable services described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the ~~((school district must obligate the))~~ remaining funds must be obligated for special education and related services to parentally placed private school students eligible for special education during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed private school students eligible for special education, the school district, after timely and meaningful consultation with representatives of private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education attending private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed private school students eligible for special education, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education attending private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed private school students eligible for special education in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school students eligible for special education to the extent consistent with state law.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04040 Equitable services provided.

(1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing

equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be ~~((non-secular))~~ secular, neutral, and nonideological.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed private school students eligible for special education may be provided on the premises of private ~~((nonsectarian))~~ schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private school student eligible for special education must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the services.

(3) School districts are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04060 Use of personnel. (1) School district or other public agency personnel may be made available to ~~((nonsectarian))~~ private schools and agencies only to the extent necessary to provide services required by the ~~((special-education))~~ student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in ~~((nonsectarian))~~ private

schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school (~~((special education))~~) students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04070 Property, equipment and supplies. (1) A school district must control and administer the funds used to provide special education and related services for students eligible for those services in private schools, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the act.

(2) Equipment and supplies used with students in a private school or agency may be placed on (~~((nonsectarian))~~) private school premises for the period of time necessary for the program. Equipment and supplies placed on private school premises will be used only for Part B purposes.

(3) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(4) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for Part B purposes.

(5) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) ~~((A parent))~~ Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

(a) No parent as defined in WAC 392-172A-01125 can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The student is a ward of the state; ~~((or))~~

(d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act; or

(e) An educational representative is appointed for a student pursuant to WAC 392-172A-05135(5).

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

(a) For determining whether a student needs a surrogate parent;

(b) For assigning a surrogate parent to the student; and

(c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

(a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;

(b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

(c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) ~~((When))~~ Subject to subsections (4) and (5) of this section, when a student eligible for special education reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020 ~~((, unless the student is declared incapacitated as to person under chapter 11.88 RCW, the following shall occur))~~:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter 11.88 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of eighteen who have not been determined incapacitated under chapter 11.88 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of the student, may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter 11.94 RCW.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC ((392-172A-07105) 392-172A-05145 (3), (4)(e) and (7).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the ((requirements of Section 612 (a)(1)(A) of the act)) provision

of a free appropriate public education for students suspended or expelled from school.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05180 Definitions—Destruction of records, educational records, participating agency. As used in WAC ((392-172A-07150)) 392-172A-05180 through ((392-172A-07215)) 392-172A-05245:

(1) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes the OSPI, school districts and other public agencies.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 CFR 300.201 through ((300)) 300.213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students; including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Use of funds;

(k) Personnel preparation;

(l) Availability of documents relating to the eligibility of the school district;

(m) Provision to OSPI of all necessary information and data for the state's performance goals;

(n) Provision of instructional materials to blind persons or persons with print disabilities;

(o) ((Compliance with corrective actions as a result of monitoring, or dispute resolution processes)) Timely correction of noncompliance; and

(p) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the local district ((or other public agency)) designee responsible for child identification activities and confidentiality of information.

(3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.

(4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(5) A description of the use of funds received under Part B of the act.

(6) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, citizen complaints, or determinations status.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter((, that address the actions outlined in WAC 392-172A-06000 (1)(b) through (p))).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06085 Coordinated early intervening services. (1) A school district may not use more than fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated((;)) early intervening services, which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated((;)) early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that develops and maintains coordinated(;) early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received coordinated early intervening services; and

(b) The number of students served under this section who received coordinated early intervening services and ~~((subsequently))~~ later receive special education and related services ~~((under Part B of the act during the preceding))~~ within the following two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated(;) early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(6) Districts who have been determined to have significant disproportionality will be required to reserve the maximum amount of coordinated early intervening funds for students, in accordance with WAC 392-172A-07040.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07010 Monitoring. (1) ~~((The OSPI shall monitor selected local school districts special education programs, so that all districts are monitored at least once every six years. The focus of))~~ OSPI's monitoring of school districts' special education program is to:

(a) Improve educational results and ~~((functional))~~ outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq. ~~((in order to validate compliance with this chapter));~~

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure and report district performance on relative targets and priorities from federally approved state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection ~~((of previsit data)),~~ review, and analysis of quantitative and qualitative data and other information;

(b) Conduct of on-site visits;

(c) ~~((Comparison of a sampling of evaluation reports and individualized education programs with the services provided; and~~

~~((d)))~~ Review and analysis of such quantifiable and qualitative data and indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, ~~((a monitoring report))~~ a notification of identified noncompliance shall be ~~((submitted))~~ issued to the school district. ~~((The monitoring report shall include, but not be limited to:~~

~~(a) Findings of noncompliance, if any;~~

~~(b) Required student specific corrective actions; and~~

~~(c) Areas that will require a corrective action plan and/or improvement plan to address any systemic issues determined through the monitoring.~~

~~(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the OSPI with supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report. In the event that the school district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the OSPI shall determine whether or not any revisions are necessary, the extent to which the proposed action is acceptable and will issue a final monitoring report within thirty calendar days after receipt of the supplemental response.~~

~~(5) The school district will have ninety calendar days after the date of its receipt of the final monitoring report to provide the OSPI with a proposed corrective action/improvement plan, if required, which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate any areas of noncompliance.~~

~~((6)))~~ This notification will initiate a process of corrections, verification, and validation to ensure that the noncompliance is corrected as soon as possible, but no later than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan is required.

~~(4) If the school district does not ((comply with a corrective action plan approved pursuant to subsections (4) and (5) of this section))~~ timely address compliance with corrective actions, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s);

~~(ii) Expedite the school district's response to the final monitoring report); and/or~~

~~((iii)))~~ (ii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) ~~((Withholding))~~ Withhold, in whole or part, a specified amount of state and/or federal special education funds, ~~((in compliance))~~ to address noncompliance.

(c) ~~((Requesting))~~ Request assistance from the state auditors office ~~((to initiate an audit~~

~~(7) When monitoring districts under this section or when enforcing other provisions of this subpart relating to the district's obligations to provide OSPI with data under WAC 392-172A-06000 through 392-172A-06060:~~

~~(a) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:~~

~~Advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, Office of Special Education Programs, other offices of the Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded non-profit agencies, and require the district to work with appropriate entities. Such technical assistance may include:~~

~~(i) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area of concern within a specified period of time;~~

~~(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;~~

~~(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and~~

~~(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.~~

~~(b) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:~~

~~(i) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;~~

~~(ii) Withhold, in whole or in part, any further payments to the district under Part B of the act.~~

~~(c) Notwithstanding (a) or (b) of this subsection, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under (a) or (b) of this subsection).~~

NEW SECTION

WAC 392-172A-07012 Determinations. (1) OSPI annually reviews the data it obtains from school districts

through monitoring, submission of other data required by the district, and other public information provided by the district. Based on the data and information provided, OSPI determines if the school district:

(a) Meets the requirements and purposes of Part B of the act;

(b) Needs assistance in implementing the requirements of Part B of the act;

(c) Needs intervention in implementing the requirements of Part B of the act; or

(d) Needs substantial intervention in implementing the requirements of Part B of the act.

(2) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, office of special education programs, other offices of the department of education, other federal agencies, technical assistance providers approved by the department of education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(3) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI may take actions described under subsection (2) of this section and will take one or more of the following actions:

(a) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(b) Withhold, in whole or in part, any further payments to the district under Part B of the act;

(4) Notwithstanding subsections (2) or (3) of this section, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under subsections (2) or (3) of this section.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07035 Child count. The OSPI reports to the secretary of the department of education no later than February 1 of each year the number of ~~((special education))~~ students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' ~~((reports))~~ annual federal count of eligible students provided to OSPI ~~((which are due by))~~ on a date selected by OSPI between October 1 and December 1 of each year.

(1) Information required in the report includes:

(a) The number of ~~((special education))~~ students receiving special education and related services ~~((on December 1 of that school year))~~;

(b) The number of ~~((special education))~~ students aged three through five ~~((who are))~~ receiving ~~((free, appropriate public))~~ special education and related services;

(c) The number of ~~((those special education))~~ students aged six through seventeen, and eighteen through twenty-one within each disability category ~~((, as defined in the definition of "special education students"))~~; and

(d) The number of ~~((those special education))~~ students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count ~~((= December 1))~~.

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) ~~((The office of the superintendent of public instruction shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.))~~ School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

~~((6) The OSPI will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:~~

~~(a) Provides them with both special education and related services; or~~

~~(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.~~

~~(7) The superintendent may not include special education students in its reports who:~~

~~(a) Are not enrolled in a school or program operated or supported by a public agency;~~

~~(b) Are not provided special education that meets state standards;~~

~~(c) Are not provided with a related service that they need to assist them in benefiting from special education;~~

~~(d) Are counted by the state's lead agency for Part C services; or~~

~~(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.))~~

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07040 Significant disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

(a) The identification of ~~((students eligible for special education, including the identification of students in accordance with a particular impairment described in this chapter;~~

~~(b) The placement in particular educational settings of these students; and~~

~~(c) The incidence, duration and type of disciplinary actions including suspension and expulsions.~~

(2) Disproportionality is determined by a ratio of the risk that a student from a particular racial or ethnic group is identified as eligible for special education, placed in a particular eligibility category, placed in a particular setting, or is subject to discipline, compared to the risk factor for all other students in that district.

~~(3) Significant disproportionality means:~~

~~(a) The overall percentage of students eligible for special education in the district is greater than the statewide average plus one percent;~~

~~(b) The weighted risk ratio for a school district as calculated by the state is greater than 3.0 in one or more racial or ethnic groups by disability category or discipline when compared to all students within the school district, and placement when compared to all eligible students within the school district; and~~

~~(c) Placement of one or more racial or ethnic groups on the least restrictive environment tables published by the OSPI annually is greater than the statewide average plus one percent, to the extent the representation is the result of inappropriate identification.~~

~~(4)) children as students eligible for special education:~~

~~(b) The identification of students with a particular disability;~~

~~(c) The placement of students in particular educational settings; or~~

~~(d) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.~~

(2)(a) In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education including those with a particular disability, the placement in particular educational settings of these students, or discipline, the OSPI shall provide for the

review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require any school district identified under ~~((subsection (1) of))~~ this section to reserve the maximum amount of federal funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC 392-14-600 through 392-14-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need special education students whose cost is ~~((greater than))~~ at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-172A-04075 Other service arrangements for students, including students placed in sectarian schools.

WSR 09-20-069

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-09—Filed October 5, 2009, 8:41 a.m., effective November 5, 2009]

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

Purpose: These new rules amend the audited financial statement regulations (WAC 284-07-100 through 284-07-230) to incorporate an amendment to the National Association of Insurance Commissioners' (NAIC) accreditation standards. The amendments will improve the commissioner's surveillance of the financial condition of insurers by: (1) Strengthening the independence of certified public accountants preparing audits of insurer financial statements, (2) establishing more control and independence by the audit committee of insurer board of directors, and (3) requiring insurers with \$500 million or more in direct and assumed premiums to annually prepare a management's report of internal control over financial reporting.

Citation of Existing Rules Affected by this Order: Amending 14 [WAC 284-07-100, 284-07-110, 284-07-120, 284-07-130, 284-07-140, 284-07-150, 284-07-160, 284-07-170, 284-07-180, 284-07-190, 284-07-200, 284-07-210, 284-07-220, and 284-07-230].

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

Other Authority: RCW 48.05.250, 48.44.095, 48.46.080, 48.46.200, 48.125.090.

Adopted under notice filed as WSR 09-15-134 on July 20, 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 4, Amended 14, Repealed 0.

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

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

Date Adopted: October 5, 2009.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2006-06, filed 7/31/06, effective 8/31/06)

WAC 284-07-100 Purpose and scope. (1) The purpose of ~~((this regulation,))~~ WAC 284-07-100 through 284-07-230~~((;))~~ is to improve the Washington state insurance commissioner's surveillance of the financial condition of insurers by requiring:

(a) An annual ~~((examination by independent certified public accountants))~~ audit of ~~((the))~~ financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

(b) Communications of Internal Control Related Matters Noted in an Audit; and

(c) Management's report of internal control over financial reporting.

(2) Every insurer, as defined in WAC 284-07-110, shall be subject to ~~((this regulation))~~ WAC 284-07-100 through 284-07-230. Insurers having direct premiums written of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of ~~((directly))~~ direct written policies nation-wide at the end of ~~((such))~~ the calendar year shall be exempt from ~~((this rule))~~ WAC 284-07-100 through 284-07-230 for ~~((such))~~ the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of one million dollars or more will not be so exempt.

(3) Foreign or alien insurers filing the audited financial report~~((s))~~ in another state, pursuant to ~~((such other))~~ that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from ~~((this rule))~~ WAC 284-07-120 through 284-07-210 if:

(a) A copy of the audited financial report, ~~((Report on Significant Deficiencies in))~~ Communication of Internal Control~~((s))~~ Related Matters Noted in an Audit, and the Accountant~~(('s))~~'s Letter of Qualifications ~~((which))~~ that are filed with ~~((such))~~ the other state are filed with the NAIC in accordance with the filing dates specified in WAC 284-07-120, 284-07-190 and 284-07-200, respectively (Canadian insurers may submit accountant's reports as filed with the Office of the Superintendent of Financial Institutions, Canada); and

(b) A copy of any Notification of Adverse Financial Condition Report filed with ~~((such))~~ the other state is filed with the NAIC within the time specified in WAC 284-07-180.

~~((Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance.))~~

(4) ~~((This rule))~~ Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

(5) WAC 284-07-100 through 284-07-230 shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under the rules, regulations, practices, and procedures of the insurance commissioner.

~~((5))~~ After January 1, 2003, (6) All reports and filings required by WAC 284-07-100 through 284-07-230 must be filed electronically with the commissioner. Insurers must electronically transmit the report or filing in PDF or other format as noted on the commissioner's web site. The commissioner has the discretion to allow an insurer to file paper copies of reports and filings required by WAC 284-07-100 through 284-07-230. The insurer must demonstrate that filing in electronic form will create an undue financial hardship for the insurer. Applications for permission to file in hard copy must be received by the commissioner at least ninety days before the statement of annual statement is due.

~~((6))~~ (7) To comply with statutory or other requirements that reports or filings be signed or verified, insurers and accountants may:

(a) Use a method of electronic signature verification that has been approved by the commissioner; or

(b) File a paper copy of the signature or verification at the time of the electronic transmission of the report or filing.

~~((7))~~ (8) The report or filing and the appropriate signatures and/or verifications must both be received to complete a filing. The date of receipt of the later of the two parts of the filing is considered the receipt date of the report or filing.

AMENDATORY SECTION (Amending Matter No. R 2008-29, filed 3/11/09, effective 4/11/09)

WAC 284-07-110 Definitions. For the purposes of ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 the following definitions shall apply:

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

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

~~((3))~~ (2) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting

processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of WAC 284-07-100 through 284-07-230 at the election of the controlling person. Refer to WAC 284-07-213(5) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

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

(5) "Group of insurers" means those licensed insurers included in the reporting requirements of chapters 48.31B and 48.31C RCW, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

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

((4)) (7) "Independent board member" has the same meaning as described in WAC 284-07-213(3).

(8) "Insurer" has the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, (~~and~~) fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

((5)) (9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g) and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g) and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g).

(10) "NAIC" means the National Association of Insurance Commissioners.

((6)) (11) "Policy holder" shall also mean subscriber.

(12) "SEC" means the United States Securities and Exchange Commission.

(13) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(14) "Section 404 report" means management's report on internal control over financial reporting as defined by the SEC and the related attestation report of the independent certified public accountant described in WAC 284-07-110(1).

(15) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201 (Section 10A(i) of the Securities and Exchange Act of 1934);

(b) The audit committee independence requirements of Section 301 (Section 10A (m)(3) of the Securities and Exchange Act of 1934); and

(c) The internal control of financial reporting requirements of Section 404 (Item 308 of SEC Regulations S-K).

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

WAC 284-07-120 General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

(1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting (~~(such)) an~~ extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(3) If an extension is granted in accordance with the provisions in subsection (2) of this section, a similar extension of thirty days is granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to WAC 284-07-100 through 284-07-230 shall designate a group of individuals as constituting its audit committee, as defined in WAC 284-07-110(3). The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of WAC 284-07-100 through 284-07-230 at the election of the controlling person.

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

WAC 284-07-130 Contents of annual audited financial report. (1) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year

then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the commissioner of the state of domicile.

(2) The annual audited financial report shall include the following:

- (a) Report of independent certified public accountant.
- (b) Balance sheet reporting admitted assets, liabilities, capital, and surplus.
- (c) Statement of operations.
- (d) Statement of cash flows.
- (e) Statement of changes in capital and surplus.
- (f) Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and *NAIC Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to RCW 48.05.250, 48.05.073, 48.36A.260, 48.43.050, 48.43.097, 48.44.095, ~~((or))~~ 48.46.080, or 48.125.090 with a written description of the nature of these differences.

(g) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement~~((s))~~ shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

AMENDATORY SECTION (Amending Order R 94-2, filed 1/27/94, effective 2/27/94)

WAC 284-07-140 Designation of independent certified public accountant. (1) Each insurer required by ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 to file an annual audited financial report must, within sixty days after becoming subject to ~~((such))~~ the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit ~~((required by this regulation))~~ set forth in WAC 284-07-100 through 284-07-230. ~~((Each))~~ Insurers not retaining an independent certified public accountant on the effective date of ~~((this rule, or the date on which this rule becomes applicable to it,))~~ WAC 284-07-100 through 284-07-230 shall register the name and address of their retained independent certified public accountant not less than ~~((two))~~ six months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the Washington state insurance code, Title 48 RCW, and the rules and regulations ~~((thereunder,))~~ that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the commissioner, specifying such exceptions as ~~((are believed))~~ he or she may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall, within five business days, notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure~~((s))~~, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request ~~((such))~~ the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for ~~((disagreement))~~ which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the commissioner together with its own.

AMENDATORY SECTION (Amending Matter No. R 2008-29, filed 3/11/09, effective 4/11/09)

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

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

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as an indemnification) with respect to the audit of the insurer.

(2) Except as otherwise provided ~~((herein))~~ in WAC 284-07-100 through 284-07-230, the commissioner shall recognize an independent certified public accountant ~~((shall be recognized))~~ as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants (AICPA) and ~~((the code of professional conduct))~~ statutes (chapter 18.04 RCW) and rules (chapter 4-25 WAC) of the ~~((state of))~~ Washington state board of ~~((public))~~ accountancy, or similar ((applicable code)) rules.

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

RCW, the mediation or arbitration provisions shall operate at the option of the statutory successor.

~~(4) ((No)) (a) The lead (or coordinating) partner ((or other person responsible for rendering a report)) (having primary responsibility for the audit) may not act in that capacity for more than ((seven)) five consecutive years. ((Following any period of service such)) The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of ((two)) five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application must be made at least thirty days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:~~

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

~~((b)) (ii) Premium volume of the insurer; and~~

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

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

~~(b) The insurer shall file, with its annual statement filing, the approval for relief from WAC 284-07-150 (4)(a) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.~~

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

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

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under ~~((this rule))~~ WAC 284-07-100 through 284-07-230; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of ~~((this rule))~~ WAC 284-07-100 through 284-07-230.

(6) The commissioner as provided in RCW 48.02.060 may hold a hearing to determine whether ~~((a))~~ an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of ~~((this regulation))~~ WAC 284-07-100 through 284-07-230.

(7)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

(i) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(ii) Financial information systems design and implementation;

(iii) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(iv) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statements only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification (opinion) on an insurer's reserves if the following conditions have been met:

(A) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(B) The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and

(C) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(v) Internal audit outsourcing services;

(vi) Management functions or human resources;

(vii) Broker or dealer, investment adviser, or investment banking services;

(viii) Legal services or expert services unrelated to the audit; or

(ix) Any other services that the commissioner determines, by rule, are impermissible.

(b) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role of the insurer.

(8) Insurers having direct written and assumed premiums of less than one hundred million dollars in any calendar year may request an exemption from subsection (7)(a) of this section. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with WAC 284-07-100 through 284-07-230 would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(9) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection (7)(a) of this section or that do not conflict with subsection (7)(b) of this section, only if the activity is approved in advance by the audit committee, in accordance with subsection (10) of this section.

(10) All auditing services and nonaudit services provided to an insurer by the qualified independent certified

public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity or:

(a) The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

(b) The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more of the members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(11) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (10) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(12)(a) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from (a) of this subsection with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

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

WAC 284-07-160 Consolidated or combined audits.

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and ~~((such))~~ the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet((-));

(2) Amounts for each insurer subject to this section shall be stated separately((-);

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis((-);

(4) Explanations of consolidating and eliminating entries shall be included((-); and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

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

WAC 284-07-170 Scope of ~~((examination))~~ audit and report of independent certified public accountant. Financial statements furnished pursuant to WAC 284-07-130 hereof shall be examined by an independent certified public accountant. The ~~((examination))~~ audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to WAC 284-07-217, the independent certified public accountant should consider (as that term is defined in Statement of Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards, or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration ~~((should also))~~ shall be given to ~~((such other))~~ the procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

AMENDATORY SECTION (Amending Order R 94-2, filed 1/27/94, effective 2/27/94)

WAC 284-07-180 Notification of adverse financial condition.

(1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under ~~((examination))~~ audit or that the insurer does not meet the minimum capital and surplus or net worth requirements of the Washington state insurance code, Title 48 RCW, as of that date. An insurer ~~((who))~~ that has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five business days of receipt of ~~((such))~~ the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive

((such)) the evidence within the required five business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

(2) No independent public accountant shall, by virtue of ((this regulation)) WAC 284-07-100 through 284-07-230, be liable in any manner to any person for any statement made in connection with subsection (1) of this section if ((such)) the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to ((this regulation)) WAC 284-07-100 through 284-07-230, becomes aware of facts which might have affected his or her report, the commissioner notes the obligation of the accountant ((should)) to take such action as ((is)) prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants (AICPA) or its replacement.

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

WAC 284-07-190 ((Report on significant deficiencies in)) Communication of internal control(s) related matters noted in an audit. (1) In addition to the annual audited financial ((statements)) report, each insurer shall furnish the commissioner with a written ((report prepared by the accountant describing significant deficiencies)) communication as to any unremediated material weaknesses in ((the insurer's)) its internal controls ((structure)) over financial reporting noted ((by the accountant)) during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by SAS No. 60, *Communication of Internal Control ((Structure)) Related Matters Noted in an Audit* ((AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants)) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the commissioner within sixty days after the filing of the annual audited financial statements), or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in WAC 284-07-120(1)) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer is required to provide a description of remedial actions taken or proposed to correct ((significant deficiencies)) unremediated material weaknesses, if such actions are not described in the accountant's ((report)) communication.

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

WAC 284-07-200 Accountant's letter of qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants (AICPA) and the statutes (chapter 18.04 RCW) and rules (chapter 4-25 WAC) of ((professional conduct of)) the Washington state board of ((public)) accountancy, or similar ((applicable)) rules((-));

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within ((this rule)) WAC 284-07-100 through 284-07-230 shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards((-);

(3) That the accountant understands the annual audited financial report and ((the)) his or her opinion thereon will be filed in compliance with ((this rule)) WAC 284-07-100 through 284-07-230 and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers((-);

(4) That the accountant consents to the requirements of WAC 284-07-210 and that the accountant consents and agrees to make available for review by the commissioner, or ((his)) the commissioner's designee or appointed agent, the workpapers, as defined in WAC 284-07-210((-);

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants((-)) (AICPA); and

(6) A representation that the accountant is in compliance with the requirements of WAC 284-07-150.

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

WAC 284-07-210 Definition, availability, and maintenance of ((CPA)) independent certified public accountants workpapers. (1) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the ((examination)) accountant's audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of ((the examination)) his or her audit of the financial statements of an insurer and which support the accountant's opinion ((thereof)).

(2) Every insurer required to file an audited financial report pursuant to ((this regulation)) WAC 284-07-100

through 284-07-230, shall require the accountant to make available for review by the commissioner's examiners, all workpapers prepared in the conduct of the ((examination)) accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the commissioner's office or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(3) In the conduct of the aforementioned periodic review by the commissioner's examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner's office. Such reviews by the commissioner's examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the insurance commissioner.

NEW SECTION

WAC 284-07-213 Requirements for audit committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to WAC 284-07-100 through 284-07-230. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (5) of this section and WAC 284-07-110(3).

(3) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member for the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(5) To exercise the election of the controlling person to designate the audit committee for purposes of WAC 284-07-100 through 284-07-230, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(6)(a) The audit committee shall require the accountant that performs for an insurer any audit required by WAC 284-07-100 through 284-07-230 to timely report to the audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

(i) All significant accounting policies and material permitted practices;

(ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(iii) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance or health carrier holding company system, the reports required by (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than five hundred million dollars in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section's requirements

based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

NEW SECTION

WAC 284-07-215 Conduct of insurers in connection with the preparation of required reports and documents.

(1) No director or officer of an insurer shall, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under WAC 284-07-100 through 284-07-230; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under WAC 284-07-100 through 284-07-230.

(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to WAC 284-07-100 through 284-07-230 if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of subsection (2) of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

NEW SECTION

WAC 284-07-217 Management's report of internal control over financial reporting. (1) Every insurer required to file an audited financial report pursuant to WAC 284-07-100 through 284-07-230 that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and federal flood program, of five hundred million dollars or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in WAC 284-07-110. The report shall be filed with the commissioner

along with the *Communications of Internal Control Related Matters Noted in an Audit* described under WAC 284-07-190. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-310.

(3) An insurer or group of insurers that is:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but is a SOX compliant entity; or

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in WAC 284-07-130 (2)(b) through (g)) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in WAC 284-07-130 (2)(b) through (g)) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file:

(i) A WAC 284-07-217 report; or

(ii) The Section 404 Report and a WAC 284-07-217 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's report of internal control over financial reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of the internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weakness in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's report on internal control over financial reporting, required by subsection (1) of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall, to the extent provided by law, be kept confidential by the commissioner.

AMENDATORY SECTION (Amending Order R 94-2, filed 1/27/94, effective 2/27/94)

WAC 284-07-220 Exemptions and effective dates. (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with ~~((this regulation))~~ any and all provisions of WAC 284-07-100 through 284-07-230 if the commissioner finds, upon review of the application, that compliance with WAC 284-07-100 through 284-07-230 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from ~~((this regulation))~~ WAC 284-07-100 through 284-07-230, ~~((such))~~ the insurer may request in writing a hearing on its application for an exemption. ~~((Such))~~ The hearing shall be held in accordance with the rules and procedures pertaining to administrative hearings.

(2) Domestic insurers retaining a certified public accountant on the effective date of ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 who ~~((qualifies))~~ qualify as independent shall comply with ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 for the year ending December 31, 1992, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise.

(a) As of December 31, 1992, file with the commissioner ~~((~~

~~((i) Report of independent certified public accountant;~~

~~((ii) Audited balance sheet;~~

~~((iii) Notes to audited balance sheet))~~ an audited financial report.

(b) For the year ending December 31, 1992, and each year thereafter, ~~((such))~~ the insurers shall file with the commissioner all reports and communications required by ~~((this regulation))~~ WAC 284-07-100 through 284-07-210.

(4) Foreign insurers shall comply with ~~((this regulation))~~ WAC 284-07-100 through 284-07-230 for the year ending December 31, 1992, and each year thereafter, unless the commissioner permits otherwise.

(5) ~~((An insurer who on December 31, 1993, was not subject to WAC 284-07-100 through 284-07-230, and who on that date retained a certified public accountant, who is qualified as independent, shall comply with this regulation for the year ending December 31, 1993, and each year thereafter unless the commissioner permits by order, bulletin, letter, or otherwise, for a specific insurer or any one or more insurers.))~~ The requirements of WAC 284-07-150(4) shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

(6) ~~((An insurer who on December 31, 1993, was not subject to WAC 284-07-100 through 284-07-230, and who on that date did not retain a certified public accountant, who is qualified as independent, shall meet the following minimum schedule for compliance unless the commissioner permits by order, bulletin, letter, or otherwise, for a specific insurer or any one or more insurers.~~

~~((a) As of December 31, 1993, file with the commissioner by June 1, 1994:~~

~~((i) Report of independent certified public accountant;~~

~~((ii) Audited balance sheet;~~

~~((iii) Notes to audited balance sheet.~~

~~((b) And, for the year ending December 31, 1994, and each year thereafter, such insurers shall file with the commissioner all reports required by this regulation.))~~ The requirements of WAC 284-07-213 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written premium and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to change in premiums shall have one year following the year the threshold is exceeded (but not later than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(7) The requirements of WAC 284-07-150 (7) through (12), 284-07-190, 284-07-215, and 284-07-217 are effective

beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

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

WAC 284-07-230 Canadian and British companies.

(1) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by ~~((such))~~ the companies with their ~~((domiciliary))~~ supervision authority duly audited by an independent chartered accountant.

(2) For ~~((such))~~ the insurers, the letter required in WAC 284-07-140(2) shall state that the accountant is aware of the requirements relating to the annual audited ~~((statement))~~ report filed with the commissioner pursuant to WAC 284-07-120 and shall affirm that the opinion expressed is in conformity with ~~((such))~~ those requirements.

NEW SECTION

WAC 284-07-240 Severability provision. If any provision of WAC 284-07-100 through 284-07-230 or its application to any person or circumstances is held invalid, the remainder of WAC 284-07-100 through 284-07-230 or the application of the provision to other persons or circumstances is not affected.

**WSR 09-20-070
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-22—Filed October 5, 2009, 8:47 a.m., effective November 5, 2009]

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

Purpose: RCW 48.29.015 requires that title insurance agents file an annual report with the insurance commissioner setting forth the name and address of those persons who have a financial interest in the title insurance agent during the year. In addition the report must include [include] the percent of title orders originating from each of those persons who own a financial interest in the title insurance agent. These rules establish the information that must be included in the report, the procedures for filing the report, the procedures for reporting the sources of title orders received, and record-keeping requirements related to the reporting procedures.

Statutory Authority for Adoption: RCW 48.02.060, 48.29.005.

Other Authority: RCW 48.29.015.

Adopted under notice filed as WSR 09-14-039 on June 24, 2009.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

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

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

Date Adopted: October 5, 2009.

Mike Kreidler
Insurance Commissioner

Chapter 284-29 WAC

TITLE INSURANCE

NEW SECTION

WAC 284-29-100 Definitions. For purposes of this rule:

(1) An "affiliate" of, or person "affiliated" with a title insurance agent is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Associates of producers" has the meaning as set forth in RCW 48.29.010 (3)(f).

(3) "Financial interest" has the meaning as set forth in RCW 48.29.010 (3)(d).

(4) "Person" has the meaning as set forth in RCW 48.01.070.

(5) "Producers of title insurance business or producer" has the meaning as set forth in RCW 48.29.010 (3)(e) and also includes associate of producers as set forth in RCW 48.29.010 (3)(f).

(6) "Report of affiliated business ownership" means a report required by RCW 48.29.015 setting forth the name, address, and percent of title orders originating from those persons who have had a financial interest in a title insurance agent.

(7) "Title insurance agent" has the meaning as set forth in RCW 48.17.010(15).

(8) "Title order" has the same meaning as "preliminary report," "commitment," or "binder" as set forth in RCW 48.29.010 (3)(c) and also includes "title policy" as set forth in RCW 48.29.010 (3)(a).

NEW SECTION

WAC 284-29-110 No report required. (1) If a title insurance agent does not have any producers of title insurance business or associates of a producer who own a financial interest in the title insurance agent, then the title insurance agent is not required to file the title insurance agent report of affiliated business ownership.

(2) If a title insurance agent is wholly owned through one or more intermediaries of a company traded on a national stock exchange, then the title insurance agent is not required to file the title insurance agent report of affiliated business ownership.

NEW SECTION

WAC 284-29-120 Report form. The title insurance agent report of affiliated business ownership form and instructions as to how and where to submit the form are on the commissioner's web site at www.insurance.wa.gov.

NEW SECTION

WAC 284-29-130 Report required. (1) The title insurance agent report of affiliated business ownership must be filed with the commissioner annually by March 15th.

(2) If there is any change or addition to the ownership information contained in the annual report, then the title insurance agent must file an amended report with the commissioner within fifteen days after the end of the month in which the title insurance agent learns of the change or addition.

(3) Changes to the information regarding the percent of title orders originating from each of the producers do not need to be filed with the commissioner except with the annual filing. If the title insurance agent discovers or reasonably should have discovered that the information contained in the annual filing was not correct, then the title insurance agent must file an amended report within fifteen days after the end of the month in which the title insurance agent discovered the incorrect information.

NEW SECTION

WAC 284-29-140 Identifying producers. (1) If a person who has a financial interest in a title insurance agent also owns a controlling interest in another producer, then the title insurance agent must report this person and the other business entities controlled by the person as producers who have a financial interest in the title insurance agent. For example if John Brown personally has a financial interest in a title insurance agent and John Brown also owns a controlling interest in ABC Realty Co. and XYZ Home Builders Inc., then the title insurance agent, in addition to reporting John Brown as a producer, must also report ABC Realty Co. and XYZ Home Builders Inc. as producers having a financial interest in the title insurance agent.

(2) In reporting producers who have a financial interest in the title insurance agent, the information about the producer must be sufficient to properly identify the person who

is directly in a position to refer or influence the referral of title insurance business to the title insurance agent.

(3) If a producer owns the financial interest in the title insurance agent through one or more intermediary entities, then the identity of the producer and the identity of other entities that the producer owns a controlling interest in that are producers must be set forth in the report. For example, if Henry Smith and Frank Jones own an interest in Joint Venture Co., and Joint Venture Co. has a financial interest in the title insurance agent, then Henry Smith and Frank Jones must be identified in the report as producers who have a financial interest in the title insurance agent, in addition to reporting other entities who are producers that are owned by Henry Smith and Frank Jones.

NEW SECTION

WAC 284-29-150 Reporting of amount of business. A title insurance agent must make all reasonable and good faith efforts to determine the source of the title orders that it receives. This must also include information that the title insurance agent obtains when it is also acting as an escrow agent for the transaction. For example:

(1) If a title insurance agent receives a title order in which the seller is XYZ Home Builders Inc., owned by John Brown who has a financial interest in the title insurance agent, then it may be assumed that the source of the title order was John Brown (XYZ Home Builders, Inc.) even though the title order may have been directly received from another person.

(2) If the title insurance agent receives a title order from a producer with a financial interest in the title insurance agent held through one or more intermediary entities, then the specific producer must be identified as the source of the title order. For example, Henry Smith and Frank Jones own an interest in Joint Venture Co., and Joint Venture Co. directly holds the financial interest in the title insurance agent. Henry Smith must be reported as the source of the title insurance business for title orders received from Henry Smith. Likewise, Frank Jones must be reported as the source of title insurance business of orders received from Frank Jones. The amount of business received from both Henry Smith and Frank Jones may not be aggregated and reported as being from Joint Venture Co.

(3) If a title insurance agent receives an order in its escrow department from ABC Realty Co. (owned by John Brown who also has a financial interest in the title insurance agent), and the escrow department then places the title order with the title department of the title insurance agent, then the title insurance agent must report the source of the title order as being ABC Realty Inc.

(4) If the title insurance agent handling the transaction, either through its title department or its escrow department, or both, has information that ABC Realty Inc. (owned by John Brown who has a financial interest in the title insurance agent) is one of the real estate companies involved in the transaction, then it must be assumed that ABC Realty Inc. was the source of the title order unless the title insurance agent has sufficient evidence that the title order was referred to the title insurance agent by another producer.

NEW SECTION

WAC 284-29-160 Recordkeeping. (1) A title insurance agent must keep and maintain complete and accurate records of the names and business addresses of those persons who have had a financial interest in the title insurance agent who are reasonably known or reasonably believed by the title insurance agent to be producers.

(2) A title insurance agent must keep and maintain records of its title orders sufficient to identify the source of the title orders.

(3) The records required by WAC 284-29-100 through 284-29-160 must be kept by the title insurance agent for a period of three years after the end of the year being reported upon.

(4) All records of a title insurance agent kept pursuant to WAC 284-29-100 through 284-29-160 must be available to the commissioner or the commissioner's representative during regular business hours.

WSR 09-20-078**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed October 6, 2009, 7:58 a.m., effective November 6, 2009]

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

Purpose: Rule making is required to comply with HB 1478 passed by the legislature 2009 regular session. This rule allows members of the armed forces stationed outside of Washington to change the registration year of their vehicle.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-300 Changing assigned registration year.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 09-15-169 on July 21, 2009.

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

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

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

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

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

Date Adopted: September 22, 2009.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-17-017, filed 8/3/01, effective 9/3/01)

WAC 308-96A-300 Changing assigned registration year. When will the assigned registration year of a vehicle be changed?

(1) The department will change the registration year of a vehicle if the vehicle remains unlicensed for more than the entire assigned registration year.

(2) The registered owner may request a change of registration expiration month. This can only be done at the time of renewal and requires the registered owner to purchase more than twelve months of registration, limited to the vehicle field system constraints and license tab availability.

(3) When the vehicle is being added to a fleet.

(4) When a vehicle has been sold and the registration is no longer valid. (Example: When a vehicle has been sold with expired tabs, a new expiration date will be assigned at the time of registration renewal.)

(5) When the registered owner is a member of the armed forces returning to Washington state after being stationed outside of Washington in accordance with RCW 46.16.006.

WSR 09-20-081**PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed October 6, 2009, 12:08 p.m., effective November 6, 2009]

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

Purpose: Amendments to WAC 390-28-100 are designed to modernize the rule language, reference statutory standards for reporting modifications, describe real property disclosures, define bona fide separate property agreements and bona fide separate status and refer filers to modification examples in public disclosure commission interpretations.

Citation of Existing Rules Affected by this Order: Amending WAC 390-28-100.

Statutory Authority for Adoption: RCW 42.17.370(1).

Adopted under notice filed as WSR 09-17-086 on August 17, 2009.

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

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

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

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

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

Date Adopted: September 24, 2009.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending Order 85-04, filed 10/31/85)

WAC 390-28-100 Reporting modifications—Possible qualifications—Statement of financial affairs. (1) One or more of the following~~((, or any of them,))~~ may be considered by the commission as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** A candidate or official may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17.241 (1)(b) ~~((of said act,))~~ if:

(i) The financial institution or other entity in which the candidate or official ~~((having such))~~ held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by such candidate or ~~((elected))~~ official~~((, and provided that))~~;

(ii) Such reporting would present ~~((actual difficulties))~~ a manifestly unreasonable hardship to the candidate or official; and

(iii) The interest ~~((in question))~~ would present no actual or potential conflict with the proper performance of the duties of the office sought or held~~((, in the public interest))~~.

(b) **Income and ownership interests.** A candidate or official may be exempted from reporting ~~((any of))~~ the information otherwise required by RCW 42.17.241 (1)(f) and (g), if:

(i) Public disclosure would violate any legally ~~((recognizable))~~ recognized confidential relationship~~((, provided,))~~;

(ii) The information ~~((in question))~~ does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by ~~((such))~~ the candidate or ~~((elected))~~ official in whole or in part~~((, And provided further, That))~~;

(iii) Such reporting would present ~~((actual difficulties))~~ a manifestly unreasonable hardship to the candidate or official including but not limited to adversely affecting the competitive position of an entity in which the filer had an interest of ten percent or more as described in RCW 42.17.370(10); and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held~~((, in the public interest))~~.

(c) **Immediate family members' interests.** A candidate or official may be exempted from reporting ~~((any of))~~ the information otherwise required by RCW 42.17.241 for members of the immediate family of a candidate or ~~((elected))~~ official, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest does not constitute a present or prospective source of income to such candidate or ~~((elected))~~ official or to any other person who is dependent upon such candidate or ~~((elected))~~ official for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17.370(10).

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17.241 (1)(h) through (k):

(i) Under WAC 390-24-200, the filer shall list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description shall be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety situation.

(e) **Other.** A candidate or official may be exempted from reporting ~~((any other matter))~~ information otherwise required under RCW 42.17.241 which would constitute ~~((an))~~ a manifestly unreasonable hardship in a ~~((given))~~ particular case, when the ~~((matter reported))~~ circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held ~~((in the public interest))~~. Examples of members of professions often seeking modifications, and examples of other frequent situations that may result in modification requests, are described in commission interpretive statements.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

**WSR 09-20-088
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed October 6, 2009, 3:40 p.m., effective November 6, 2009]

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

Purpose: Revises WAC 181-79A-030 and 181-79A-206 and new section WAC 181-79A-207. Amends definitions for teacher professional certification. Amends requirements for professional certification for teachers. Add new section with

teacher standards and criteria related to certification. Statutory requirement that professional certification for teacher be met through external assessment process.

Citation of Existing Rules Affected by this Order: Amending X [WAC 181-79A-030 and 181-79A-206].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-17-094 on August 17, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, 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 1, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 23, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "regionally accredited institution of higher education," as defined in WAC 180-78-010 and 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended or regained.

(4) "Classroom teaching" means instructing pupils in an instructional setting.

(5) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold

a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

(6) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention.

(7) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from a regionally accredited college or university.

(8) "Credit hour(s)" means credit (normally 100 level or above) awarded by a regionally accredited institution of higher education.

(9) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(10) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(11) Teacher "professional growth team" means a team comprised of the candidate for professional certification, a colleague specified by the candidate, a provider of support to the candidate, if the candidate chooses to employ a support provider, and a representative from the school district or state-approved private, state agency providing education for children in which the candidate teaches or has taught.

(12) "Individual professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207.

(13) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the pro-

professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(14) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

AMENDATORY SECTION (Amending WSR 09-12-129, filed 6/3/09, effective 7/4/09)

WAC 181-79A-206 Academic and experience requirements for certification—Teachers. Candidates for teachers' certificates shall complete the following requirements in addition to those set forth in WAC 181-79A-150.

(1) Initial/residency.

Candidates for the initial or residency certificate shall hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5).

(2) Continuing.

(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from a regionally accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon completion of the requirements for an endorsement in that subject area or specialization.

(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.

(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) Professional.

(a) Beginning January 1, 2010 and pursuant to WAC 181-79A-206 (3)(f) candidates for the professional certificate shall have successfully completed a professional educator standards board-approved, professional certificate program, ((pursuant to WAC 181-78A-500 through 181-78A-540:)) or submit to the external portfolio of evidence assessment as directed by RCW 28A.410.220(2). The professional certificate requires successful demonstration of the three standards

(effective teaching, professional development, and professional contributions) and twelve criteria, pursuant to WAC 181-79A-207.

(i) ((Provided, That an)) Individuals who hold((s)) a teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement ((for completion of a))s of the professional certificate ((program)), in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a teacher.

(ii) A candidate may submit a portfolio of evidence to the external assessment for evaluation as per RCW 28A.410.220(2) following two years of successful teaching in a state-approved public, private or state operated education program for children as defined in Title 28A RCW: Provided, the candidate was employed at least three-quarters time each year or a total of one and one-half full-time equivalent over a minimum of two years as defined in WAC 392-121-212. The portfolio assessment elements shall be determined by the professional educator standards board and include requirements for the candidates to prepare and submit a professional growth plan approved and supported by a professional growth team.

(b) A professional growth plan identifying the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 is prepared by the candidate for a professional certificate, in collaboration with members of the professional growth team. The candidate will identify a professional growth team as defined in WAC 181-79A-030(11).

(((b) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).))

(c) Teacher professional certificate portfolio evidence of assessment pilot participants who have not attended a program but received a "met criteria" on all entries submitted to the pilot assessment would receive the professional certificate and not be required to attend a program.

(d) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(((d))) (e) Prior to January 1, 2010, candidates pursuing the professional certificate will submit a portfolio to the professional educator standards board approved professional certificate program.

(((e))) (f) Between January 1, 2010, and September 1, 2011, candidates pursuing the professional certificate will have two options:

(i) Submit a portfolio for evaluation to the college or university professional certificate program. The college or university has until December 31, 2011, to verify completion.

(ii) Submit a portfolio for evaluation to the uniform and external portfolio of evidence assessment as administered by the professional educator standards board.

(((f))) (g) After September 1, 2011, candidates pursuing the professional certificate must submit a portfolio for evalu-

ation to the uniform and external portfolio of evidence assessment as administered by the professional educator standards board.

NEW SECTION

WAC 181-79A-207 Standards for teachers with professional certification. (1) A successful candidate for the teacher professional certificate shall demonstrate:

(a) The knowledge and skills for effective teaching which ensure student learning by:

(i) Using instructional strategies that make learning meaningful and show positive impact on student learning;

(ii) Using a variety of assessment strategies and data to monitor and improve instruction;

(iii) Using appropriate classroom management principles, processes and practices to foster a safe, positive, student-focused learning environment;

(iv) Designing and/or adapting challenging curriculum that is based on the diverse needs of each student;

(v) Demonstrating cultural sensitivity in teaching and in relationships with students, families, and community members;

(vi) Integrating technology into instruction and assessment; and

(vii) Informing, involving, and collaborating with families and community members as partners in each student's educational process including using information about student achievement and performance.

(b) A successful candidate for the professional certificate shall demonstrate the knowledge and skills for professional development by:

(i) Evaluating the effects of his/her teaching through feedback and reflection;

(ii) Using professional standards and district criteria to assess professional performance, and plan and implement appropriate growth activities; and

(iii) Remaining current in subject area(s), theories, practice, research and ethical practice.

(c) A successful candidate for the professional certificate shall demonstrate professional contributions to the improvement of the school, community, and the profession by:

(i) Advocating for curriculum, instruction, and learning environments that meet the diverse needs of each student; and

(ii) Participating collaboratively in school improvement activities and contributing to collegial decision making.

Responds to reduction in funds in 2009 legislative budget for this purpose.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-325.

Statutory Authority for Adoption: RCW 28A.410.210.

Other Authority: 2009 legislative budget reductions.

Adopted under notice filed as WSR 09-17-071 on August 14, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 23, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-325 Program approval requirement—Field experience for all administrators. The internship shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought. Components of the required internship shall include demonstration by the candidate that he or she has the appropriate, specific relevant skills pursuant to WAC 181-78A-270. An approved preparation program for administrators and, prior to August 31, 1998, for principals, shall require an internship of at least three hundred sixty hours: Provided, That an approved preparation program for principals shall require for those persons entering the program August 31, 1998, and after, an internship which requires practice as an intern during a full school year. A "full school year" shall mean seven hundred twenty hours of which at least one-half shall be during school hours, when students and/or staff are present and include the principal performance domains as stated in WAC 181-78A-270 (2)(a) or (b): Provided, That an approved preparation program for principals shall require for those persons beginning their internship August 1, 2009, and after, an internship which requires practice as an intern during the full school year. A "full school year" shall mean five hundred forty hours of which at least one-half shall be during school hours.

WSR 09-20-093

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed October 6, 2009, 5:29 p.m., effective November 6, 2009]

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

Purpose: Revises WAC 181-78A-325 changing the number of hours of internship for preparation programs to provide to administrators to receive their certification.

when students and/or staff are present. Provided further, That an approved preparation program for principals shall require for those individuals entering the program on or after September 1, 2004, an internship that shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-270 (2)(b) and meets, at minimum, the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval.

WSR 09-20-095

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 7, 2009, 9:03 a.m., effective November 7, 2009]

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

Purpose: Amendments to chapter 192-270 WAC, Training benefits, are made to implement those sections of chapter 3, Laws of 2009, that were effective on April 5, 2009. The rules define terms, modify timeframes for filing applications for training benefits, and require that training be for a high demand occupation. Three rules are repealed as obsolete.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-270-020, 192-270-025 and 192-270-030; and amending WAC 192-270-005 and 192-270-035.

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

Adopted under notice filed as WSR 09-17-114 on August 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 0, Amended 2, 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 3.

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

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

Date Adopted: October 2, 2009.

Paul Trause
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-005 Definitions. The definitions below apply to this chapter, ~~((and))~~ RCW 50.22.150, and RCW 50.22.155:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular set of skills have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. You will not be considered a dislocated worker if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.

~~((2)) ("NAICS" means the North American industry classification system code.~~

~~((3))~~ For claims with an effective date prior to April 5, 2009, "plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. These wages must be earned in:

(a) Your base year, and

(b) At least two of the four twelve-month periods preceding your base year.

~~((4)) "SIC" means the standard industrial classification code.~~

~~((5))~~ (3) "Skill set" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

~~((6))~~ (4) "Training benefits" means the additional benefits paid under RCW 50.22.150 and RCW 50.22.155 to eligible dislocated workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

~~((7)) "Wages" means remuneration earned in employment as defined in Title 50 RCW or the comparable laws of another state. This means that only wages in covered employment can be considered in determining whether you have sufficient tenure in an occupation or in work with a particular skill set.)~~

(5) For purposes of RCW 50.22.155, subsection (2)(b)(i) relating to low income workers, the term "total wages" means wages in employment covered under Title 50 RCW or comparable federal or state laws.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-035 Time frames. Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of this section, the claimant information booklet is considered your notification of the eligibility requirements for the training benefits program.

(1) Submitting a training plan.

(a) For claims with an effective date prior to April 5, 2009, you have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

(b) For claims with an effective date on or after April 5, 2009, you have 90 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(2) Enrollment in training.

(a) For claims with an effective date prior to April 5, 2009, you must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(b) For claims with an effective date on or after April 5, 2009, you must be enrolled in training with 120 calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be 125 calendar days from the date your application for benefits is filed, which represents 120 days plus five days for the booklet to reach you by mail.

(3) For claims with an effective date on or after April 5, 2009, these timeframes may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the timelines established under this section.

(4) If you return to work, and subsequently become unemployed, the time frames described in subsections (1) and (2) begin with the date you file your additional claim for benefits.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-270-020	Employment in the aerospace industry.
WAC 192-270-025	Employment in the forest products industry.
WAC 192-270-030	Employment in the fishing industry.

WSR 09-20-100

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed October 7, 2009, 9:49 a.m., effective November 7, 2009]

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

Purpose: Standards for college educator preparation programs are amended to reflect improvements in program evaluation. WAC 181-78A-261 regarding Standard III includes the governance and resource requirements for approved educator preparation programs (teacher, administrator, and ESA). The revised language deletes two areas: (1) Collaboration and (2) interactions with diverse populations. The other changes are minor such as reordering and rewording for clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-261.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-17-070 on August 14, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 23, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-261 Approval standard—Unit governance and resources. Building on the mission to prepare educators who demonstrate a positive impact on student learning, the unit has the leadership, authority, budget, personnel, facilities, and resources, including information technology resources, for the preparation of candidates to meet state standards. The following evidence shall be evaluated to determine whether each preparation program is in compliance with the resources program approval standard of WAC 181-78A-220(3):

Unit leadership, authority and budget

(1) ~~(A separate administrative unit supports the preparation program whose composition and organization are clearly described in writing.~~

(2) ~~An officially designated administrator is responsible for the management of operations and resources for the preparation program.~~

(3) ~~Faculty are qualified and model best professional practices in scholarship, service, and teaching including the assessment of their own effectiveness as related to candidate performance.~~

(4) ~~The institution has and implements an explicit plan to ensure that candidates interact with higher education faculty, school faculty, other candidates and P-12 students representing diverse populations.~~

(5) ~~The unit provides a mechanism and facilitates collaboration between unit faculty and faculty in other units of the institution involved in the preparation of educators.~~

(6) ~~The unit receives sufficient budgetary allocations at least proportional to other institutional units.~~

(7) ~~Workload policies allow faculty members to be actively engaged in teaching, scholarship, assessment, advisement, collaborative work with P-12 schools, and service.~~

(8) ~~Specific staff and/or faculty members in the unit are assigned the responsibility of advising applicants for certification and endorsements and for maintaining certification records.~~

(9) ~~The unit has adequate facilities to support candidates in meeting standards.~~

(10) ~~The unit has adequate information technology resources, library, and curricular resources, and electronic information to support faculty and candidates.~~

(11) ~~The unit systematically evaluates faculty performance and facilitates professional development.~~

(12) ~~Faculty regularly and systematically collaborate with colleagues in P-12 settings, faculty in other college or university units, and members of the broader professional community to improve teaching, candidate learning, and the preparation of educators.)~~ A separate administrative unit is responsible for the composition and organization of the preparation program.

(a) An officially designated administrator is responsible for the management of operations and resources for the preparation program.

(b) The unit receives sufficient budgetary allocations at least proportional to other institutional units.

Personnel

(2) The unit has adequate personnel to promote teaching and learning.

(a) Workload policies allow faculty to be actively engaged in teaching, scholarship, assessment, advisement, service, and collaborative work with P-12 schools.

(b) Specific staff and/or faculty in the unit are assigned the responsibility of advising applicants for certification and endorsements and for maintaining certification records.

(c) The unit has adequate clinical faculty, site supervisors, support personnel, part-time faculty, and/or graduate teaching assistants.

Faculty qualifications and professional practices

(3) Faculty are qualified and exemplify professional practices.

(a) Faculty are qualified for their assignments.

(b) Faculty exemplify professional practices in teaching.

(c) Faculty exemplify professional practices in scholarship.

(d) Faculty exemplify professional practices in service.

Faculty performance and professional development

(4) The unit systematically and comprehensively evaluates faculty performance and supports professional development.

(a) The faculty evaluate their own effectiveness in teaching, scholarship, and service.

(b) The unit evaluates faculty effectiveness in teaching and learning.

(c) The unit provides opportunity for faculty to engage in professional development.

Unit facilities and resources

(5) The unit is provided adequate facilities and resources to promote teaching and learning.

(a) The unit is provided classrooms, lab space, office space, and/or other facilities.

(b) The unit is provided technology, library, curricular, and electronic information resources.

(c) The facilities support faculty and candidate use of technology.

WSR 09-20-109**PERMANENT RULES****PROFESSIONAL EDUCATOR****STANDARDS BOARD**

[Filed October 7, 2009, 11:27 a.m., effective November 7, 2009]

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

Purpose: Amends WAC 181-78A-105 (3)(a)(iii)(B), technical change permitting educator preparation programs that add an approved program administrator program are not required to have a site visit until the next, regularly scheduled visit and still offer the program.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-105.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-15-059 on July 10, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 23, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each college or university desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board and designated staff of the office of the superintendent of public instruction, a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment. Resubmit such plan to the designated official.

(3) Submit such plan to the professional educator standards board. The college or university may be granted approval for full proposal development or denied approval.

(a) If approved, the college or university shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board and designated staff of the office of the superintendent of public instruction, a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4)), provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution;

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(ii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved for up to a two-year period in a specific location(s). If not approved, the college or university may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) During the second year of approval, staff of the office of the superintendent of public instruction shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards.

(b) If denied, the college or university may resubmit its plan based upon the suggestions of the professional educator standards board.

(4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:

(a) A description of the location and facilities;

(b) Verification that no complaints have been filed against the program in its current location(s);

(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;

(d) A statement that supports need for the program;

(e) Cost to the students;

(f) Mode(s) of the program delivery; and

(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.

WSR 09-20-110
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 7, 2009, 11:42 a.m., effective November 7, 2009]

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

Purpose: Revises WAC 181-78A-205, 181-78A-207, 181-78A-209, and 181-78A-250. Revises Standard I for college/university educator preparation program per directions of the professional educator standards board.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-205, 181-78A-207, 181-78A-209, and 181-78A-250.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-17-112 on August 18, 2009.

Changes Other than Editing from Proposed to Adopted Version: Number of required meetings remained four per year in original proposal, reduced as result of public hearing to three per year.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 23, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-205 Required professional education advisory board. Colleges and universities seeking approval by the professional educator standards board as an approved preparation program, and in order to maintain such approval status, shall establish a professional education advisory board (PEAB) in accordance with the following:

(1) The program areas for which a college or university may seek approval and maintain an approved preparation program are:

- (a) Teacher.
- (b) Administrator.
- (c) Educational staff associate (ESA), school counselor.
- (d) Educational staff associate, school psychologist.
- (e) Educational staff associate, school social worker.

(2) A college or university may combine educational staff associate professional education advisory boards as long as one-half or more of the voting members are appointed by the associations representing the ESA roles involved and are divided equally among those roles.

(3) A college or university may have separate administrator professional education advisory boards for each administrator role as long as one-half or more of the voting members are appointed by the association representing the administrator role involved: Provided, That each administrator PEAB shall include at least one member appointed by the association of Washington school principals (AWSP) ~~(and)~~, one appointed by the Washington association of school administrators (WASA), and one appointed by the Washington Federation of Independent Schools (WFIS).

(4) The failure of a designated organization, as specified in WAC 181-78A-209, to make appointments to the designated board, or to make such appointments in a timely man-

ner, shall not cause the preparation program to lose its approval status.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-207 Qualification to be appointed to a college or university professional education advisory board. (1) ~~((Appointees to service on professional education advisory boards from required agencies, other than the designee(s) of the college or university president, at the time of their appointment, must be employed in or reside in a school district with which the college or university has a current written agreement to provide field experiences for students involved in the preparation program for which the professional education advisory board has responsibility.~~

~~((2)))~~ Professional education advisory boards may authorize the appointment of additional representatives from other school districts or other public and private agencies as long as one-half or more of the members of the professional education advisory board consist of representatives who meet the qualifications ~~((of subsection (1)))~~ of this ~~((section))~~ subsection and who are from the role for which the professional education advisory board has responsibility.

~~((3)))~~ (2) If any professional education advisory board receives a written request from other school districts or other public or private agencies for representation on such professional education advisory board, the current members of such professional education advisory board shall vote on such request at the next regular meeting of such board: Provided, That a college or university may elect to add private school representatives to a professional education advisory board without adding to the representation from the role for which the professional education advisory board has responsibility if the professional education advisory board authorizes such action by a majority vote.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-209 College or university professional education advisory boards—Membership. The professional education advisory boards shall at a minimum consist of the following:

(1) **TEACHER.**

(a) One-half or more of the voting members shall be classroom teachers. All, but one, will be appointed by the president of the Washington Education Association. ~~((One of these))~~ The remaining teacher(s) shall be employed in a state-approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one principal appointed by the president of the Association of Washington School Principals.

(c) At least one school administrator appointed by the Washington Association of School Administrators.

(d) At least one educational staff associate (school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist) appointed by the president of the individual's professional association.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

~~((e))~~ (f) At colleges or universities where career and technical education programs are offered, one career and technical education director or career and technical education teacher, with expertise in one of the approved career and technical education programs at the college or university, appointed by the Washington Association of Vocational Administrators in cooperation with the college or university.

(2) ADMINISTRATOR.

(a) One-half or more of the voting members shall be administrators. One-half of these administrators (~~((at least one-fourth of the total voting membership))~~) shall be appointed by the president of the Washington Association of School Administrators. (~~((All but one of))~~) The remaining administrators shall be appointed by the president of the Association of Washington School Principals (~~(-The remaining administrator)~~) except one who shall be employed in an approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one or more classroom teachers appointed by the president of the Washington Education Association.

(c) At least one educational staff associate (school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist) appointed by the president of the individual's professional association.

(d) At least one college or university representative who may serve in a voting or nonvoting role.

(3) SCHOOL COUNSELOR.

(a) At least one-half of the voting members shall be school counselors appointed by the president of the Washington School Counselors Association.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

(4) SCHOOL PSYCHOLOGIST.

(a) At least one-half of the voting members shall be school psychologists appointed by the president of the Washington State Association of School Psychologists.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

(5) SCHOOL SOCIAL WORKER.

(a) At least one-half of the voting members shall be school social workers appointed by the president of the Washington Association of School Social Workers.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

(6) MEMBERSHIP APPOINTMENTS. Applicable to all professional association appointments, if the professional association does not respond to the university's request for an appointment of a representative within sixty days of the receipt of the request, a university may appoint the representative of its choice in the role for which an appointment is being sought. If the university makes an appointment, it must notify the appropriate professional association within one week that the appointment has been made. If an association is unable to appoint a representative due to the geographic restriction of possible candidates, the PEAB will appoint an alternate to represent that association with their consent.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-250 Approval standards professional education advisory board. Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(1):

(1) The college or university professional education advisory board has been established in accordance with WAC 181-78A-209.

(2) The educational service district professional education advisory board for a teacher professional certification program has been established in accordance with WAC 181-78A-520.

(3) The professional education advisory board has adopted operating procedures and has met at least ~~((four))~~ three times a year.

(4) The professional education advisory board has reviewed all program approval standards at least once every five years.

(5) The professional education advisory board annually has reviewed and analyzed data for the purposes of determining whether candidates have a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Student surveys, follow-up studies, employment placement records, student performance portfolios, course evaluations, and summaries of performance on the pedagogy assessment for teacher candidates.

(6) The professional education advisory board has made recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

(7) The professional education advisory board annually has seen, reviewed and approved an executive summary of the activities of the professional education advisory board. The college, university or educational service district has

submitted the approved executive summary to the professional educator standards board.

(8) The professional education advisory board for administrator preparation programs participated in the candidate selection process for principal preparation programs.