WSR 10-01-036
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-264—Filed December 7, 2009, 3:52 p.m., effective January 7, 2010]

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

Purpose: Amend WAC 232-16-800 Johnson Debay's Slough Game Reserve.

Citation of Existing Rules Affected by this Order: Amending WAC 232-16-800.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.040, 77.12.570, 77.12.210.

Adopted under notice filed as WSR 09-19-147 on September 23, 2009.

Changes Other than Editing from Proposed to Adopted Version: Changes from the text of the proposed rule and reasons for difference:

- The name of Debay's Slough Road was changed to Debay's Isle Road to match the actual road name.
- The words "white corner marker" was deleted because the point of reference was no longer needed.
- The distance traveled east along the south bank of the Skagit River was changed from 2200 feet to 3750 feet in order to make the reserve boundary close at the northeast corner.
- The distance traveled south along the fence line was changed from 150 feet to 855 feet in order to reflect the incorporation of additional acreage within the reserve.
- The words "southeast 1050 feet to fence line, then" was removed since they no longer describe the boundary which places additional acreage in the reserve.
- The distance traveled east along the fence line was changed from 1090 feet to 435 feet to correctly align the boundary with the point of origin.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 4, 2009.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-16-800 Johnson/Debay's Slough Game Reserve. In Skagit County, beginning at the intersection of Francis Road and Debay's ((~~Slough~~)) Isle Road; then south and west along Francis Road (3090 feet) to white corner marker; then north (1265 feet) to the middle of Debay's Slough (white corner marker); then westerly (2087 feet) along the channel of Debay's Slough to the western tip of the farmed portion of Debay's Island; then northerly (1485 feet) to the south bank of the Skagit River (white corner marker); then easterly (((~~2200~~)) 3750 feet) along the south bank of the Skagit River to fence line (white corner marker); then south along fence line (((~~150~~)) 855 feet) to corner post; then ((~~southeast 1050 feet to fence line; then~~)) east ((~~1090 feet~~)) along fence line (435 feet) to fence intersection; then south (300 feet) along fence line to existing tree line (white corner marker); then continue south (835 feet) to south shoreline of Debay's Slough (white corner marker); then easterly and southerly along the west shoreline of Debay's Slough (1770 feet) to the south side of Debay's ((~~Slough~~)) Isle Road (white corner marker); then east along the south side of Debay's ((~~Slough~~)) Isle Road to the intersection of Francis Road and the point of beginning.

WSR 10-01-042
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed December 8, 2009, 11:10 a.m., effective January 8, 2010]

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

Purpose: WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal, explains how the counties, the department of revenue, and the state treasurer process the taxes and administrative fees received under chapter 458-61A WAC, Real estate excise tax (REET).

The department is amending WAC 458-61A-302 to recognize provisions of HB 2170 (chapter 486, Laws of 2005). This legislation removed the dedication of the state portion of the REET "for the support of common schools." Additional editing changes to existing language in the rule have been made.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal.

Statutory Authority for Adoption: RCW 34.05.353 (1)(a), 82.32.300, and 82.01.060(2).

Adopted under notice filed as WSR 09-19-077 on September 16, 2009.

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

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

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

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

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

Date Adopted: December 8, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal. (1) **Introduction.** This rule explains how the counties, the department of revenue, and the state treasurer process the taxes and administrative fees received under this chapter.

(2) **County treasurer.** The county treasurer distributes the proceeds of the real estate excise tax along with the cash receipt journal summary in accordance with the provisions of chapters 82.45 and 82.46 RCW. When no real estate excise tax is due on a transaction, the county will collect an administrative fee for processing the real estate excise tax affidavit. RCW 82.45.180.

(3) **Adjustments.** Requests from county treasurers for adjustments to the funds that have been distributed to the state treasurer must be sent to the department for approval or denial. ((~~The department will forward to the state treasurer those requests that it approves.~~)) If the department denies a request for adjustment, the department will return the request to the county treasurer with an explanation for the denial.

(4) **Tax paid directly to the department.** Real estate excise tax for transfers of a controlling interest in an entity owning real property in Washington, and any other tax payment under this chapter made directly to the department, are remitted to the state treasurer for deposit in accordance with the provisions of chapter 82.45 RCW. ((~~The state treasurer deposits the proceeds of the state portion of the tax in the general fund for the support of the common schools.~~)) The state treasurer deposits and distributes the proceeds of any local taxes in accordance with the provisions of chapters 82.45 and 82.46 RCW.

(5) **Affidavit batch transmittal.**

(a) **Due date.** The county will submit copies of all the real estate excise tax affidavits for the entire month, together with a completed affidavit batch transmittal form, to the department by the fifth business day following the close of the month in which the tax was received. The affidavit batch must include all affidavits processed during the month, plus copies of any documents related to refunds made by the county.

(b) **Alternate transmittal method.** An alternate method for submitting affidavits may be used in lieu of the paper method described in this rule with the prior approval of the department. Use of an alternate method (e.g., electronic transmittal) requires a signed memorandum of understanding (MOU) between the county and the department.

(c) **Distribution.** The county will complete the affidavit transmittal form, supplied by the department, and send one copy with the affidavit batch to the department. ((~~The county will send a second copy of the affidavit batch transmittal with the monthly cash receipts journal summary to the state treasurer's office as documentation for the remittance of the real estate excise tax deposit.~~))

(d) **Reporting of refunds.** The county must report any refunds made during the month on the adjustment section provided on the batch transmittal form and attach all refund documentation.

(e) **Retention of records.** The county treasurer will retain the approved real estate excise tax affidavits, including any supplemental statements, for a period of not less than four years following the year in which the affidavit is received. See RCW 82.45.150 and 82.32.340.

WSR 10-01-050
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed December 9, 2009, 10:59 a.m., effective January 9, 2010]

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

Purpose: WAC 458-20-12401 (Rule 12401) Special stadium sales and use tax. This rule explains the special stadium sales and use taxes imposed by RCW 82.14.360, which is currently only assessed in King County. The tax is assessed on sales of food and beverages by restaurants, taverns, and bars. The tax applies only to those food and beverage sales that are already subject to the retail sales tax. Rule 12401 has been amended to:

- Remove language from the opening paragraph providing the citation to the 1995 amendment to RCW 82.14.-360, which imposes the tax. This information was removed because it is no longer needed;
- Add "movie theaters" to the list of facilities that often sell food and beverages for immediate consumption. The term is added to the examples of facilities provided in subsection (2)(a)s definition of "restaurant." This addition does not reflect a change in the department's interpretation of the law. It incorporates information now provided in Det. 98-098E, 17 WTD 55 (1998); and
- Update language in subsection (4)(a), which is an example pertaining to bakery sales, to incorporate terminology consistent with Washington law that adopted provisions of the streamlined sales and use tax agreement. This update does not change the tax consequences of the example.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-12401 Special stadium sales and use tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.14.360(1).

Adopted under notice filed as WSR 09-14-012 on June 22, 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: December 9, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-16-086, filed 8/7/96, effective 9/7/96)

WAC 458-20-12401 Special stadium sales and use tax. (1) **Introduction.** RCW 82.14.360 ((~~was amended in the third special session in 1995. (See chapter 1, 1995 3rd sp.s.) Effective January 1, 1996,~~)) provides for a special stadium sales and use tax that applies to sales of food and beverages by restaurants, taverns, and bars in counties with a population of one million or more. Currently, the special stadium tax applies only in King County. The tax applies only to those food and beverage sales that are already subject to the retail sales tax. Grocery stores, mini-markets, and convenience stores were specifically excluded from the definition of a restaurant and are not required to collect the tax. However, a restaurant located within a grocery store, mini-market, or convenience store is subject to this tax if the restaurant is owned or operated by a different legal entity from the store or market. This section explains when the tax will apply.

(2) **Definitions.** The following definitions apply to this section.

(a) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed-and-breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants" for purposes of this tax. So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption on trips that both originate and terminate within the county imposing the special stadium tax if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(b) "Tavern" has the same meaning here as in RCW 66.04.010 and means any establishment with special space and accommodation for the sale of beer by the glass and for consumption on the premises.

(c) "Bar" means any establishment selling liquor by the glass or other open container and includes, but is not limited to, establishments that have been issued a class H license by the liquor control board.

(d) "Grocery stores, mini-markets, and convenience stores," have their ordinary and common meaning.

(3) **Tax application.** This special stadium sales and use tax currently applies only to food and beverages sold by restaurants, bars, and taverns in King County. The tax is in addition to any other sales or use tax that applies to these sales. This special tax only applies if the regular sales or use tax imposed by chapters 82.08 or 82.12 RCW applies.

(a) The tax applies to the total charge made by the restaurant, tavern, or bar, for food and beverages. If a mandatory gratuity is included in the charge that, too, is subject to the tax.

(b) Catering provided by a restaurant, tavern, or bar is also subject to the tax. However, when catering is done by a business that does not meet the definition of restaurant in subsection (2) of this section, has no facilities for preparing food, and all food is prepared at the customer's location, the charge is not subject to the tax.

(c) In the case of catering subject to the tax, if a separate charge is made for linens, glassware, tables, tents, or other items of tangible personal property that are not required for the catering, those separate charges are not subject to the tax. However, separately stated charges for items that are required as a part of the catering service, such as waitpersons or mandatory gratuities, are subject to the tax.

(4) **Examples.** The following examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances. For these examples, assume the transactions occur in King County.

(a) ((~~XYZ~~)) The Hot Bakery operates a coffee shop where customers may purchase baked goods and coffee for consumption on the premises ((~~or may purchase bakery products for consumption elsewhere~~)). ((~~The sales of~~)) When utensils are provided with the bakery goods ((~~and beverages for consumption on the premises are~~)), the sale of bakery goods, along with the coffee is considered prepared food. The sale of prepared food is subject to the retail sales tax and special stadium tax. ((~~The~~)) If the bakery products are bagged or boxed without utensils, the retail sales and special stadium ((~~tax does~~)) taxes do not apply ((~~to the bakery goods sold "to go" because~~)) under the provisions of RCW 82.08.0293 ((~~and~~)). See WAC 458-20-244((~~(6) these bakery goods are not subject to the state retail sales tax. Since the state retail sales tax does not apply to these sales, neither does the special stadium sales tax~~)) Food and food ingredients, for information about the sales of prepared foods.

(b) ((~~XYZ~~)) Charlie operates a "fast food" business. Customers may consume the food and beverages on the premises or may take the food "to go" for consumption elsewhere. All sales of food and beverages by this business are subject to the special stadium tax, including the food and beverages sold "to go."

(c) ((~~XYZ~~)) Jane operates carts that may be set up on a sidewalk or within parks from which customers may purchase hot dogs and beverages. The cart includes heating facilities for preparation of hot dogs at the cart site. No seating is provided by the business. The site location is not owned or leased by ((~~the business~~)) Jane. These sales are not subject to the special stadium sales tax because the business does not have a designated space for the preparation of the food it sells. This business does not fit the definition of "restaurant." However, if ((~~XYZ~~)) Jane operates a mobile food service unit selling food or beverages for immediate consumption at fixed locations within the grounds of a stadium, arena, fairgrounds, or other place, admission to which is subject to an admission charge, then the special stadium tax applies.

(d) ((~~XYZ~~)) Bill operates a combination gas station and convenience store. The convenience store sells some groceries and also some prepared foods such as hot dogs and hamburgers. Customers may also purchase soft drinks or coffee by the cup. None of these sales are subject to the special stadium sales tax because of the specific language in the statute exempting convenience stores from the tax.

(e) ((~~XYZ~~)) Peter operates a business that sells prepared pizza. The business prepares and bakes the pizza at its premises. The business has no seating. Customers may order the pizzas by either entering ((~~the seller's~~)) Peter's place of business or by telephone. Customers may either take delivery at the seller's site or the business will deliver the pizza to the customer's residence or other site. These sales are subject to the special stadium sales tax because the business does have a designated site and facilities for the preparation of food for sale for immediate consumption, even though no seating is available. The regular retail sales tax applies to these sales since these sales are not exempt food products under RCW 82.08.0293 (2)((~~(c)~~)).

(f) ((~~XYZ~~)) Jack has the exclusive concession rights to prepare and sell hot dogs within a sports facility. Customers place their orders and take delivery of the prepared food and beverages at ((~~the seller's~~)) Jack's site in the sports facility. ((~~XYZ~~)) Jack provides no seating that ((~~it~~)) he controls. Customers generally take the food and beverage to their seats and consume the items while watching the sports event. ((~~XYZ~~)) Jack will also prepare hot dogs and soft drinks at ((~~its~~)) his food bar and use ((~~its~~)) his employees or agents to sell these products to customers in the stands while the sports event is in progress. All of the sales of food and beverages by ((~~XYZ~~)) Jack are subject to the special stadium sales tax. ((~~XYZ's~~)) Jack's business operation meets the definition of "restaurant." ((~~XYZ~~)) Jack has set aside space that ((~~it~~)) he controls for the purpose of preparing food and beverages for immediate consumption for sale to the public.

(g) ((~~DEF~~)) Jinny operates a cafe within ((~~ABC's~~)) Abe's grocery store, for the sale of food or beverages for immediate consumption on the premises. ((~~ABC~~)) Abe's grocery store is a separate entity from ((~~DEF~~)) Jinny's cafe, and it leases the space for the cafe to ((~~DEF~~)) Jinny. Sales of food and beverages by ((~~ABC~~)) Abe's grocery store are exempt from the special stadium tax, but sales ((~~from~~)) at the cafe by ((~~DEF~~)) Jinny are subject to ((~~that~~)) retail sales tax and the special stadium sales tax.

WSR 10-01-051

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 9, 2009, 12:24 p.m., effective January 9, 2010]

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

Purpose: RCW 82.08.0255 (1)(c) and 82.12.0256 (1)(c) provide a retail sales and use tax exemption for motor vehicle and special fuels purchased by counties and public transportation benefit areas (PTBAs) for use in passenger-only ferry vessels. The exemption as it applies to county-owned ferries is addressed in current subsection (3)(a), with subsection (3)(d) addressing the exemption as it applies to PTBAs. The discussion regarding county-owned ferries clearly identifies the statutory requirement that the exemption is limited to fuels used in passenger-only ferries, while the discussion for fuel used by a PTBA does not. The department proposes to amend the rule to correct this oversight. The amendment combines the discussion of the exemption as it applies to fuel purchased for both county-owned and PTBA-owned passenger-only ferries in a single subsection (3)(a).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.0255, 82.12.0256, 82.08.865, and 82.12.865.

Adopted under notice filed as WSR 09-20-106 on October 7, 2009.

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

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

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

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

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

Date Adopted: December 9, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-045, filed 7/29/08, effective 8/29/08)

WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) **Introduction.** This section explains the retail sales and use taxes for motor vehicle fuel, special fuels, and fuels commonly referred to as natural gas and propane. This section also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuels, and how are they taxed?** "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section mean all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally the fuel taxes apply to sales of fuel for highway consumption and the sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuels exemptions are available?**

(a) **((~~County owned ferries.~~)) Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide exemptions from the retail sales tax and use tax for motor vehicle fuel or special fuel((~~s~~)), purchased on or after April 27, 2007, for use in passenger-only ferry vessels. This exemption applies only to public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW ((~~for use in passenger only ferries~~)).

(b) **Nonprofit transportation providers.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for sales of or uses of motor vehicle fuel or special fuels purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and ((~~82.12.0265~~)) 82.12.0256 provide exemptions for the retail sales tax and use tax when motor vehicle fuel or special fuels are purchased or used for the purpose of public transportation, and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3).

(d) ((~~**Public transportation benefit areas (PTBA).** For purchases on or after April 27, 2007, RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel and special fuels purchased by a PTBA created under chapter 36.57A RCW.~~

~~(e)~~)) **Special fuels used in interstate commerce.** The retail sales tax does not apply to sales of special fuels delivered in this state which are later transported and used outside this state by persons engaged in interstate commerce. (RCW 82.08.0255(2).) This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuels to interstate carriers must obtain a completed exemption certificate "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser in order to document the entitlement to the exemption. The exemption certificate can be obtained from the department of revenue (department) on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the exemption certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

((~~(f)~~)) (e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this section, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) Effective March 6, 2006, RCW 82.08.865 and 82.12.865 exempt farm fuel users from retail sales and use taxes for diesel and aircraft fuel purchased for nonhighway use.

(ii) Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for nonhighway use. This exemption, effective May 11, 2007, also applies to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which can be obtained from the department on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **Nonpollutant fuels.** Nonpollutant fuels are described as natural gas and liquefied petroleum gas, commonly called propane. Nonpollutant fuels can be purchased for either highway or "off-highway" use. Sales of nonpollutant fuels for highway use are normally subject to taxes under

either chapter 82.36 or 82.38 RCW. Nonpollutant fuels purchased for "off-highway" use are subject to retail sales tax or use tax

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these nonpollutant fuels.

Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** Nonpollutant fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers must obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The "Certificate for Purchase of Nonpollutant Special Fuels" must certify the amount of fuel which will be consumed by the purchaser in using motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of Nonpollutant Special Fuels" can be obtained from the department on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. In the event such an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) Nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpollutant Special Fuels" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of his permanent records. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. In lieu of taxes of chapters 82.36 and 82.38 RCW, retail sales tax is due on their purchases of nonpollutant fuel, for either highway or off-highway use.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle fuel or special fuels and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.

WSR 10-01-053
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 9, 2009, 3:42 p.m., effective January 9, 2010]

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

Purpose: The purpose of the rules is to comply with the legislative directive to implement procedures allowing students rights to appeal state assessment requirements under conditions of special, unavoidable circumstances, as stipulated in RCW 28A.655.065.

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-600, 392-501-601, and 392-501-602.

Statutory Authority for Adoption: RCW 28A.665.065 [28A.655.065], 28A.665.061 [28A.655.061], 28A.155.045.

Adopted under notice filed as WSR 09-12-069 on May 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 0, Repealed 0.

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

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

Date Adopted: July 18, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-600 General description. RCW 28A.655.065 directs the superintendent of public instruction to develop guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and RCW 28A.155.045 pertaining to the certificate of individual achievement for students who have special, unavoidable circumstances.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-601 Eligibility and application requirements. (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year, from successfully demonstrating his or her skills and knowledge on the Washington assessment of student learning (WASL), on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and severe medical condition. The condition must be documented by a medical professional and included with the application; or

(iii) Another unavoidable event of a similarly compelling magnitude that reasonably prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended, or in a plan required ((~~in~~)) under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; or

(f) Students who transfer from an out-of-state or out-of-country school to a Washington public school in the twelfth grade year after March 1.

(3) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

(4) The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

((~~(4)~~)) (5) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

((~~(5)~~)) (6) Applications must be received by the superintendent of public instruction on or before May 1 or ((~~August~~)) October 1. ((~~The May 1 deadline is intended primarily for students who were not able to participate in the spring assessment, while the August deadline is intended primarily for students who decide to file an appeal after receiving their scores in June.~~))

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-602 ((~~High school graduation certificate~~)) Special, unavoidable circumstance appeal((~~s~~)) review board and approval criteria. (1) The ((~~high school graduation certificate~~)) special, unavoidable circumstance appeal((~~s~~)) review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint ((~~five~~)) seven members total to the board, five voting members and two alternates (for cases of unanticipated absenteeism or potential conflict of interest on the part of a regular voting member). The board shall be chaired by a current or former high school principal and shall consist of current or former teachers, department heads, and/or school district assessment directors with experience and expertise in the Washington essential academic learning requirements. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate.

(3) The high school graduation certificate appeals review board shall review applicable special, unavoidable circumstance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted to the superintendent to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of ((~~the~~)) superintendent of public instruction (OSPI) shall coordinate and assist the work of

the board. In this capacity, staff from the OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on the WASL, on an objective alternative assessment, or on a Washington alternate assessment available to students eligible for special education services;

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

(c) The student has met, or is on track to meet, all other state and local graduation requirements; and

(d) After considering the criteria below, in the board's best judgment, the student more likely than not possesses the skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior WASL or alternate assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the high school graduation appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the student's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of the deadline for receiving the recommendation from the certificate appeals review board. This deadline for acting on the application may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable certificate was waived.

(10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.

WSR 10-01-054
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 9, 2009, 3:43 p.m., effective January 9, 2010]

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

Purpose: The purpose of the rules is to provide an appropriate graduation alternative for a portion of the special education population that is defined as functioning at the awareness level. This new set of rules meets the intent of RCW 28A.155.045 authorizing the superintendent of public instruction to establish guidelines that waive certain graduation requirements associated with RCW 28A.655.061.

Statutory Authority for Adoption: RCW 28A.665.061 [28A.655.061], 28A.155.045.

Adopted under notice filed as WSR 09-12-070 on May 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 2, Amended 0, Repealed 0.

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

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

Date Adopted: July 18, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-501-700 General description. RCW 28A.155.045 authorizes the superintendent of public instruction to develop guidelines for waiving specific requirements in RCW 28A.655.061 pertaining to the graduation requirements and the state assessment system, and to determine appropriate assessment alternatives through which to assess identified students.

NEW SECTION

WAC 392-501-705 Eligibility and application requirements. (1) A student, or a student's parent or guardian, may initiate a waiver request to the superintendent of public instruction if a student's cognitive development is

identified at the awareness level. The waiver request can cover one or all state assessed content areas of study. Students with cognitive development at the awareness level exhibit behaviors that include, but are not limited to, the following:

(a) Having limited intentionality and being unable to communicate using presymbolic strategies.

(b) Reactions to environmental stimuli are limited to crying, opening eyes, movement, etc.

(c) Behavior not under the student's control but reflects a general physical state (e.g., hungry, wet, sleepy).

(d) Being conscious (awake) during limited times each day.

(e) Requiring parents, teachers, or other adults to interpret the child's state from behaviors such as sounds, body movements, and facial expressions.

(f) Other criteria as defined by the superintendent of public instruction's guidelines posted to the agency web site.

(2) For a student requesting a waiver under this section, the student must have the following documented in his or her records:

(a) The student is in high school and is designated as being in the 11th or 12th grade.

(b) The individualized education program (IEP) team as identified under WAC 392-172A-03095, through an evaluation of the student's behaviors and educational history, determines that the student is functioning at the awareness level (as defined in subsection (1) of this section).

(3) Filing a waiver request requires the use of a specific form developed by the superintendent of public instruction. Completing the waiver request requires:

(a) The special education teacher responsible for the IEP of the student to complete and sign the awareness waiver application and document the student's nonparticipation in the state assessment system in the student's IEP.

(b) The waiver application is submitted to the district's special education director for review, verification, and signature.

(c) Upon verification, the district special education director files the waiver application form with the district assessment coordinator.

(d) The district assessment coordinator reviews, signs, and transmits the waiver application to the superintendent of public instruction per instruction listed on the form.

(e) Staff from the office of superintendent of public instruction shall record a status of "waived" in the state data base, then transmit a confirmation e-mail to the student's high school principal and the district assessment coordinator.

(f) The school shall complete all necessary school and district documentation, including but not limited to, IEP documentation.

WSR 10-01-055

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 9, 2009, 3:45 p.m., effective January 9, 2010]

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

Purpose: The purpose of the rules is to comply with the legislative directive to implement an alternative assessment method that shall be an evaluation of a collection of work samples prepared and submitted by an applicant, as provided for in RCW 28A.655.065, to demonstrate achievement of the state content areas in which the student has not yet met standard on the high school Washington assessment of student learning (WASL).

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-510.

Statutory Authority for Adoption: RCW 28A.655.061, 28A.665.065 [28A.655.065].

Adopted under notice filed as WSR 09-12-071 on May 29, 2009.

Changes Other than Editing from Proposed to Adopted Version: Changes to proposed language since emergency filing (part of public hearing record):

- Clause 1 modified the specific reference to the Washington assessment of student learning (WASL) to a generic reference to the state high school assessment.
- Clause 2 modified the grade level reference to include both 11th and 12th grades regarding direct access to the state-approved alternative assessments for in-state transferees.
- Clause 3 added language to allow out-of-state transfer students, with documented non-English proficiency, who are waived from the portions of the state high school assessment in 10th grade, direct access to the state-approved alternative assessments.

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: July 20, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-510 Access to alternative assessment. (1) Students who transfer into a public school from out-of-state or from out-of-country in the eleventh or twelfth grade year may utilize an objective alternative assessment for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the ((~~Washington~~)) state high school assessment ((~~of student learning~~)).

(2) Students who transfer for their 11th or 12th grade year into a public school from within the state from a nonpublic school setting may utilize an objective alternative assessment for meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

(3) Students who were exempted from the high school assessment in 10th grade due to their status as a new student with non-English proficiency, may utilize an objective alternative assessment after their 10th grade year, in the content areas originally exempted, for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

WSR 10-01-069
PERMANENT RULES
ATTORNEY GENERAL'S OFFICE

[Filed December 11, 2009, 3:20 p.m., effective January 11, 2010]

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

Purpose: WAC 44-10-010, adding definition of "manufacturer dispute program" for clarification of existing rules; WAC 44-10-020, adding "email" to designated contact information provided by a manufacturer; WAC 44-10-031, updating a citation and clarify effect of filing a claim; WAC 44-10-040, updating to reflect new statutory procedures regarding review and acceptance or rejection of consumer requests for arbitration; WAC 44-10-050, updating to reflect new statutory procedures regarding assignment of requests for arbitration to the new motor vehicle arbitration board; WAC 44-10-060 (1)-(3), updating and adding clarifications to reflect new statutory procedures regarding requests for special master arbitrator hearings; WAC 44-10-070, editorial clarification without change to effect; WAC 44-10-080, editorial clarification without change to effect; WAC 44-10-090, updating to reflect statutory change ending fee collection from out of state consumers; WAC 44-10-100 (1) and (3), updating to reflect statutory changes regarding board duties, allowing use of e-mail; WAC 44-10-110, updating to reflect statutory change allowing use of e-mail; WAC 44-10-120, editorial clarification without change to effect; WAC 44-10-150, update reflecting statutory change regarding board duties; WAC 44-10-170, editorial clarification without change to effect; WAC 44-10-180, clarification without change to effect; WAC 44-10-200 (1), (1)(a)(iii) and (d), (2), (3)(a), (3)(a)(ii), (c), (e), (f), (g), and (6), editorial clarifications without change to effect, updating to reflect new statutory procedures regarding issuance of arbitration decisions, allowing use of e-mail, motor home manufacturer distribution of liability, and manufacturer liability; WAC 44-10-221, editorial clarification without change to effect regarding resale documents for vehicles reacquired under chapter 19.118 RCW through manufacturer dispute programs; WAC 44-10-222, clarification without change to effect, establishing directions relating to a new statutory requirement for manufacturers to obtain title to certain manufacturer reacquired new motor vehicles, and alternative placement location of a disclosure windshield display; WAC 44-10-300, update reflecting statutory change allowing use of e-mail; and WAC 44-10-310, updating reflecting statutory change allowing use of e-mail.

Citation of Existing Rules Affected by this Order: Amending WAC 44-10-010, 44-10-020, 44-10-031, 44-10-040, 44-10-050, 44-10-060, 44-10-070, 44-10-080, 44-10-090, 44-10-100, 44-10-110, 44-10-120, 44-10-150, 44-10-170, 44-10-180, 44-10-200, 44-10-221, 44-10-222, 44-10-300, and 44-10-310.

Statutory Authority for Adoption: RCW 19.118.080(2), 19.118.061.

Adopted under notice filed as WSR 09-19-106 on September 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 20, 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 20, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, 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 20, Repealed 0.

Date Adopted: December 11, 2009.

Rob McKenna
Attorney General

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-010 Definitions. Terms, when used in this chapter, shall have the same meaning as terms used in chapter 19.118 RCW. The following definitions shall supplement or aid in the interpretation of the definitions set forth in chapter 19.118 RCW.

"Arbitration special master" means the individual or group of individuals selected by the board to hear and decide special issues timely brought before the board.

"Attorney general" or "attorney general's office" means the person duly elected to serve as attorney general of the state of Washington and delegates authorized to act on his or her behalf.

"Board" or "arbitration board" means the new motor vehicle arbitration board established by the attorney general pursuant to RCW 19.118.080.

"Intervening transferor" means any person or entity which receives, buys or otherwise transfers the returned new motor vehicle prior to the first retail transfer, sale or lease subsequent to being repurchased or replaced by the manufacturer.

"Lemon Law administration" means the section within the attorney general's office, consumer protection division, designated by the attorney general to be responsible for the implementation of chapter 19.118 RCW and related rules.

"Lemon Law resale documents" refers to the following:

(((~~(1)~~))) (a) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: (((~~(a)~~))) (i) The vehicle was reacquired by the manufacturer after a determination, settlement or adjudication of a dispute; (((~~(b)~~))) (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (((~~(c)~~))) (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

(((~~(2)~~))) (b) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: (((~~(a)~~))) (i) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (((~~(b)~~))) (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (((~~(c)~~))) (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer. The document will provide space for the manufacturer to indicate if each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

(((~~(3)~~))) (c) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the Lemon Law administration which requires the manufacturer, agent or dealer to identify the destination state and the dealer, auction, other person or entity to whom the manufacturer sells or otherwise transfers the reacquired vehicle when the vehicle is taken to another state for any disposition, including: Resale, transfer or destruction.

"Manufacturer dispute program" means a program offered by a manufacturer to owners or lessees of vehicles covered by or previously covered by the manufacturer's warranty to resolve complaints or claims: (a) Established in substantial compliance with the applicable provision of Title 16, Code of Federal Regulations Part 703; (b) where the basis of the program's standards for decision making are substantially equivalent to chapter 19.118 RCW; (c) where the basis of the program's standards for decision making are identified as some or all of the provisions of chapter 19.118 RCW; or (d) references the "Lemon Law" in a manner suggesting or inferring that chapter 19.118 RCW is the program's basis for the decision making, determining remedies or has been approved by the attorney general.

"Person" includes every natural person, firm, partnership, corporation, association, or organization.

"Settlement" means ((~~the resolution of a dispute, under chapter 19.118 RCW,~~)) an agreement between ((~~the~~)) a consumer and a manufacturer ((~~after the new motor vehicle arbitration board has accepted the consumer's request for arbitration and which results in the manufacturer reacquiring the new motor vehicle directly or indirectly through an agent or a motor vehicle dealer. Settlement includes a consumer's acceptance of a decision or award for repurchase or replacement of a vehicle issued by a manufacturer sponsored dispute resolution program where the basis of the program's standards decision making are specifically related to, or identified as, some or all of the provisions of chapter 19.118 RCW and which~~)) to resolve a claim under chapter 19.118 RCW after a request for arbitration has been assigned to the arbitration board and where the agreement results in the manufacturer reacquiring ((~~the~~)) a new motor vehicle directly or indirectly, through an agent or a motor vehicle dealer.

"Similar law of another state" refers to the law of another state which creates remedies for a manufacturer's failure to conform a vehicle to its warranty and under which the vehicle was reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-020 Designation of manufacturer ((~~contract [contact]~~)) contact. (1) A new motor vehicle manufacturer shall submit, in writing, to the Attorney General's Office, Lemon Law administration the name, address, e-mail or electronic address and telephone number of an individual designated by the manufacturer to receive notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

(2) Where a manufacturer's production or distribution system is accomplished through more than one division or region, the manufacturer may designate an individual for a division or region for the purpose of receiving notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

(3) The manufacturer is responsible for providing written notice to the attorney general of its replacement of the designated individual or changes to the related address and telephone number.

(4) If no individual is designated or an insufficient address is provided all notices shall be sent to the corporate headquarters of the manufacturer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-031 Effect of request for arbitration filing. (1) A request for arbitration is deemed to have been received within the thirty month ((~~limitation identified~~)) manufacturer mandatory arbitration participation period established in RCW 19.118.090(((~~2~~))) (3), if it:

(a) Is received by the Office of the Attorney General within thirty months from the date of original delivery of the new motor vehicle to a consumer at retail; and

(b) Identifies the consumer and the new motor vehicle which is the subject of the requested arbitration.

(2) The thirty month manufacturer mandatory arbitration participation period is extended by the number of days during which a consumer's request for arbitration is under review by the attorney general.

(3) The thirty month manufacturer mandatory arbitration participation period is extended by the number of days during the period after a consumer's request for arbitration accepted by the Lemon Law administration for assignment to the arbitration board, through the date when:

(a) The attorney general or the board is notified by the consumer that the request for arbitration is withdrawn;

(b) The attorney general or the board is notified by the consumer that the dispute has been resolved;

(c) The consumer rejects the arbitration decision; or

(d) Compliance occurs with an arbitration award that was accepted by the consumer.

(4) If the attorney general finds that a request is not complete, the thirty month ((~~limitation~~)) manufacturer mandatory arbitration participation period will resume ((~~running~~)) three business days after the date the attorney general mails notice of incompleteness to the consumer or the day following delivery of e-mail notice if requested by the consumer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-040 Attorney general screening of arbitration requests. (((~~(1) After a request for arbitration has been received, the attorney general shall review the form for completeness.~~

~~(2) The attorney general will screen the request for arbitration and supporting documentation to determine whether the request appears timely, complete and to comply with the jurisdictional requirements of chapter 19.118 RCW.~~

~~(a) If a request appears to be untimely or not in compliance with the jurisdictional requirements of chapter 19.118 RCW the attorney general will reject the request for arbitration and notify the consumer of the reason for the rejection.~~

~~(b) A request will be considered complete if the information required by the request form is provided in full or if the consumer provides a reasonable explanation for the absence of any supporting documentation.~~

~~(c) If a request is not complete, the attorney general will notify the consumer of any procedures or information required to complete the request.~~

~~(3) A consumer request that is based on a problem which does not manifest itself, is intermittent or unconfirmed shall not preclude an attorney general determination of the appearance of jurisdiction for purposes of initial screening. However, this section shall not preclude a party from raising jurisdictional issues at the arbitration hearing or subsequent court proceedings.~~)) (1) The attorney general will review a request for arbitration and supporting documentation for a statement of claim and appearance of jurisdiction within the authority established pursuant to chapter 19.118 RCW, timeliness, and completeness of the form and accompanying documents.

(2) The attorney general will reject a request for arbitration that is incomplete, untimely, or if there is reason to believe that the claim is frivolous, fraudulent, filed in bad faith, res judicata or beyond the authority of chapter 19.118 RCW.

A request for arbitration based on an alleged defect that does not manifest when inspected or tested, is intermittent or unconfirmed shall not preclude an attorney general determination of the appearance of jurisdiction and a statement of claim for purposes of initial screening.

(3) Nothing in this section precludes a party from raising jurisdictional or factual issues at the arbitration hearing or subsequent court proceedings.

(4) A request for arbitration will be considered complete when the information required by the request form is provided in full with copies of specified documents or if the consumer provides a reasonable explanation for the absence of any supporting documentation.

(5) If a request for arbitration is rejected, the attorney general will notify the consumer of the reason for the rejection and any procedures or information required to complete the request.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-050 Assignment to board. (((~~(1) After initial screening by the attorney general, all requests for arbitration which appear to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW shall be assigned to the board which will record the date it receives the assignment in the request for arbitration file.~~

~~(2) The board must determine if it will accept the request for arbitration or reject the request for arbitration, for the reasons set forth in RCW 19.118.090, within three business days after the attorney general has forwarded the request for arbitration to the board.~~

~~(3) The board shall record the date of acceptance or rejection of the request for arbitration. The acceptance of the request shall commence the running of the forty-five calendar day period in which a hearing must be conducted.~~

~~(4) Upon acceptance of a request, the board shall immediately notify the Lemon Law administration. A notice of acceptance for arbitration will be sent to the consumer and manufacturer by certified mail/return receipt requested and shall inform the parties that a hearing shall be held within forty-five calendar days. The parties shall be sent formal notice of the actual hearing date by certified mail/return receipt requested, at least ten calendar days before the hearing. The designated manufacturer contact shall be sent a copy of the consumer's request and a manufacturer's statement form with the notice of acceptance.~~)) (1) Review by the attorney general, a request for arbitration appearing to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW will be assigned to the board.

(2) A notice that the request has been assigned to the board to be scheduled for an arbitration hearing will be sent to the consumer and manufacturer by certified mail or e-mail

if requested by a party. The designated manufacturer contact will be sent a copy of the consumer's request for arbitration and a manufacturer's statement form with the notice of assignment.

(3) Upon receipt of a request for arbitration from the attorney general, the board will record the date it receives the assignment in the request for arbitration record and immediately notify the Lemon Law administration.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-060 Powers and duties of arbitration special master. (1) An arbitration special master may be appointed by the arbitration board to hear and decide preliminary and post-hearing issues ((~~which are~~)) within the arbitration board's authority. Requests for an arbitration special master ((~~may~~)) must be made in writing by ((~~either~~)) a party to the Lemon Law administration. The request will be reviewed by the program manager to determine whether issues identified in the special master request will be resolved by the program manager, forwarded to the board or denied. Post-hearing arbitration special masters and the program manager shall not resolve matters previously presented in the arbitration hearing and addressed in the arbitration decision except for clarification, or extend the time for compliance beyond the time necessary to hear and notify the parties of a decision about the issues in dispute or requiring clarification.

(2) Issues which may be decided by the program manager or arbitration special master include but are not limited to: Motions to quash or limit the scope of subpoenas, disputes related to requests to view the vehicle, disputes relating to an arbitration award including specification of the award amounts which could not have been or were not resolved at the arbitration hearing or matters necessary for compliance with the arbitration decision such as: Time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts or a determination that an offered vehicle is reasonably equivalent to the vehicle being replaced. The program manager or the arbitration special master may conduct telephonic conferences with a party or parties, as appropriate, and may request additional written information in order to rule on issues.

(3) ((~~An~~)) The program manager or the arbitration special master shall not extend the forty day period during which the manufacturer must comply with the arbitration decision except where the program manager or arbitration special master makes a finding that:

(a) The ((~~dispute~~)) issues identified in the special master request could not have been brought ((~~to the board~~)) allowing sufficient time to conclude compliance within the forty day compliance period; and

(b) If the manufacturer made the request for a special master, the manufacturer's position in the dispute is supported by the special master's decision.

(4) Arbitration special masters shall sign a written oath prior to their appointment as arbitration special master attesting to their impartiality. There shall be no ex parte communication initiated by a party with an arbitration special master.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-070 Manufacturer's statement. (1) The manufacturer shall provide information relevant to the resolution of the dispute to the consumer and board on a form created by the Lemon Law administration. The manufacturer's statement form shall be completely answered and shall include, but not be limited to, the following information:

(a) A statement of any affirmative defenses, and any legal or factual issues to be raised at the hearing. Any issues or affirmative defenses not raised in a timely manufacturer's statement or other documents ((~~filed~~)) not provided to the consumer and submitted to the board prior to the hearing may be excluded or limited by the arbitrator at the hearing; except as provided in WAC 44-10-080(6).

(b) The name, title, and business address of any person(s) the manufacturer plans to call as witnesses or from whom affidavits or written testimony will be presented;

(c) A statement identifying the year, make, model, options, color and any other significant information pertaining to the vehicle or vehicles it intends to offer as a reasonably equivalent replacement vehicle if the consumer prevails and requests replacement. If the manufacturer believes in good faith that replacement is impossible, or unreasonable, or cannot be provided timely pursuant to compliance requirements the manufacturer must raise such issue in its statement.

(2) The manufacturer must exercise its option to request a viewing of the consumer's motor vehicle by including a request to view the vehicle in the manufacturer's statement.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-080 Manufacturer's option to request a viewing of motor vehicle. (1) A manufacturer may request a viewing of the vehicle to aid in preparation of its defense. The request for a viewing of the vehicle must be indicated in the manufacturer's statement.

(2) The manufacturer and the consumer shall ((~~attempt to~~)) arrange a mutually agreeable time and location for such viewing. If after reasonable good faith attempts to arrange a viewing, a mutually agreeable time and location is not established, the manufacturer may request the Lemon Law administration program manager to set a time and location for viewing.

(3) Upon receipt of a request to set a viewing, the Lemon Law administration program manager shall establish a time and location for viewing that is reasonably convenient for the parties. The location may be the consumer's residence if other locations are not reasonably convenient for the parties((~~,~~)). The consumer must be present during the viewing, unless the consumer expressly waives in writing the right to be present.

(4) The viewing is not meant to be another attempt to repair the vehicle and no repair procedures shall be conducted.

(5) The manufacturer may perform limited nonrepair diagnostic examinations and inspection procedures, such as test driving the vehicle or attaching a testing device to the vehicle. The results of any diagnostic procedures or data

gathered as a result of such procedures shall be supplied to the consumer as soon as it is available.

(6) If the viewing of the vehicle reveals any affirmative defenses or legal or factual issues not previously raised in the manufacturer's statement or consumer's request for arbitration, either party may file amendments with the Lemon Law administration within three business days of the viewing, or, no later than three business days prior to the hearing date, whichever is earlier.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-090 Arbitration fee. ((~~(1)~~)) A three dollar arbitration fee shall be collected by the new motor vehicle dealer or lease company from the consumer at completion of the sale or lease of a new motor vehicle except for a transaction with a consumer who is not a resident of this state and who does not intend to register the vehicle in this state. No fee shall be collected where the purchase, lease or transfer is made to a party other than a consumer.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-100 Subpoenas. (1) A party's request for a subpoena to be issued ((~~on behalf of the board~~)) must be received by the Lemon Law administration with the consumer's request for arbitration or the manufacturer's statement to be considered. A consumer may submit a request for a subpoena within three business days of receipt of a manufacturer's statement. The ((~~board~~)) attorney general shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute ((~~and notify the Lemon Law administration of the determination~~)).

(2) A subpoena issued by the attorney general shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding, and command the person to whom it is directed to produce at the time and place set in the subpoena the designated documents or records under his or her control.

(3) Service of the subpoena may be made be certified mail, return receipt requested, e-mail if requested by a party or by overnight express delivery.

(4) A person to whom a subpoena is directed may submit a written request to suspend or limit the terms of the subpoena to the Lemon Law administration within five business days of receipt of the subpoena and shall notify the party who requested the subpoena, of the request to suspend or limit it. The request must be accompanied by a short statement setting forth the basis for the request. The Lemon Law administration program manager may suspend or modify the subpoena or shall assign the request to be heard at the arbitration hearing.

(5) Where the Lemon Law administration program manager upholds or modifies the subpoena, the responding person or party shall comply with the date set in the subpoena or within five business days, whichever is greater.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-110 Scheduling of arbitration hearings. The board has the authority to schedule the arbitration hearing at its discretion. The Lemon Law administration shall notify the parties of the date, time and place by certified letter mailed at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays. If for any reason an arbitration hearing must be rescheduled, the board or the Lemon Law administration shall promptly notify the parties by mail, e-mail if requested by a party or telephone.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-120 Withdrawal. A consumer may withdraw a request for arbitration at any time.

A first withdrawal shall be granted without prejudice((~~, although~~)). Upon notice to the Lemon Law administration of withdrawal, the thirty month period ((~~in which the consumer must submit a request for~~)) manufacturer mandatory arbitration participation period shall resume running. A consumer who has withdrawn may resubmit the claim for arbitration. However, if the consumer withdraws the second request, the withdrawal shall be considered a withdrawal with prejudice and the consumer shall not be allowed to resubmit the claim for arbitration.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-150 Settlement of dispute. (1) Both parties shall notify the Lemon Law administration of a resolution for settlement of the dispute after the request for arbitration has been ((~~accepted by~~)) assigned to the arbitration board. The Lemon Law administration shall verify the terms of the settlement or resolution. The disclosure of terms is for statutorily required record keeping only. The settlement or agreement to otherwise resolve the dispute is not subject to approval by the board or the attorney general.

(2) Notice of settlement or agreement to resolve the dispute shall be treated procedurally as if the consumer had withdrawn from the arbitration process, as set forth in WAC 44-10-120.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-170 Powers and duties of arbitrators. (1) Arbitrators shall have the duty to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order, and to meet the sixty day time frame required by RCW 19.118.090 for the rendering of a decision. They shall have all powers necessary to meet these ends including, but not limited to, the power:

(a) To consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and determination of the dispute;

(b) To regulate the course of the hearings and the conduct of the parties, their representatives and witnesses;

(c) To schedule vehicle inspection by the technical experts, if deemed necessary, at such time and place as the arbitrator determines;

(d) To continue the arbitration hearing to a subsequent date if, at the initial hearing, the arbitrator determines that additional information is necessary in order to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing;

(e) To impose sanctions for failure of a party to comply with a subpoena pursuant to RCW 19.118.080 (2)(b);

(f) To calculate and order the joint liability for compliance obligations of motor home manufacturers, when applicable, as part of ((~~an~~)) arbitration decisions when ordering repurchase or replacement of a new motor vehicle.

(2) The board is responsible for the assignment of arbitrators to arbitration hearings. The selection and assignment of arbitrators is not subject to the approval of either party.

(3) Arbitrators must not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice toward any party. Arbitrators shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Arbitrators shall maintain their impartiality throughout the course of the arbitration proceedings.

(a) An arbitrator shall sign a written oath prior to the commencement of each arbitration hearing to which he or she has been assigned, attesting to his or her impartiality in that case.

(b) There shall be no direct communication between the parties and the arbitrators other than at the arbitration hearing. Any other oral or written communications between the parties and the arbitrators shall be channeled through the board. Any prohibited contact shall be reported by the arbitrators to the board and noted in the case record.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-180 The arbitration hearing. (1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) The consumer shall present his or her evidence and witnesses, then the manufacturer shall present its evidence and witnesses.

(4) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may question any party or witness at any time.

(5) The arbitrator shall ensure that a tape recording record of the hearing is maintained.

(6) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only((~~, as long as~~)) if the board and ((~~the other party are informed of such and~~)) other parties are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-200 The arbitration decision. (1) The arbitration board shall issue the decision in each case to the Lemon Law administration within sixty calendar days of ((~~acceptance~~)) receipt of the request for arbitration:

(a) All decisions shall be written, in a form to be provided by the Lemon Law administration, dated and signed by the arbitrator, and sent by certified mail to the parties;

(b) The date on which the board provides the arbitration decision to the Lemon Law administration shall determine compliance with the sixty day requirement to issue an arbitration decision;

(c) The written decision shall contain findings of fact and conclusions of law as to whether the motor vehicle meets the statutory standards for refund or replacement;

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the statutory calculations used to determine the monetary award;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall identify or describe a reasonably equivalent replacement vehicle and any refundable incidental costs;

(iii) If the consumer prevails and the manufacturer ((~~is~~)) and the consumer have been represented by counsel, the decision shall include a description of the awarded reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings.

Reasonable costs and attorneys' fees shall be determined by the arbitrator based on an affidavit of costs and fees prepared by the consumer's attorney and submitted no later than the conclusion of the arbitration hearing. The affidavit may be amended for post-hearing costs and fees. The amended affidavit of costs and fees must be delivered to the manufacturer's designated representative by certified mail or personal service and a copy submitted to the Lemon Law administration by the consumer's attorney within thirty days of the consumer's acceptance of the decision but in no case after a manufacturer's compliance with a decision;

(d) Upon receipt of the board's decision, the Lemon Law administration will distribute it to the parties by certified mail or e-mail if requested by a party.

(2) Upon request of a party, an arbitrator shall make factual findings and modify the offset total where the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space is significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home in an arbitration decision awarding repurchase or replacement of a new motor vehicle ((~~originally purchased or leased at retail~~

~~after June 30, 1998~~)). An arbitrator will consider the actual amount of time that portions of the motor home were in use as dwelling, office or commercial space. The arbitrator shall not consider wear and tear resulting from:

(a) Defects in materials or workmanship in the manufacture of the motor home including the dwelling, office or commercial space;

(b) Damage due to removal of equipment pursuant to RCW 19.118.095 (1)(a); or

(c) Repairs.

The modification to the reasonable offset for use may not result in the addition or reduction of the offset for use calculation by more than one-third. The modification shall be specified as a percentage for reduction or addition to the offset calculation. The modification to the reasonable offset for use shall apply to the offset calculation at the time of repurchase or replacement of the motor home.

(3)(a) ((~~If~~)) A motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home if the manufacturer:

(i) Has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) or (b); or

(ii) Is responsible for sixty or more applicable days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home.

(b) If a motor home manufacturer has not met the criteria set forth in (a)(i) and (ii) of this subsection, but has contributed to the combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the manufacturer is jointly liable with the other liable motor home manufacturers for compliance with a decision awarding repurchase or replacement of the motor home.

(c) If a motor home manufacturer has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) ((~~or~~)), (b), or (c) and the manufacturer, together with one or more other motor home manufacturers, contributed to a combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is jointly and severally liable for compliance with a decision awarding repurchase or replacement of the motor home.

(d) In a decision awarding repurchase or replacement of a motor home, and that allocates compliance liability, an arbitrator will identify the motor home manufacturer's minimum percentage of contribution to compliance with the award. In determining the allocation of liability among jointly liable motor home manufacturers, the arbitrator will consider a motor home manufacturer's contribution to the total number of applicable days out of service as a factor.

(e) When applicable as set forth in RCW 19.118.090 ((~~(5)~~)) (6), the arbitrator must allocate liability for the consumer's costs and attorneys' fees among the liable motor home manufacturers represented by counsel. The arbitrator will specify the liable motor home manufacturer's minimum percentage of contribution to compliance with the award. The motor home manufacturer's minimum percentage of contribution for the consumer's costs and attorneys' fees may be different from the minimum percentage of contribution of the motor home manufacturer's compliance obligation due to other liable motor home manufacturers' lack of representation by counsel.

(f) An ((~~arbitrator~~)) arbitration decision must specify ((~~in the decision~~)) that the lack of compliance, late or delayed compliance, or the filing of an appeal by another liable motor home manufacturer will not affect a motor home manufacturer's independent liability for compliance with a decision awarding repurchase or replacement of the motor home.

(g) ((~~At the conclusion of the arbitration hearing regarding a motor home purchased or leased after June 30, 1998,~~)) A motor home manufacturer may present testimony and other evidence regarding the allocation of liability for compliance with arbitration decisions awarding repurchase or replacement of the motor home. If the motor home manufacturers agree amongst themselves to terms for the allocation of liability for compliance obligations, the arbitrator must include the terms in the arbitration decisions awarding repurchase or replacement of the motor home if the terms are consistent with the arbitration decisions, specific, complete and not otherwise contrary to chapter 19.118 RCW.

(4) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision and general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the Lemon Law administration within sixty calendar days from the date of the consumer's receipt of the decision or the decision will be deemed to have been rejected as of the sixty-first day.

(5) The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

(6) If the consumer accepts a decision which awards repurchase or replacement, the Lemon Law administration shall send a copy of the form completed by the consumer indicating acceptance to the manufacturer by certified mail ((~~for the board to~~)) or e-mail if requested by the manufacturer and shall include a manufacturer's intent form.

A verification of compliance form shall be sent to the consumer by the Lemon Law administration. The verification of compliance form shall be completed and returned to the Lemon Law administration by the consumer upon the manufacturer's compliance with the decision.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-221 Resale documents—Attorney general procedures. (1) When a vehicle has been determined by the new motor vehicle arbitration board, or has been adjudicated in a superior or appellate court of this state, as having one or more nonconformities or serious safety defects that

have been subject to a reasonable number of attempts by the manufacturer to conform the vehicle to the warranty:

(a) The Lemon Law administration will provide the manufacturer with the "Lemon Law resale documents" necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with RCW 19.118.061 and applicable rules;

(b) The Lemon Law administration will provide the manufacturer with the required documents by certified mail at the conclusion of the period pursuant to RCW 19.118.090 (9) for a manufacturer to file an appeal or upon notice from the manufacturer of receipt of the vehicle, whichever occurs first.

(2) When a vehicle is the subject of a "settlement" under chapter 19.118 RCW:

(a) The Lemon Law administration will provide the manufacturer with the "Lemon Law resale documents" necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with the RCW 19.118.061 and applicable rules;

(b) The Lemon Law administration will provide the manufacturer with the required documents by certified mail or express mail upon notice of the settlement by the parties ((~~or upon receipt from a manufacturer sponsored dispute resolution program of a decision or award, and notice of the consumer's acceptance of the award for repurchase or replacement of a vehicle where the basis of the program's decision-making standards are specifically related to or identified as some or all of the provisions of chapter 19.118 RCW and which will result in the manufacturer reacquiring the new motor vehicle directly, through an agent or a motor vehicle dealer~~));

(c) The Lemon Law administration will provide the manufacturer with the required "Lemon Law resale documents" and instructions regarding compliance with this section by certified or express mail upon notice of the consumer's acceptance of a decision or award for repurchase or replacement of the consumer's vehicle from a manufacturer dispute program.

(3) When a vehicle is the subject of final determination, adjudication or settlement under a "similar law of another state":

(a) The Lemon Law administration will provide the manufacturer, agent, motor vehicle dealer or other transferor with the resale documents necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with this section;

(b) The Lemon Law administration will provide the manufacturer, agent, motor vehicle dealer or other transferor with the resale documents by certified mail upon receiving a written request for Lemon Law resale documents, which includes a description of the defects or conditions causing the vehicle to be reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-222 Manufacturer duties upon receipt of a returned vehicle. The manufacturer must:

(1) Notify the Lemon Law administration and the department of licensing upon receipt of the vehicle from the consumer due to a determination, adjudication or settlement pursuant to chapter 19.118 RCW and chapter 44-10 WAC.

(2) Correct and warrant a serious safety defect and execute the appropriate section of the Lemon Law resale documents identifying corrections made to serious safety defect and nonconformities.

(3) Within sixty days of receipt of the vehicle submit a title application identifying corrections made to serious safety defect and nonconformities to the department of licensing in this state for title to the motor vehicle.

(4) Attach the "Lemon law resale windshield display," as provided by the Lemon Law administration, to the lower center of the front windshield or window on the driver's side of the vehicle in a manner so as to be readily visible from the exterior of the vehicle.

(((~~(3) Correct and warrant a serious safety defect.~~

~~(4) Notify the Lemon Law administration and the department of licensing of correction of a nonconformity or serious safety defect and execute the appropriate section of the Lemon Law resale documents.~~))

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-300 Imposition of fine for manufacturer noncompliance with an arbitration decision. (1) Pursuant to RCW 19.118.090, the Lemon Law administration program manager may impose a fine against a manufacturer if, after forty calendar days from the manufacturer's receipt of notice of consumer's acceptance of an arbitration decision, the manufacturer has not complied with the decision, notwithstanding any arbitration special master hearing or findings. Notice of the imposition of fine shall be to the manufacturer by certified mail, e-mail if requested by the manufacturer or personal service.

(2) A fine against the manufacturer for noncompliance may be imposed according to the following schedule for each day after the forty day calendar period:

DAYS 1 THROUGH 10	$ 300.00 PER DAY
DAYS 11 THROUGH 20	$ 500.00 PER DAY
DAYS 21 THROUGH 30	$ 700.00 PER DAY
DAYS 31 AND ON	$1000.00 PER DAY

The foregoing fines shall accrue until the manufacturer complies or until one hundred thousand dollars has accrued, whichever occurs first.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-310 Request for review of imposition of fine. (1) The manufacturer shall have ten days from the date of receipt of notice of imposition of fine to request a review of imposition of fine. The manufacturer's request for review of imposition of fine shall be sent to the Lemon Law administration in writing and shall state the reasons for the manufacturer's noncompliance with the arbitrator's decision within the forty calendar day period.

(2) Upon receipt of a request for review of imposition of fine, the Lemon Law administration shall have ten days to

conduct a review or request additional information from the parties or other persons regarding manufacturer noncompliance.

(3) The review shall be limited to determining whether the manufacturer has shown by clear and convincing evidence that any delay or failure of the manufacturer to comply within forty calendar days following the manufacturer's receipt of notice of consumer's acceptance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. No other issues shall be considered in the review.

(4) The Lemon Law administration shall issue a written review determination which shall be delivered to the manufacturer by certified mail, e-mail if requested by the manufacturer or personal service.

(5) If it is determined that the manufacturer's noncompliance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement from the consumer, the imposition of fine shall be rescinded. The imposition of fine shall be affirmed where the manufacturer has failed to show clear and convincing evidence as required by WAC 44-10-310(3). If the imposition of fine is affirmed, the manufacturer shall be liable for a fine according to the schedule specified in WAC 44-10-300(2) including all days during the pendency of review under this section and until compliance with the arbitrator's decision or until one hundred thousand dollars has accrued, whichever comes first.

(6) If a fine is rescinded under WAC 44-10-310(5) the Lemon Law administration program manager may impose a fine against the manufacturer where the manufacturer fails to comply with the agreement between the manufacturer and the consumer, or when the manufacturer fails to comply immediately after the circumstances no longer exist which made compliance beyond the control of the manufacturer. Notice of such fine shall be by certified mail, e-mail if requested by the manufacturer or ((~~personnel~~)) personal service to the manufacturer and shall be imposed according to the schedule in WAC 44-10-300(2), and imposition of such fine is subject to review by the Lemon Law administration upon request of the manufacturer under WAC 44-10-310.

WSR 10-01-072

PERMANENT RULES

OFFICE OF FINANCIAL MANAGEMENT

[Filed December 14, 2009, 12:51 p.m., effective January 14, 2010]

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

Purpose: Currently, chapter 82.60 WAC provides standards for both property and liability local government self-insurance programs and health and welfare local government self-insurance programs. As the programs have matured and the insurance environment has changed over years, these two types of programs (property/liability and health/welfare) have become so different as to require separate standards for each type of self-insurance program. As a result, temporary guidelines were put into place with the intent to engage in rule making at a later time using the APA process described in chapter 34.05 RCW.

Local government self-insurance programs have operated under the above-mentioned temporary guidelines for a number of years, which has caused confusion among the programs in determining what standards they are required to meet. Also, because the rules had not been updated and were not specific enough to each type of program given the changes in the insurance, economic and legal environment over time, oral waivers from requirements in both rules and guidelines were provided to some programs, creating further confusion due to lack of written documentation.

The state risk manager is required to adopt rules which create standards for solvency, management, operations and certain contracts. The office of financial management, working with the property and liability advisory board, has created proposed revisions to chapter 82.60 RCW which (1) remove the health and welfare rules from chapter 82.60 RCW and address them in a separate rule-making process, (2) replace temporary guidelines with updated rules specific to joint property and liability self-insurance programs to be adopted using the APA process described in chapter 34.05 WAC [RCW] as required by RCW 48.62.061, and (3) remove the provision for waivers from rules and guidelines and allow the state risk manager to consistently regulate all programs.

Citation of Existing Rules Affected by this Order: Repealing WAC 82-60-031, 82-60-032, 82-60-035, and 82-60-070; and amending WAC 82-60-010, 82-60-020, 82-60-030,82-60-033, 82-60-034, 82-60-036, 82-60-037, 82-60-038, 82-60-039, 82-60-040, 82-60-050, 82-60-060, 82-60-065, 82-60-080, 82-60-100, 82-60-200, 82-60-210, 82-60-215, and 82-60-220.

Statutory Authority for Adoption: RCW 48.62.061.

Adopted under notice filed as WSR 09-12-102 on June 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: In responding to comments received, the following changes were made:

WAC 82-60-038(5), added the ability to obtain information electronically to reduce costs for examination and reviews.

WAC 82-60-050(b), was clarified in response to comments that the subsection was confusing; and

WAC 82-60-210, removed new language in response to comments from legislative staff that the additional language was confusing.

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 14, Amended 16, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 16, Repealed 4.

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 16, Repealed 4.

Date Adopted: December 14, 2009.

Roselyn Marcus
Director of Legal Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-010 Preamble and authority. These rules governing local government and nonprofit self-insurance transactions are adopted by the state risk manager to implement chapter 48.62 RCW relating to the management and operations of both individual and joint local government ((~~health and welfare benefit and~~)) property and liability self-insurance programs and nonprofit property and liability self-insurance programs.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-020 Definitions. (1) "Actuary" means any person who is ((~~qualified under WAC 284-05-060 to provide actuarial services~~)) a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) ((~~"Beneficiary" means any individual entitled to payment of all or part of a covered claim under a local government health and welfare self-insurance program.~~

~~(4)~~)) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(((~~(5)~~))) (6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event ((~~such as:~~

~~(a) For health and welfare benefits, a covered service or services being delivered; or~~

~~(b) For property and liability, the destruction or damage of property or related deaths or injuries.~~

~~Unless specifically referenced, the term "claim" is used for both health and welfare and property and liability programs.~~

~~(6)~~)) that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive process" means a ((~~documented formal process providing a fair and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the party's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.~~

~~(7) "Contribution" means the amount paid or payable by the employee into a health and welfare self-insurance program.~~

~~(8)~~)) formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for goods and services over fifty thousand dollars. For purchases between five thousand dollars and fifty thousand dollars, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to five thousand dollars are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.

(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(11) "Foundation agreement" means the interlocal agreement binding local government members or the contract binding nonprofit members to a joint self-insurance program.

(12) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(13) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that

are expected to become claims, and (c) ((~~expected~~)) future development on claims already reported.

((~~(9)~~)) (14) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure ((~~health and welfare benefits or~~)) for property and liability risks on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

((~~(10)~~)) (15) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

(16) "Joint self-insurance program" means any two or more local government entities, two or more nonprofit corporations or a combination of local government entities and nonprofit corporations which have entered into a cooperative risk sharing foundation agreement ((~~pursuant to the provisions of the Interlocal Cooperation Act (chapter 39.34 RCW) and/or~~)) subject to regulation under chapter 48.62 RCW.

(((~~11) "Liability for unpaid claims" means the amount needed to provide for the estimated ultimate cost of settling claims which have occurred on or before a particular date. The estimated liability includes the amount of money that will be needed for future payments on both claims which have been reported and IBNR claims.~~

~~(12) "Liability for unpaid claim adjustment expenses" means the amount needed to provide for the estimated ultimate costs required to investigate and settle claims for covered events that have occurred on or before a particular date, whether or not reported to the government entity or nonprofit corporation at that date.~~

~~(13)~~)) (17) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

(18) "Member" means a local government entity or nonprofit corporation that:

(a) Is a signatory to a joint insurance program's foundation agreement;

(b) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

(c) Is a past or present participant in ((~~a joint self-insurance~~)) the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW.

((~~(14)~~)) (19) "Nonprofit corporation," as defined in RCW 24.03.005(3), means a corporation of which no part of the income ((~~of which~~)) is distributable to its members, directors or officers.

((~~(15)~~)) (20) "Primary assets" means cash and investments (less any nonclaims liabilities).

(21) "Reassessment" means additional moneys paid by the members to a joint self-insurance program.

(22) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

(23) "Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

(24) "Self-insurance program" means any individual or joint ((~~local government entity or nonprofit corporation~~)) self-insurance program required by chapter 48.62 RCW to comply with this chapter.

((~~(16)~~)) (25) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

(26) "Stop-loss insurance" means ((~~insurance against the risk of economic loss assumed under a self-insurance program.~~

~~(17)~~)) a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

(27) "Third-party administrator" means((~~:~~

~~(a) An~~)) a independent association, agency, entity or enterprise which, through a contractual agreement ((~~is responsible for the overall operational and financial management of the self-insurance program; or~~

~~(b) An independent association, agency, entity or enterprise which, through a contractual agreement, provides a professional service for the analysis, design, implementation, or termination of a self-insurance program; or~~

~~(c) An independent association, agency, entity or enterprise which, through a contractual agreement, administers the claim payment process on behalf of a self-insurance program. Such claim administration process includes, but is not limited to, receiving requests for claim payments, investigation, verification and adjustment of the claim. Claim payment disbursement is also considered an administrative process~~)), provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(28) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(29) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

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

NEW SECTION

WAC 82-60-02001 Standards for operation and management—Rules for individual self-insurance program. Each individual self-insurance program that self-insures is exempt from the rules applicable to joint self-insurance programs. Individual self-insurance programs shall meet the following standards:

(1) The individual self-insurance program must notify the state risk manager of its existence or termination.

(2) The program may contract for claims handling and investigation services, or the program may choose to provide these services internally. In either case, the person responsible for the program shall establish sufficient contract monitoring and internal control procedures to provide adequate oversight over the claims handling and investigation process.

(3) The program shall establish standards requiring each claim be reserved for settlement, legal and loss adjustment expense. Settlement (indemnity) reserves shall be established by a reserving process which may include estimates of jury verdict value.

(4) The program shall establish claims reserving processes that include a periodic review of case reserves.

(5) The individual self-insurance program may obtain the services of an independent claims auditor to evaluate the claims handling procedures of its contractor or internal staff.

(6) The program may use the services of an actuary to determine the funding levels necessary to fund reserves restricted for payment of claims and related claims expenses.

NEW SECTION

WAC 82-60-02003 Standards for operation and management—Rules for joint self-insurance programs. The following rules apply exclusively to joint self-insurance programs. Individual programs shall be exempt from these requirements.

NEW SECTION

WAC 82-60-02005 Standards for operation—Membership. Membership in a joint self-insurance program requires the execution of a foundation agreement. Only members may participate in risk-sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments and reassessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member. The approval shall be by resolution or ordinance of the governing body as appropriate for the entity type.

(3) Each member shall become a signatory to the foundation agreement and subsequent amendments to the foundation agreement of the joint self-insurance program.

NEW SECTION

WAC 82-60-02007 Standards for operation—Providing services to nonmembers. (1) Nonmembers may purchase services through an interlocal agreement as authorized by chapter 39.34 RCW. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC 82-60-020(18) and is eligible for membership as authorized by RCW 48.62.021(1).

(2) A program intending to provide services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written legal determination of all potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide such services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Every joint self-insurance program providing services as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

NEW SECTION

WAC 82-60-02009 Standards for operation—Communication with members—Annual membership report. The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the comparative balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

NEW SECTION

WAC 82-60-02011 Standards for operations—Meetings. All joint self-insurance programs are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

NEW SECTION

WAC 82-60-02013 Standards for operation—Notice of regular meetings of the governing body. Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be delivered in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner

and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the electronic web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

NEW SECTION

WAC 82-60-02015 Standards for operation—Special meetings—Notice to members. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings. In addition, programs shall provide notice by electronic mail to the state risk manager and every member of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 82-60-02017 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program will provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be delivered by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be provided to the state risk manager and every member of the program by electronic mail and shall be posted on the web site of the program accessible to the public.

NEW SECTION

WAC 82-60-02019 Standards for operation—Notification of changes to bylaws or foundation agreement. Every joint self-insurance program shall provide notification of the intent to change the bylaws or foundation agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

NEW SECTION

WAC 82-60-02021 Standards for operation—Changes to foundation agreement. (1) Changes to any terms of the foundation agreement shall be approved by a majority of the members, or by a greater majority if provided for in the bylaws or foundation agreement of the joint self-insurance program. Changes to the foundation agreement shall be approved during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) Amendments to the foundation agreement shall be adopted by ordinance or resolution of the governing board or council of each member. The signed amendment and copy of the ordinance or resolution, as appropriate, shall be retained by the joint self-insurance program. The foundation agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) Changes to any terms of the foundation agreement shall require amendment using the approval and adoption process described above.

(4) The addition of new members to a joint self-insurance program and/or the subscription of the foundation agreement by said new members shall not be considered as amendments to the foundation agreement.

NEW SECTION

WAC 82-60-02023 Standards for operation—Elections of the governing body. The governing body of every joint self-insurance program shall be elected by a majority of the members. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote and recorded in the meeting minutes.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-030 Standards for management and operation—Adoption of program. (((~~(1) All self-insurance programs shall provide that the governing body of the local government entity or nonprofit corporation establishing or maintaining a program adopt the self-insurance program by resolution or ordinance.~~)) The foundation agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body. The resolution or ordinance shall include, but not be limited to, ((~~funding and expenditure mechanisms.~~

~~(2) The interlocal agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body~~)) an acknowledgement that the entity shall be subject to assessments and reassessments as required by the joint self-insurance program. Copies of each resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The foundation agreement, along with a list of members participating in the program, shall be published on the public web site of each joint self-insurance program. The foundation agreement and subsequent amendments shall be filed in accordance with requirements of chapter 39.34 RCW.

NEW SECTION

WAC 82-60-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides estimates of the unpaid claims measured at the expected and the seventy percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the requirement to maintain sufficient primary assets shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of the joint self-insurance program shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the seventy percent confidence level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the reserve requirements to maintain sufficient primary and secondary assets shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission. Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include the service of a cease and desist order upon the program.

(4) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

(5) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the adequacy of reserves. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-033 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program assessments. (1) Joint self-insurance program assessment formulas shall include all costs including rating for insured and self-insured layers of coverage. Assessment formulas shall be consistent and nondiscriminatory among ((~~new and existing~~)) all members. ((~~Joint self-insurance programs shall not engage in practices that set standard assessment rates lower for new members than those established for existing members.~~))

(2) This provision shall not be construed to prohibit individual choice of coverage by members from several offered by the joint self-insurance program. The assessment formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The assessment formula shall be available for review by the state risk manager.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-034 Standards for operations—Disclosures. (((~~(1) All health and welfare self-insurance programs shall furnish each employee or retiree covered by the program a written description of the benefits allowable under the program, together with:~~

~~(a) Applicable restrictions, limitations, and exclusions;~~

~~(b) The procedure for filing a claim for benefits;~~

~~(c) The procedure for requesting an adjudication of disputes or appeals arising from beneficiaries regarding the payment or denial of any claim for benefits; and~~

~~(d) A schedule of any direct monetary contributions toward the program financing required by the employee.~~

~~Such benefits or procedures shall not be amended without written notice to the covered employees and retirees at least thirty days in advance of the effective date of the change unless exigent circumstances can be demonstrated.~~

~~(2)~~)) All joint self-insurance programs shall furnish to each member of the program written statements which describe:

(((~~(a) All~~)) (1) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

(((~~(b)~~))) (2) The method by which ((~~members pay assessments~~)) members' (re)assessments are determined;

(((~~(c)~~))) (3) The procedure for filing a claim against the joint self-insurance program; ((~~and~~

~~(d)~~))) (4) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues((~~.~~

~~Such statements shall not be amended without written notice to the members at least thirty days in advance of the effective date of the change~~)); and

(5) General characteristics of the insurance coverage portion of the program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-036 Standards for operations—Standards for solvency—Termination provisions. (1) Program terminations. All ((~~individual and joint health and welfare~~

~~self-insurance programs and all~~)) joint ((~~property and liability~~)) self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Member terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of membership of a member.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-037 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) The preparation and submission of accurate and timely annual financial ((~~statements~~)) reports of the program as prescribed by the state auditor's office.

(d) The submission of audited financial statements to the state risk manager within one year of the program's fiscal year end which meet the requirements of the state risk manager as described in 82.60.060(3).

(2) No financial plan of a joint self-insurance program shall permit ((~~interfund~~)) loans to any member from primary assets held ((~~against liabilities for unpaid claims and claim adjustment expenses except for those amounts which are clearly inactive or in excess of liabilities for unpaid claims and claim adjustment expenses.~~

~~(3) No financial plan of a joint self-insurance program shall permit loans from assets held against liabilities for unpaid claims and claim adjustment expenses to any member~~)) for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-038 Standards for management—Standards for contracts—Third-party administrator contracts. (((~~(1)~~))) Before contracting for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written ((~~standards and~~)) procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the ((~~entity~~)) governing body of the joint self-insurance program of its ultimate governing, managerial and financial responsibilities. The procedures shall, as a minimum:

(((~~(a)~~))) (1) Provide a method of third-party administrator selection using a formal competitive solicitation process;

(((~~(b)~~))) (2) Require a complete written description of the services to be provided, remuneration levels, ((~~and~~)) contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;

(((~~(c)~~))) (3) Provide for the confidentiality ((~~and ownership~~)) of the program's information, data and other intellectual property developed or shared during the course of the contract;

(((~~(d)~~))) (4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;

(5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced; ((~~and~~

~~(e)~~)) (6) Require the compliance with all applicable local, state and federal laws((~~.~~

~~(2) None of the above shall otherwise relieve the entity from other contracting requirements imposed on those entities~~));

(7) Establish a monitoring and acceptance procedure to determine compliance with third-party administrator contract requirements; and

(8) Establish indemnification provisions and set forth insurance requirements between the parties.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-039 Standards for management and operations—Preparation for incorporation of nonprofit corporation members. Joint property and liability self-insurance programs whose members are local government entities that are preparing to include nonprofit corporations as members of the program shall, as a minimum, address the following in their plan of operation:

(1) Amount of capitalization each nonprofit corporation will pay to become a member of the joint self-insurance program and criteria used to determine the capitalization amount;

(2) Self-insured retention level for nonprofit corporation members;

(3) ((~~Flexibility in premium assessment rates with emphasis on rates for nonprofit corporations that recognize the potential and actual loss experience of the nonprofit corporation;~~)) Legal determination of federal and state tax liabilities resulting from the inclusion of nonprofit members;

(4) Procedures for reviewing the financial soundness of each nonprofit corporation being considered for membership in the self-insurance program; and

(5) Representation of nonprofit corporations on the governing board of directors but local government entities must retain control as required by RCW 48.62.121 (2)(a).

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-040 Standards for operation and management—Risk management. ((~~Individual and~~)) All joint ((~~property and liability~~)) self-insurance programs shall have a written risk management program which ((~~addresses risk finance, loss control, risk avoidance and risk transfer~~)) includes, but is not limited to, loss control, loss prevention, training and evaluation of risk based on loss experience.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-050 Standards for claims management—Claims administration. (1)(((~~a~~))) All joint self-insurance programs shall ((~~have~~)) adopt a written claims administration program ((~~that contains~~)) which includes, as a minimum, ((~~claim~~)) the following procedures:

(a) Claims filing procedures((~~, internal financial control mechanisms, and claim and claim adjustment expense reports.~~

~~(b) All individual and joint health and welfare self-insurance programs and all joint property and liability self-insurance programs shall have a written claim appeal procedure that contains, as a minimum, a time limit for filing an appeal, a time limit for response, and a provision for a second level of review.~~

~~(2)(a) All self-insurance programs may contract for claims administration services with a qualified third-party administrator, provided all the requirements under subsection (1) of this section are included in the contract.~~

~~(b) Individual and joint property and liability self-insurance programs may perform claims administration services on their own behalf. Individual and joint health and welfare self-insurance programs may perform claims administration services on their own behalf, provided the state risk manager is supplied with documentation and a detailed written explanation in support of the self-insurance program's proposed claims administration activities. The documentation and proposal shall include, as a minimum, the following:~~

~~(i) The nature, type and anticipated volume of claims to be administered.~~

~~(ii) The number of employment positions established or to be established which are required to perform the self-insurance program's claim administration functions, including an organizational chart showing reporting responsibilities.~~

~~(iii) Qualifications of personnel having claim reserving and settlement authority.~~

~~(iv) A projection of expected claim administration expenses.~~

~~(3) All self-insurance programs shall have conducted by an independent qualified professional not currently performing claims administration services to the program, a review of claim reserving, adjusting and payment procedures no less than every three years. Such review shall be in writing and retained for a period not less than three years.~~)) and forms.

(b) Standards requiring case reserves for each claim be established in the amount of the jury verdict value.

(c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster work loads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written number coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a ((~~dedicated claim account from which only~~)) financial system that identifies claim and claim adjustment expenses ((~~can be paid~~)).

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain ((~~written~~)) claim ((~~and claim adjustment~~)) expense reports for all claims made against the joint self-insurance program and((~~, separate written reports for each individual~~)) its members.

(7) All joint self-insurance programs shall obtain an independent review of claim reserving, adjusting and payment procedures every three years at a minimum. Said audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's

opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-060 ((~~Financial~~)) Standards for management and operations—State risk manager reports. (1) Every ((~~individual and joint health and welfare self-insurance program and every~~)) joint property and liability self-insurance program authorized to transact business in the state of Washington shall ((~~record and annually report its revenue, claim and claim expense experience, and other data as required by the state risk manager. Multistate programs shall report both its Washington state revenues, claim and claim expense experience and other data required by~~)) submit the annual report to the state risk manager ((~~and its overall income, claim and claim expense experience~~)).

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

(a) Unaudited annual financial statements, including attestation, as provided to the state auditors office;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the unaudited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in articles of incorporation, bylaws or foundation agreement;

(f) Details of services provided by contract to nonmembers;

(g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred fifty days following the completion of the joint program's fiscal year.

(((~~(2) All joint self-insurance programs authorized to transact business in the state of Washington shall submit quarterly financial reports to the state risk manager. Such reports shall be submitted to the state risk manager no later than sixty days following the completion of each of the program's four quarters within its fiscal year.~~)) (3) Audited financial statements shall be provided to the state risk manager within one year of the program's fiscal year end and comply with requirements for submission of audited financial statements established by the state risk manager.

(4) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

NEW SECTION

WAC 82-60-065 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

(a) Any change in the terms of the foundation agreement;

(b) Elimination or reduction of stop loss insurance;

(c) Acceptance of any loans or lines of credit;

(d) Provision of services to nonmembers;

(e) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

(a) Increases in retention level;

(b) Decrease or elimination of insurance limits;

(c) Initial contract with a third-party administrator, or change in third-party administrator;

(d) Any change to bylaws.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-080 Standards for management and operations—Conflict of interest. (1) Every joint self-insurance program shall require the claims auditor, the third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

(((~~(1)~~))) (a) No member of the board of directors; trustee; administrator, including a third-party administrator; or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

(((~~(a)~~))) (i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(((~~(b)~~))) (ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, third-party administrator, or as an employee.

(((~~(c)~~))) (iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

(((~~(2)~~))) (b) No consultant((~~, third-party administrator~~)) or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in

any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer((~~, health care service contractor, or health care supply provider. This provision shall not preclude licensed insurance brokers or agents from receiving compensation for insurance transactions performed within the scope of their licenses, provided such compensation is disclosed to the self-insurance program's governing body.~~

~~(3)~~)) or consultant.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The terms of compensation shall be provided for by contract between the broker of record and the governing body, and the amount or percentage of the compensation must be disclosed in writing. Contracts between brokers of record and the governing body shall include a provision that contingent commissions or other form of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

(d) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-100 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager, with concurrence from the property and liability advisory board ((~~and the health and welfare advisory board~~)), shall fix ((~~assessments~~)) state risk manager fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.62 RCW. Such ((~~assessments~~)) fees shall be levied against each joint property and liability self-insurance program ((~~and each individual and joint health and welfare benefit self-insurance program~~)) regulated by chapter 48.62 RCW. ((~~Examination fees shall be based upon actual time and expenses incurred for the review and investigation of every joint property and liability self-insurance program and every individual and joint health and welfare benefit self-insurance program by the state risk manager or designee.~~

~~(2) The state risk manager, with concurrence from the two advisory boards, shall determine the assessment rate on a fiscal year basis and the review and investigation fees on a fiscal year basis.~~

~~(3)~~)) Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The ((~~review and investigation~~)) state risk manager fees shall be paid by ((~~the~~)) each joint self-insurance program to the state of Washington, office of financial management within ((~~thirty~~)) sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(((~~4~~))) (3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative ((~~cost assessment and review and investigation fees~~)) fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

(((~~5~~))) (4) The state risk manager shall assess each prospective joint self-insurance program((~~, and each prospective individual health and welfare benefit self-insurance program,~~)) an initial investigation fee at a rate determined annually by the state risk manager, with the concurrence of the advisory boards. ((~~Such fee shall be sufficient to cover the costs for the initial review and approval of that self-insurance program.~~))

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-200 Standards for operations—Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-210 Standards for operations—Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks((~~, or an individual or joint self-insurance program covering health and welfare benefits~~)) has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

NEW SECTION

WAC 82-60-215 Standards for contracts—Competitive solicitation standards for consultant contracts. Every joint self-insurance program shall use a formal competitive solicitation process in the selection of consultants. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on preestablished criteria which may include such factors as the consult-

ant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by state risk manager and state auditor.

NEW SECTION

WAC 82-60-220 Standards for contracts—Standards for operation—Purchases of goods and services not related to claims. Joint self-insurance programs comprised of one common entity type must comply with bidding and purchasing requirements as prescribed by law or regulation for that entity type. Joint self-insurance programs comprised of multiple entity types shall use a competitive process for the purchase of goods and services not described in WAC 82-60-215. Vendor selection shall be based on fees or costs, ability, capacity, experience, reputation, and responsiveness to time limitations. These regulations do not apply to the purchase of goods and services described in WAC 82-60-050(5).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 82-60-031	Program financing.
WAC 82-60-032	Nondiscrimination in contributions.
WAC 82-60-035	Wellness programs.
WAC 82-60-070	State risk manager may waive requirements.

WSR 10-01-074
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-12—Filed December 14, 2009, 4:52 p.m., effective January 14, 2010]

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

Purpose: These new rules clarify the methods by which insureds may cancel property and casualty insurance policies.

Citation of Existing Rules Affected by this Order: Amending WAC 284-30-590.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 09-16-129 on August 5, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-30-590 (8)(e)(ii), "Understands" was changed to "Is informed."

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 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: December 14, 2009.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-590 Unfair practices with respect to policy cancellations, renewals, and changes. (1) It is unfair practice to utilize a twenty-day notice to increase premiums by a change of rates or to change the terms of a policy to the adverse interest of the insured thereunder, except on a one time basis in connection with the renewal of a policy as permitted by RCW 48.18.2901(2), or to utilize such notice if it is not, by its contents, made clearly and specifically applicable to the particular policy and to the insured thereunder or does not provide sufficient information to enable the insured to understand the basic nature of any change in terms or to calculate any premium resulting from a change of rates.

(2) In the unusual situation where a contract permits a midterm change of rates or terms, other than in connection with a renewal, it is an unfair practice to effectuate such change with less than forty-five days advance written notice to the named insured, or to utilize a contract provision which is not set forth conspicuously in the contract under an appropriate caption of sufficient prominence that it will not be minimized or rendered obscure.

(3) It is an unfair practice to effectuate a change of rates or terms other than prospectively. Such changes may be effective no sooner than the first day following the expiration of the required notice.

(4) If an insured elects to not continue coverage beyond the effective date of any change of rates or terms, it is an unfair practice to refund any premium on less than a pro rata basis.

(5) The cancellation and renewal provisions set forth in chapter 48.18 RCW do not apply to surplus line policies. To avoid unfair competition and to prevent unfair practices with respect to consumers, it is an unfair practice for any surplus line broker to procure any policy of insurance pursuant to chapter 48.15 RCW that is cancelable by less than ten days advance notice for nonpayment of premium and twenty days

for any other reason, except as to a policy of insurance of a kind exempted by RCW 48.15.160. This rule shall not prevent the cancellation of a fire insurance policy on shorter notice in accord with chapter 48.53 RCW.

(6) Except where the insurance policy is providing excess liability or excess property insurance including so-called umbrella coverage, it is an unfair practice for an insurer to make a common practice of giving a notice of nonrenewal of an insurance policy followed by its offer to rewrite the insurance, unless the proposed renewal insurance is substantially different from that under the expiring policy.

(7) Where the rate has not changed but an incorrect premium has been charged, if the insurer elects to make a midterm premium revision, it is an unfair practice to treat the insured less favorably than as follows:

(a) If the premium revision is necessary because of an error made by the insurer or its agent, the insurer shall:

(i) Notify the applicant or insured of the nature of the error and the amount of additional premium required; and

(ii) Offer to cancel the policy or binder pro rata based on the original (incorrect) premium for the period for which coverage was provided; or

(iii) Offer to continue the policy for its full term with the correct premium applying no earlier than twenty days after the notice of additional premium is mailed to the insured.

(b) If the premium revision results from erroneous or incomplete information supplied by the applicant or insured, the insurer shall:

(i) Correct the premium or rate retroactive to the effective date of the policy; and

(ii) Notify the applicant or insured of the reason for the amount of the change. If the insured is not willing to pay the additional premium billed, the insurer shall cancel the policy, with appropriate statutory notice for nonpayment of premium, and compute any return premium based on the correct premium.

(c) This subsection recognizes that an insurer may elect to allow an incorrect premium to remain in effect to the end of the policy term because the insured is legally or equitably entitled to the benefit of a bargain made.

(8) If a policy includes conditions allowing the insured to cancel the policy, the insured may cancel the policy or binder issued as evidence of coverage.

(a) The insured may provide notice before the effective date of cancellation using one of these methods:

(i) Written notice of cancellation to the insurer or producer by mail, fax or e-mail;

(ii) Surrender of the policy or binder to the insurer or producer; or

(iii) Verbal notice to the insurer or producer.

(b) If the insurer receives notice of cancellation from the insured, it must accept and promptly cancel the policy or any binder issued as evidence of coverage effective the later of:

(i) The date notice is received; or

(ii) The date the insured requests cancellation.

(c) If an insured provides verbal notice of cancellation to the insurer, the insurer may require the insured to provide written confirmation of cancellation, but may not impose a waiting period for cancellation by requiring written confirmation from the insured.

(d) Insurers may retroactively cancel a policy to accommodate the insured.

(e) Insurers must establish safeguards to ensure the person requesting cancellation:

(i) Is authorized to do so; and

(ii) Is informed that the request to cancel the policy is binding on both parties.

WSR 10-01-082
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed December 15, 2009, 2:53 p.m., effective January 15, 2010]

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

Purpose: WAC 246-100-072, 246-100-207, 246-100-208, and 246-100-209 amending rules for HIV testing, counseling and partner services. The amendments make the state rules more consistent with the Centers for Disease Control and Prevention (CDC) most current recommendations for HIV testing (September 2006) and partner services (October 2008). These rules reduce barriers to HIV testing, enhance the health of individuals who are HIV infected and reduce the number of new HIV infections.

Citation of Existing Rules Affected by this Order: Amending WAC 246-100-072, 246-100-207, 246-100-208, and 246-100-209.

Statutory Authority for Adoption: RCW 70.24.130.

Adopted under notice filed as WSR 09-19-144 on September 23, 2009.

Changes Other than Editing from Proposed to Adopted Version: In WAC 246-100-207 (1)(a) and 246-100-208 (1)(b) reversed order of "in writing" and "verbally" to list "verbally" in front of "in writing" with regard to how informed consent for HIV testing can be provided to a person. Also in WAC 246-100-208 (1)(b), added "When ordering or prescribing and [an] HIV test" in front of "obtain" to clarify when informed consent should be obtained.

A final cost-benefit analysis is available by contacting John Peppert, Office of Infectious Disease and Reproductive Health, Department of Health, P.O. Box 47844, Olympia, WA 98504-7844, phone (360) 236-3427, fax (360) 586-5440, e-mail John.Peppert@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: November 4, 2009.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-072 Rules for notification of partners at risk of human immunodeficiency virus (HIV) infection. (1) A local health officer or authorized representative shall:

(a) Within ((~~seven~~)) three working days of receipt of a report ((~~indicative~~)) of a previously unreported case of HIV infection, attempt to contact the principal health care provider to ((~~determine~~)):

(i) Seek input on the best means ((~~and the necessity~~)) of conducting a case investigation including partner notification ((~~case investigation~~)); and

(ii) If appropriate, request that the provider contact the HIV-infected person as required in subsection (2) of this section.

(b) Contact the HIV-infected person ((~~for the purpose of providing assistance in notifying~~)) to:

(i) Provide post-test counseling as described under WAC 246-100-209;

(ii) Discuss the need to notify sex or injection equipment-sharing partners, including spouses, that they may have been exposed to and infected with HIV and that they should seek ((~~HIV pretest counseling and~~)) HIV testing((~~, unless:~~

~~(i) The principal health care provider recommends that the state or local health officer not meet with the HIV-infected individual for the purpose of notifying partners, including spouses; or~~

~~(ii) The local health officer determines a partner notification case investigation is not necessary;~~

~~(c) Provide assistance notifying partners in accordance with the "*HIV Partner Counseling and Referral Services—Guidance*"~~)); and

(iii) Offer assistance with partner notification as appropriate.

(c) Unless the health officer or designated representative determines partner notification is not needed or the HIV-infected person refuses assistance with partner notification, assist with notifying partners in accordance with the "*Recommendations for Partner Services Programs for HIV Infection, Syphilis, Gonorrhea, and Chlamydial Infection*" as published by the Centers for Disease Control and Prevention, ((~~December 1998~~)) October 2008.

(2) If the local health officer ((~~decides~~)) or designated representative informs the principal health care provider that he or she intends to conduct ((~~the~~)) a partner notification case investigation, the principal health care provider((~~:~~

~~(a) May provide recommendations to the state or local health officer on the best means of contacting the HIV-infected individual for the purpose of notifying sex or injection equipment-sharing partners, including spouses, that partners may have been exposed to and infected with HIV and that partners should seek HIV pretest counseling and HIV testing; and~~

~~(b)~~)) shall attempt to inform the HIV-infected person that the local health officer or authorized representative will contact the HIV-infected person for the purpose of providing assistance with the notification of partners.

(3) ((~~If the principal health care provider recommends that the state or local health officer not meet with the HIV-infected individual for the purpose of notifying partners, including spouses, the principal health care provider shall:~~

~~(a) Inform the HIV-infected individual of the necessity to notify sex and injection equipment-sharing partners, including spouses, that they have been exposed to and may be infected with HIV and should seek HIV testing; and~~

~~(b) Provide assistance notifying partners in accordance with the "*HIV Partner Counseling and Referral Services—Guidance*" as published by the Centers for Disease Control and Prevention, December 1998; and~~

~~(c) Inform the local health officer or an authorized representative of the identity of sex or injection equipment-sharing partners known to the provider when the HIV-infected individual either refuses or is unable to notify such partners and confirm notification to the health care provider; and~~

~~(d) Upon request of the state or local health officer, report the number of exposed partners, including spouses that have been contacted and offered HIV testing.~~

~~(4)~~)) A health care provider shall not disclose the identity of an HIV-infected individual or the identity of sex and injection equipment-sharing partners, including spouses, at risk of HIV infection, except as authorized in RCW 70.24.105 or ((~~WAC 246-100-072~~)) in this section.

((~~(5)~~)) (4) Local health officers and authorized representatives shall:

(a) Use identifying information, ((~~provided~~)) according to this section, on HIV-infected individuals only ((~~for~~)) to:

(i) ((~~Contacting~~)) Contact the HIV-infected individual to provide post-test counseling and, as appropriate, referral to medical care, or to contact sex and injection equipment-sharing partners, including spouses; or

(ii) ((~~Carrying~~)) Carry out an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024; and

(b) Destroy documentation of referral information established under this subsection, containing identities and identifying information on the HIV-infected individual and at-risk partners of that individual, immediately after notifying partners or within three months of the date information was received, whichever occurs first, unless such documentation is being used in an active investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

((~~(6)~~)) (5) A health care provider may consult with the local health officer or an authorized representative about an HIV-infected individual and the need for notification of partners at any time.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting. (1) ((~~Any person~~)) Except for per-

sons conducting seroprevalent studies under chapter 70.24 RCW, or ordering or prescribing an HIV test for another((~~, except for seroprevalent studies under chapter 70.24 RCW or provided~~)) individual under subsections (((~~(2)~~))) (4) and (((~~(3)~~))) (5) of this section or ((~~provided~~)) under WAC 246-100-208(1), any person ordering or prescribing an HIV test for another individual, shall:

(a) ((~~Provide a brief evaluation of both behavioral and clinical HIV risk factors; and~~

~~(b) Unless the person has been previously tested and declines receipt of information, explicitly provide verbal or written information that is culturally, linguistically, developmentally and, medically appropriate to the individual being tested regarding HIV including:~~

~~(i) The benefits of learning HIV status and the potential dangers of the disease; and~~

~~(ii) A description of ways in which HIV is transmitted and ways in which it can be prevented; and~~

~~(iii) The meaning of HIV test results and the importance of obtaining test results; and~~

~~(iv) As appropriate, the availability of anonymous HIV testing and the differences between anonymous testing and confidential testing; and~~

~~(c) Obtain or ensure explicit verbal or written informed consent of the individual to be tested prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW and document the consent of the individual being tested; and~~

~~(d) Recommend and offer or refer for pretest counseling described under WAC 246-100-209 to any person requesting pretest counseling and to any person determined to be at increased risk for HIV as defined by Federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral, November 9, 2001*. The individual's decision to refuse pretest counseling is not grounds for denying HIV testing; and~~

~~(e) Provide or refer for other appropriate prevention, support or medical services, including Hepatitis services; and~~

~~(f) Provide or ensure successful completion of referral for post-test counseling described under WAC 246-100-209 if the HIV test is positive for or suggestive of HIV infection; and~~

~~(g) In the event that the individual tests positive, had a confidential test, and fails to return for post-test counseling,~~)) Obtain the informed consent of the individual, separately or as part of the consent for a battery of other routine tests provided that the individual is specifically informed verbally or in writing that a test for HIV is included; and

(b) Offer the individual an opportunity to ask questions and decline testing; and

(c) If the HIV test is positive for or suggestive of HIV infection, provide the name of the individual and locating information to the local health officer for follow-up to provide post-test counseling as required by WAC 246-100-209(((~~(2)~~))).

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "*Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings*."

(3) Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "*Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings*" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.

(4) Any person authorized to order or prescribe an HIV test for another individual may offer anonymous HIV testing without restriction.

(((~~(3)~~))) (5) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;

(b) Explain that the reason for HIV testing is to prevent contamination of the blood supply, tissue, or organ bank donations;

(c) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session; and

(d) Inform the individual that the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer.

(((~~(4)~~))) (6) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform an HIV test, provide written information to the individual tested explaining:

(i) What an HIV test is;

(ii) Behaviors placing a person at risk for HIV infection;

(iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

(iii) ((~~Requirements under subsection (4)(c) of this section.~~)) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.

(c) Establish procedures to inform an applicant of the following:

(i) Post-test counseling specified under WAC 246-100-209(((~~(2)~~))) is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.

(((~~(5)~~))) (7) Laboratories and other places where HIV testing is performed must demonstrate compliance with all of the requirements in the Medical test site rules, chapter 246-338 WAC.

(((~~(6)~~))) (8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(((~~(7)~~))) (9) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) The test or sequence of tests has been approved by the ((~~United States Food and Drug Administration (~~))FDA((~~)~~)) or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) Such information consists of relevant((~~, pertinent~~)) facts communicated in such a way that it will be readily understood by the recipient.

(((~~(8)~~))) (10) Persons may inform a tested individual of the unconfirmed reactive results of an FDA-approved rapid HIV test provided the test result is interpreted as preliminarily positive for HIV antibodies, and the tested ((~~person~~)) individual is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-208 Counseling standard—AIDS counseling. (1) Principal health care providers providing care to a pregnant woman who intends to continue the pregnancy and is not seeking care to terminate the pregnancy or as a result of a terminated pregnancy shall ((~~counsel or~~)):

(a) Provide or ensure the provision of AIDS counseling ((~~for each pregnant woman continuing the pregnancy. This subsection shall not apply when health care is sought in order to terminate a pregnancy or as a result of a terminated pregnancy. "AIDS counseling" for a pregnant woman means:~~

~~(a) Performing a risk screening that includes an assessment of sexual and drug use history as part of the intake process;~~

~~(b) Providing written or verbal information on HIV infection that at a minimum includes:~~

~~(i) All pregnant women are recommended to have an HIV test;~~

~~(ii) HIV is the cause of AIDS and how HIV is transmitted;~~

~~(iii) A woman may be at risk for HIV infection, and not know it;~~

~~(iv) The efficacy of treatments to reduce vertical transmission;~~

~~(v) The availability of anonymous testing, and why confidential testing is recommended for pregnant women;~~

~~(vi) The need to report HIV infection;~~

~~(vii) Public funds are available to assist eligible HIV-infected women receive medical care and other assistance; and~~

~~(viii) Women who decline testing will not be denied care for themselves or their infants~~)) as defined in WAC 246-100-011(2);

(((~~(c) Obtaining~~)) (b) When ordering or prescribing an HIV test, obtain the informed consent of the pregnant woman for confidential human immunodeficiency virus (HIV) testing, separately or as part of the consent for a battery of other routine tests provided that the pregnant woman is specifically informed verbally or in writing ((~~or verbally~~)) that a test for HIV is included;

(((~~(d) Providing HIV testing unless the pregnant woman refuses to give consent;~~)) (c) Offer the pregnant woman an opportunity to ask questions and decline testing;

(d) Order or prescribe HIV testing if the pregnant woman consents;

(e) If the pregnant woman refuses ((~~a confidential test~~)) to consent, ((~~discussing and addressing~~)) discuss and address her reasons for refusal and document in the medical record ((~~that~~)) both her refusal and the provision of education on the benefits of HIV testing; and

(f) If ((~~the risk screening indicates, providing or referring for behavioral change counseling for women who:~~

~~(i) Have or recently have had a sexual partner(s) who is known to be HIV infected or is a man who has sex with another man or is an injection drug user;~~

~~(ii) Uses or recently have used injection drugs;~~

~~(iii) Have signs or symptoms of HIV seroconversion;~~

~~(iv) Currently have or recently have exchanged sex for drugs or money or had a sexually transmitted disease or had multiple sex partners; or~~

~~(v) Express a need for further, more intensive counseling; and~~

~~(g) Basing the behavioral change counseling on the standards defined in WAC 246-100-209 and the recommendations of the federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral,* and *Revised Recommendations for HIV Screening of Pregnant Women, November 9, 2001*; and~~

~~(h) Offering referrals and providing follow-up to other necessary medical, social and HIV prevention services~~)) an HIV test is positive for or suggestive of HIV infection, provide the follow-up and reporting as required by WAC 246-100-209.

(2) Health care providers may obtain a sample brochure addressing the elements of subsection (1)((~~(b)~~)) of this section by contacting the department of health's HIV prevention program at P.O. Box 47840, Olympia, WA 98504-7840.

(3) Principal health care providers shall counsel or ensure AIDS counseling as defined in WAC 246-100-011(2) and offer and encourage HIV testing for each patient seeking treatment of a sexually transmitted disease.

(4) Drug treatment programs under chapter 70.96A RCW shall provide or ensure provision of AIDS counseling as defined in WAC 246-100-011(2) for each person in a drug treatment program.

(((~~(5) Health care providers, persons, and organizations providing AIDS counseling in subsections (3) and (4) of this section shall:~~

~~(a) Assess the behaviors of each individual counseled for risk of acquiring and transmitting human immunodeficiency virus (HIV);~~

~~(b) Maintain a nonjudgmental environment during counseling which:~~

~~(i) Considers the individual's particular circumstances; and~~

~~(ii) Is culturally, linguistically, and developmentally appropriate to the individual being counseled.~~

~~(c) Focus counseling on behaviors increasing the risk of HIV acquisition and transmission;~~

~~(d) Offer or refer for HIV testing and provide or ensure provision of personalized risk reduction education to individuals who are determined to be at increased risk for HIV as defined by Federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral, November 9, 2001*.~~

~~(6) Persons and organizations providing AIDS counseling may provide additional or more comprehensive counseling than required in this section.~~))

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-209 Counseling standards—Human immunodeficiency virus (HIV) pretest counseling—HIV post-test counseling. (((~~(1)~~))) Health care providers and other persons providing pretest or post-test counseling shall assess the individual's risk of acquiring and transmitting human immunodeficiency virus (HIV) by evaluating information about the individual's possible risk-behaviors and unique circumstances, and as appropriate((~~:~~)):

(((~~(a)~~))) (1) Base counseling on the recommendations of the Federal Centers for Disease Control and Prevention as published in the *Revised Guidelines for HIV Counseling, November 2001*; and

(((~~(b)~~))) (2) Assist the individual to set a realistic behavior-change goal and establish strategies for reducing their risk of acquiring or transmitting HIV; and

(((~~(c)~~))) (3) Provide appropriate risk reduction skills-building opportunities to support the behavior change goal; and

(((~~(d)~~))) (4) Provide or refer for other appropriate prevention, support or medical services, including those services for other bloodborne pathogens((~~.~~

~~(2) Health care providers and other persons providing post-test counseling shall:~~

~~(a) For all individuals tested for HIV, offer at least one individual counseling session at the time HIV test results are disclosed consistent with the requirements in subsection (1) of this section; and~~

~~(b)~~)); and

(5) If the individual being counseled tested positive for HIV infection:

(((~~(i)~~))) (a) Provide or arrange for at least one individual in-person counseling session consistent with the requirements in subsection (1) through (4) of this section; and

(((~~(ii)~~))) (b) Unless testing was anonymous, inform the individual that the identity of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

(((~~(iii)~~))) (c) Ensure compliance with the partner notification provisions contained in WAC 246-100-072, and inform the tested person of those requirements; and

(((~~(iv)~~))) (d) Develop or adopt a system to avoid documenting the names of referred partners in the permanent record of the individual being counseled; and

(((~~(v)~~))) (e) Offer referral for alcohol and drug and mental health counseling, including suicide prevention, if appropriate; and

(((~~(vi)~~))) (f) Provide or refer for medical evaluation including services for other bloodborne pathogens, antiretroviral treatment, HIV prevention and other support services; and

(((~~(vii)~~))) (g) Provide or refer for tuberculosis screening.

WSR 10-01-089
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed December 16, 2009, 11:14 a.m., effective January 16, 2010]

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

Purpose: During the 2009 legislative session, SHB 1435 was passed into law granting the liquor control board administrative authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. New laws are required to implement this legislation. The new rules provide guidance and clarity to applicants wanting to apply for these types of licenses and current licensees wanting to make changes to their license.

Statutory Authority for Adoption: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220.

Adopted under notice filed as WSR 09-22-100 on November 4, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 12, 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 12, 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: December 16, 2009.

Sharon Foster
Board Chairman

Chapter 314-33 WAC

CIGARETTE AND TOBACCO PRODUCTS LICENSE PROCESS

NEW SECTION

WAC 314-33-001 Cigarette and tobacco products license qualifications and application process. (1) Each cigarette and tobacco products license application is unique and investigated individually. The board may inquire and request documents regarding matters in connection with the cigarette and tobacco products license application. Following is a general outline of the cigarette and tobacco products license application process:

(a) The board may require proof concerning the applicant's identity.

(b) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per RCW 82.24.510 and 82.26.150.

(2) Failure to respond to the board's requests for information within the timeline provided may cause the application to be denied.

NEW SECTION

WAC 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. The following is a list of reasons the board may deny a cigarette or tobacco products license application:

(1) Failure to meet qualifications or requirements for the specific cigarette or tobacco products license, as outlined in this chapter and chapters 82.24 and 82.26 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant.

(4) Willfully withholding information.

(5) Submitting false or misleading information.

(6) The applicant has failed to submit payments of the taxes imposed under chapter 82.24 or 82.26 RCW along with reports and returns to the department of revenue as required.

(7) If the applicant is a corporation and the corporation is not currently registered with the secretary of state.

(8) The applicant is currently the subject of an outstanding felony arrest warrant.

(9) The existence of disqualifying criminal history standards outlined in WAC 314-33-020.

(10) The existence of disqualifying liquor and cigarette and tobacco products law or rule violation history standards outlined in WAC 314-33-025.

NEW SECTION

WAC 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? (1) For the purpose of reviewing an application for a license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant and criminal history record within the previous five years.

(2) When the board processes a criminal history check on an applicant, it uses a point system to determine a person's qualification for a license. The board will not normally issue a cigarette and tobacco products license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned from date of conviction	Points assigned
Felony conviction	Five years	12 points
Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW	Five years	12 points
Other gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Nondisclosure of any of the above	n/a	4 points each

(3) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board may administratively close the application.

NEW SECTION

WAC 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? The board will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and/or rule administrative violation history. The board will not normally issue a cigarette and tobacco products license to a person, or to an entity that has the following violation history or to any person that has demonstrated a pattern of disre-

gard for laws or rules: Four or more violations within the last two years of the date the application is received by the board.

NEW SECTION

WAC 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? If the board denies a cigarette or tobacco products license application, the applicant may:

(1) Request an administrative hearing per chapter 34.05 RCW; or

(2) Reapply for the license no sooner than one year from the original denial date.

Chapter 314-34 WAC

CIGARETTE AND TOBACCO PRODUCTS VIOLATIONS

NEW SECTION

WAC 314-34-001 Purpose of chapter. The purpose of this chapter is to outline what a cigarette and/or tobacco products licensee can expect if a licensee receives an administrative violation notice alleging a violation of a statute under chapters 82.24 and 82.26 RCW, or under chapter 314-33 WAC.

NEW SECTION

WAC 314-34-003 Authority—Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. (1) The board has full power and authority to suspend or revoke the license of any cigarette wholesale or retail licensee and tobacco products distributor or retail licensee upon sufficient showing that the license holder has violated the provisions of chapters 82.24 and 82.26 RCW or chapter 314-33 WAC.

(2) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW or this chapter. For example, if a person has both a cigarette license and a tobacco products license, revocation of the tobacco products license will also result in revocation of the cigarette license.

(3) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes during the period of the suspension or revocation.

(4) For the purposes of this rule, "cigarettes" has the same meaning as in RCW 82.24.010 and "tobacco products" has the same meaning as in RCW 82.26.010.

(5) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to chapter 34.05 RCW.

NEW SECTION

WAC 314-34-005 What are the procedures for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? When an enforcement officer believes that a cigarette and/or tobacco products licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee or the licensee's agent. The AVN will include:

(1) A brief narrative description of the violation(s) the officer is charging;

(2) The date(s) of the violation(s);

(3) A copy of the law(s) and/or regulation(s) allegedly violated;

(4) An outline of the licensee's options as outlined in WAC 314-34-010; and

(5) The penalty.

NEW SECTION

WAC 314-34-010 What options does a licensee have once they receive a notice of administrative violation? (1) A licensee has twenty days from receipt of the notice to:

(a) Accept the recommended penalty; or

(b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing. A response must be submitted on a form provided by the board.

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?** If a licensee does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.

(3) **What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a

cigarette or tobacco products law or rule? For the purposes of chapter 314-33 WAC, a two-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(1) 1st offense - License suspension for not less than thirty consecutive business days.

(2) 2nd offense - License suspension for not less than ninety days - or more than twelve months.

(3) 3rd and consecutive offenses - Subject to revocation.

NEW SECTION

WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions. (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

NEW SECTION

WAC 314-34-030 Cigarette and other tobacco products violations. (1) The following is a list of cigarette violations:

(a) Taxes - failure to pay taxes as required;

(b) Stamps - tax stamp violations to include:

(i) Failure to affix stamps;

(ii) Forgery/counterfeit; or

(iii) Possession of unstamped cigarettes.

(c) Retailer obtaining cigarettes from an unauthorized source;

(d) Records - improper recordkeeping or failure to submit reports as required;

(e) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Stamps;

(iii) Vehicles;

(iv) Cigarettes;

(v) Books; or

(vi) Records.

(f) Transporting violations to include failure to notify and improper records;

(g) Operating outside the capacity of the license and failure to secure the proper license; and

(h) License suspension violations.

(2) The following is a list of other tobacco product violations:

(a) Taxes - failure to pay taxes as required;

(b) Records - improper recordkeeping or failure to submit reports as required;

(c) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Vehicles;

(iii) Tobacco products;

(iv) Books; or

(v) Records.

(d) Transporting violations to include failure to notify and improper records;

(e) Operating outside of the capacity of the license or failure to secure the proper license;

(f) Retailer not licensed as a distributor and obtaining tobacco products from an unlicensed distributor;

(g) Manufacturer representative's violation; and

(h) License suspension violations.

WSR 10-01-090
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed December 16, 2009, 11:23 a.m., effective January 16, 2010]

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

Purpose: Regulations relating to manufacturers, distributors, importers and retailers were impacted by the 2009 legislative action. Rules needed amending or repealing and new rules needed to be created as part of implementing EHB 2040, changing beer and wine regulation (tied house), and parts of SSB 5834, changes to authorized reps, created a winery warehouse, allowed exceptions to tied house restrictions, and created changes to electronic fund transfer payment transactions. Implementation of legislation passed in 2009 requires changes in current rules and creation of new rules to clarify and provide further guidance to licensees who are impacted by the new regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-12-135 and 314-12-145; and amending WAC 314-11-015, 314-11-095, 314-12-140, 314-12-141, 314-13-015, 314-13-020, 314-13-025, 314-19-015, 314-19-035, 314-20-001, 314-20-050, 314-20-100, 314-24-001, 314-24-070, 314-24-107, 314-24-150, 314-24-190, 314-24-210, 314-44-005, 314-44-015, and 314-52-080.

Statutory Authority for Adoption: RCW 66.08.030 and 66.28.320.

Adopted under notice filed as WSR 09-22-102 on November 4, 2009.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 21, Repealed 2.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 21, Repealed 2.

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: December 16, 2009.

Sharon Foster
Board Chairman

AMENDATORY SECTION (Amending WSR 04-15-162, filed 7/21/04, effective 8/21/04)

WAC 314-11-015 What are my responsibilities as a liquor licensee? (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC ((~~314-12-300~~)) 314-29-015 through ((~~314-12-340~~)) 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated on the licensed premises;

(b) Permit any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(ii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(e) Engage in, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW; or

(f) Sell or serve liquor by means of "drive-in" or by "curb service."

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

(c) See WAC 314-11-050 for further guidelines on prohibited conduct.

AMENDATORY SECTION (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

WAC 314-11-095 What records am I required to keep regarding my licensed premises? Licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business.

(1) All industry members and retailers shall keep and maintain the following records on their premises for a three-year period and the records must be made available for inspection if requested by an employee of the liquor control board, or by a person appointed in writing by the board for the purposes of administering or enforcing any provisions of Title 66 RCW or Title 314 WAC:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and ((~~cancelled~~)) canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest in the liquor license; ((~~and~~))

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) Records of all items, services, and moneys' worth furnished to and received by a retailer and of all items, services, and moneys' worth provided to a retailer and purchased by a retailer at fair market value;

(f) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member; and

(g) Business entertainment records of industry members or their employees who provide either food, beverages, transportation, tickets or admission fees for or at athletic events or for other forms of entertainment to retail licensees and/or their employees.

(2) See ((~~the following~~)) additional rules for ((~~record keeping~~)) recordkeeping requirements specific to breweries and wineries: WAC 314-20-015(2), 314-20-050, 314-24-100, and 314-24-150 (as now or hereafter amended).

NEW SECTION

WAC 314-11-097 Credit on nonliquor food items—Conditions—Recordkeeping. (1) Notwithstanding the provisions of WAC 314-12-140, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty days' credit terms to retailers. Complete and separate accounting records shall be maintained for a period of three years on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

(2) Nonliquor food products include all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products.

(3) For the purpose of this section, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

(4) If the board finds in any instance that any licensee has violated this section by extending or receiving credit in excess of the thirty days as provided for by this section, then all licensees involved shall be held equally responsible for such violation.

NEW SECTION

WAC 314-12-027 Financial interest and ownership. Pursuant to the exceptions in chapter 66.28 RCW:

(1) An industry member or affiliate may have a financial interest in another industry member or a retailer, and a retailer or affiliate may have financial interest in an industry member unless such interest has resulted or is more likely than not to result in:

(a) Undue influence over the retailer or the industry member; or

(b) An adverse impact on public health and safety.

(2) The structure of any such financial interest must be consistent with the following:

(a) An industry member in whose name a license or COA has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but the industry member must form a separate legal entity to apply for the retail liquor license.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a retail restaurant. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole proprietor, could purchase any amount of stock in a retail restaurant;

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in manufacturer, importer, or distributor licensed under RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but the retailer must form a separate legal entity to apply for the nonretail liquor license.

Example: Joe and Jane Smith own a grocery store and hold a grocery store liquor license under a sole proprietor legal entity. They want to purchase stock in a local winery. Joe and Jane Smith are not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, Joe and Jane Smith must form a separate legal entity (such as a corporation or limited liability company) to purchase the stock in the winery;

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a distributor. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole-proprietor, could purchase any amount of stock in a distributor;

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name.

Example: B&W Distributing, LLC is the liquor licensee for BW Distributing. B&W Distributing, LLC wants to purchase stock in ABC Winery. B&W Distributing, LLC is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, B&W Distributing, LLC must form a separate legal entity to purchase the stock in the winery.

(3) Any person may request a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an

adverse impact on public health and safety by filing a complaint or request for determination with the board.

(a) The board may conduct an investigation as it deems appropriate in the circumstances.

(b) If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or an adverse impact on public health or safety, the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, the retailer, or both.

The recipient of the administrative violation notice or notice of intent to deny the license may request an administrative hearing under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc. (1) No ((~~contract shall be made or entered into whereby any retail licensee agrees to handle any particular brand or brands of liquor to the exclusion of any other brand or brands of liquor.~~

~~(2) No contract shall be made or entered into for the future delivery of liquor to any retail licensee: Provided, That~~)) industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(((~~(3)~~))) (2) No ((~~manufacturer, distributor, or importer, or his employee,~~)) industry member shall ((~~directly or indirectly solicit, give or offer to, or receive from any retail licensee, any employee thereof, or an applicant for a license, any~~)) advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

(a) Gifts((~~,~~));

(b) Discounts((~~,~~));

(c) Loans of money((~~,~~));

(d) Premiums((~~,~~));

(e) Rebates((~~,~~));

(f) Free liquor of any kind((~~,~~)); or

(g) Treats or services of any nature whatsoever((~~, nor shall any retail licensee, employee thereof, or an applicant for a license, directly or indirectly, solicit, receive from, or give or offer to any manufacturer, distributor or importer, or his employee, any gifts, discounts, loans of money, premiums, rebates, free liquor of any kind, treats or services of any nature whatsoever,~~)) except such services as are authorized in this regulation.

(((~~(4)~~))) (3) Pursuant to RCW 66.28.010 ((~~a manufacturer, distributor, importer,~~)) an industry member or ((~~his~~)) licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of ((~~his~~)) its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of ((~~his~~)) its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of ((~~his~~)) its products in such a manner as to cover up, hide or reduce the space of display of the products of any other ((~~manufacturer, distributor or importer; Provided, however, manufacturers, distributors, importers~~)) industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when ((~~reasonable~~)) a two-day notice is given to other interested ((~~manufacturers, distributors~~)) industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

(((~~(b)~~))) (d) Provide price cards and may also price goods of ((~~his~~)) its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(((~~(c)~~))) (e) Provide point of sale advertising material and brand signs.

(((~~(d)~~))) (f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

(((~~(e)~~))) (g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

(((~~(5)~~))) (4) No ((~~manufacturer, distributor, importer,~~)) industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any ((~~retail licensee~~)) retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any ((~~manufacturer, distributor or importer~~)) industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

(((~~(6)~~))) (5) No ((~~manufacturer or distributor~~)) industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

(((~~(7)~~))) (6) In selling equipment, fixtures, supplies or commodities other than liquor, no ((~~manufacturer, distributor or importer~~)) industry member shall grant to ((~~retail licensees~~)) any retailer, nor shall such ((~~licensees~~)) retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the ((~~manufacturer's, importer's, or distributor's~~)) industry member's cost of acquisition. In no event shall credit be extended to any ((~~retail licensee~~)) retailer.

(((~~(8)~~))) (7) Any ((~~manufacturer, distributor or importer~~)) industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such

sales have on file and available for inspection ((~~in accordance with WAC 314-20-050~~)), records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold((~~,~~));

(b) The purchase price of each unit sold together with the total amount of the sale((~~,~~));

(c) Transportation costs and services rendered in connection with the installation of such articles((~~,~~)); and

((~~Such invoice shall list~~)) (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection ((~~(5)~~)) (4) of this section.

((~~(9)~~)) (8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

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

WAC 314-12-141 Courses of instruction. ((~~Breweries, wineries and distributors~~)) Industry members conducting courses of instruction as authorized by RCW 66.28.150 may provide alcohol at no charge to licensees of the board, their employees, and invited guests who have a legitimate business interest in the manufacturing, importing, distributing and retailing of liquor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-12-135	Business entertainment—Records.
WAC 314-12-145	Credit on nonliquor food items—Conditions—Recordkeeping.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-015 What method of payment can a retailer use to purchase beer or wine from ((~~a manufacturer or distributor~~)) an industry member? Per RCW 66.28.010(1), a retail licensee must pay cash for beer and wine prior to or at the time of delivery by ((~~a distributor, brewery, or winery~~)) an industry member. The board will recognize the following forms of payment as cash payment for the purposes of this title, under the conditions outlined in this rule and in WAC 314-13-020.

(1) **Checks,** under the provisions of WAC 314-13-020.

(2) **Credit/debit cards,** under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both the retailer and the ((~~manufacturer, importer, or distributor~~)) industry member, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for board review.

(e) The credit or debit card charge must be initiated by the ((~~manufacturer, importer, or distributor~~)) industry member no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT),** under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the retailer and the ((~~manufacturer, importer, or distributor~~)) industry member, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the retail licensee must enter into a written agreement with the ((~~manufacturer, importer, or distributor~~)) industry member specifying the terms and conditions for EFT as payment for alcohol or nonalcohol beverages.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for board review.

(f) The electronic funds transfer must be initiated by the ((~~manufacturer, importer, or distributor~~)) retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a retailer to delay payment on EFT transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-020 What if a check, EFT transaction, or credit/debit card transaction is reported as having nonsufficient funds (NSF)? Any transaction reported as having nonsufficient funds (NSF) will be considered an extension of credit, in violation of RCW 66.28.010(1). If a transaction is reported as NSF:

(1) The retailer must pay the full amount of the transaction to the ((~~manufacturer, importer, or distributor~~)) industry member by 3 p.m. on the first business day following receipt of the NSF report.

(2) If the retailer does not make payment by this time, the ((~~manufacturer, importer, or distributor~~)) industry member must report the NSF transaction to the their local board enforcement office by 5 p.m. the next business day following receipt of the NSF report.

(3) The local board enforcement office will contact the retailer, who will have until 3 p.m. the next business day to pay the NSF transaction. If the retailer does not pay the ((~~manufacturer, importer, or distributor~~)) industry member by this time, the board will issue an administrative violation notice to the retailer.

(4) Until the NSF transaction is paid:

(a) The ((~~manufacturer, importer, or distributor~~)) industry member who received the NSF transaction will not deliver any beer or wine to the retailer; and

(b) It is the responsibility of the retailer to not receive any beer or wine from any ((~~manufacturer, importer, or distributor~~)) industry member.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-025 How do retail licensees purchase spirituous liquor at a discount from the board? (1) In order to acquire spirituous liquor for resale, the following licensees must purchase spirituous liquor from the board at a fifteen percent discount:

(a) Spirits, beer, and wine restaurants;

(b) Spirits, beer, and wine private clubs; ((~~and~~))

(c) Spirits, beer, and wine nightclubs; and

(d) Sports/entertainment facilities.

(2) When purchasing spirituous liquor, the licensee must present the tear-off portion of the business' master license that shows its liquor endorsement.

(3) This discounted spirituous liquor may only be used for resale on the licensed premises (see WAC 314-70-010 for instructions on when a business discontinues).

(a) Possession of discounted liquor off of the licensed premises will be *prima facie* evidence of a violation of this rule, unless:

(i) The liquor is en route from the point of purchase to the licensed premises((~~,~~)); or

(ii) The liquor is en route from the licensed premises of a beer and/or wine restaurant or a spirits, beer, and wine restaurant with a caterer's endorsement to an approved event being catered by the licensee.

(b) Any spirituous liquor on the licensed premises must be liquor purchased at a discount from the board, except:

(i) Under the authority of a banquet permit, see chapter 314-18 WAC; or

(ii) Liquor bottles if they are used as part of the decor, and any bottles containing liquor are locked in a display case and are not for sale.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-19-015 What are the monthly reporting and tax payment requirements? (1) The required monthly beer and/or wine tax reports must be:

(a) On a form furnished by the board or in a format approved by the board;

(b) Filed every month, including months with no activity or taxes due;

(c) Submitted, with the tax due, to the board on or before the twentieth day of each month, for the previous month (for example, a report listing transactions for the month of January is due by February 20). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each type of liquor license or permit held.

Type of Licensee	Tax Payment Requirements
(2) Washington beer and/or wine distributor	(a) Distributors must pay taxes on all beer and/or wine received during the preceding calendar month, including samples received at no charge (see WAC 314-64-080 and 314-64-090 for more information). The total tax due (per barrel for beer and per liter for wine) is to be paid by the first distributor to receive the product and must be included with the monthly report. (b) Distributors do not pay taxes on beer and/or wine received from another in-state licensed distributor who has already paid the Washington state tax on the product. (c) Distributors may claim a tax refund or credit, provided that they have paid the taxes prior to claiming the credit, for the following (see WAC 314-19-030 for information on claiming a tax refund or credit): (i) Shipments exported directly to a point outside the state of Washington, including sales to interstate common carriers; (ii) Sales to any military reservation in Washington state; (iii) Product that is deemed unsalable due to freight damage, product quality, or other causes that occurred prior to receipt by the distributor, subject to the following conditions: (A) The unsalable product must be destroyed within the state of Washington (per RCW 66.24.305); (B) The licensee must notify their local liquor enforcement officer in advance for destruction of more than fifty cases of wine or two hundred cases of beer;

Type of Licensee	Tax Payment Requirements
	(C) The licensee must report the destroyed product on the next required monthly report; (D) The licensee must keep records showing the reason for the destruction and an inventory of products destroyed. These records must be kept on the licensed premises and available for inspection by board employees for a period of two years; and (E) The licensee must provide documentation from the freight company with the report if they are claiming a credit due to freight damage.
(3) Washington beer and/or wine importers	Importers must pay taxes on samples received during the preceding calendar month, as follows: (a) If the samples are used by the importer within the state of Washington, the importer must pay the tax. (b) If samples are provided to a distributor, the distributor must pay the tax.
(4) Domestic breweries, microbreweries, and domestic wineries	(a) Domestic breweries, microbreweries, and domestic wineries must list production for the current month only. The brewery that the domestic brewery/brand owner contracts with is required to include any products they produce for the brand owner in their production count. (b) Domestic breweries, microbreweries, and domestic wineries must pay taxes on beer and/or wine that is: (i) Sold at retail on the licensed premises (or shipped to additional winery locations as authorized by RCW 66.24.170(4)), including retail sales to out-of-state residents; (ii) Sold to retail licensees; (iii) Furnished as samples to retail licensees as authorized by RCW 66.28.040, WAC 314-64-080, and 314-64-090 (does not include samples provided to distributors); (iv) Provided as donations to qualifying 501 (c)(3) or (6) nonprofit organizations per RCW 66.28.040 or to the Washington wine commission per RCW 66.12.180 and 66.24.210; (v) Received via an interplant transfer if used as outlined in above subsections (i), (ii), (iii), or (iv); ((~~or~~)) (vi) Sold at farmers markets as authorized by RCW 66.24.170(5), 66.24.240(4) and/or 66.24.244(5); or (vii) Wine that has been shipped out-of-state as nontax paid export and returned to Washington state if used as outlined in (b)(i), (ii), (iii), (iv), or (vi) of this subsection. (c) Domestic breweries, microbreweries, and domestic wineries do not pay tax on beer and/or wine that is: (i) Sold to distributors; (ii) Shipped out of a particular location for an interplant transfer;
	(iii) Exported directly to a point outside the state of Washington, including sales to interstate common carriers; (iv) Sold to the Washington state liquor control board; (v) Sold to any military reservation in Washington state; or (vi) Provided as a tasting on the brewery or winery premises or at additional winery locations at no charge, as authorized by RCW 66.24.170(4). See WAC 314-19-010(3) for the definition of "tastings."
(5) Domestic brewery—Brand owners	(a) Domestic brewery-brand owners must file a report showing the quantity of all beer sold or delivered to each licensed beer distributor, or beer exported directly to a point outside the state of Washington, during the preceding month. (b) Domestic brewery-brand owners are not responsible for the tax on beer that is contract produced.
(6) Out-of-state beer and/or wine certificate of approval holders	(a) Certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples, during the preceding month. (b) Tax is due from the certificate of approval holder: (i) On samples shipped to licensed agents, and (ii) On donations to the Washington wine commission per RCW 66.12.180 and 66.24.210 or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.
(7) Out-of-state United States beer and/or wine certificate of approval holders with a direct shipping to Washington retailer endorsement	(a) Certificate of approval holders with this endorsement must file an addendum report showing the quantity of beer and/or wine sold or delivered to each licensed retailer, including samples, during the preceding month. (b) Tax is due from the certificate of approval holder on beer and/or wine sold or delivered to retail licensees and on sales to nonprofit charitable associations.
(8) Out-of-state United States wine certificate of approval holders with a direct shipping to consumers endorsement	(a) A certificate of approval holder with this endorsement must report the total quantity of wine sold to consumers in Washington state during the preceding month. (b) Tax is due from the certificate of approval holder on wine sold or delivered to Washington state residents.
(9) Authorized representative certificate of approval holders-U.S. and/or foreign produced beer or wine	(a) Authorized representative certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples. They must list the brewery and/or winery that they represent and that had shipments into Washington state during the preceding month.

Type of Licensee	Tax Payment Requirements
	(b) Tax is due from the authorized representative beer and/or wine certificate of approval holders only on samples shipped to licensed agents, directly to retailers per WAC 314-64-080 and 314-64-090, donations to the Washington wine commission per RCW 66.12.180 and 66.24.210, or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.
(10) Public house licensees	Public house licensees must pay taxes on all sales of their own product during the preceding calendar month.
(11) Retailer with an endorsement allowing receipt of direct shipment of beer or wine from a United States brewery, microbrewery, or winery	A Washington retailer who receives shipments directly from a United States brewery, microbrewery, or winery, ((~~either inside or~~)) outside Washington, must file a report showing the quantity of beer and wine received by direct shipment from each licensed beer or wine producer, including samples, during the preceding month.
(12) Wine shipper permit holder	(a) An out-of-state winery must file a report showing the total quantity of wine sold or delivered to consumers during the preceding month. (b) Pay the tax due for sales of wine to Washington state residents.

AMENDATORY SECTION (Amending WSR 04-24-007, filed 11/19/04, effective 12/20/04)

WAC 314-19-035 Reduced tax rate for beer. (1) The additional beer taxes imposed under RCW 66.24.290 (3)(a) do not apply to the first sixty thousand barrels of beer sold by a brewery in Washington each fiscal year, if:

(a) The beer is produced in the United States; and

(b) The producing brewery or domestic brewery-brand owner meets the qualifications of 26 U.S.C. Sec. 5051 (a)(2).

(2) In order to qualify for this exemption, the Washington brewer or the out-of-state beer certificate of approval holder must provide the board a copy of an Alcohol and Tobacco Tax and Trade Bureau (TTB) acknowledged copy of their filing "Notice of Brewer to Pay Reduced Rate of Tax" for the calendar year as required under 27 C.F.R. Sec. 25.167; a variance for any year that waives annual submission to the TTB; or the Brewer's Notice which waives annual submission to the TTB.

(3) The tax exemption will not apply until the first day of the second month following the month the notice is received (for example, if the notice is received by the Board on January 10, the tax exemption will start on March 1).

(4) How will the distributor know what tax rate to pay for each brewery's products?

(a) The board will provide distributors a list of breweries that qualify for the reduced tax rate; and

(b) The qualifying brewery is responsible to inform the distributors when product sold to distributors exceeds the first sixty thousand barrels exempted from the additional tax.

(c) Once a qualifying brewery's sales to distributors exceeds sixty thousand barrels, the distributors must begin paying the full tax rate on their next monthly tax report.

(5) Per RCW 66.24.290, authorized representative certificate of approval holders do not qualify for the reduced rate in Washington state.

(6) The tax exemption will not apply to strong beer. Strong beer must be paid at the higher rate even when the brewery meets the qualifications for the reduced rate. Strong beer is any malt beverage that contains more than eight percent alcohol by weight.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-001 Definitions. ((~~(1)~~)) **Per RCW 66.04.010(2), an "authorized representative"** means a person who:

(((~~(a)~~))) (1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

(((~~(b)~~))) (2) Has its business located in the United States outside of the state of Washington;

(((~~(c)~~))) (3) Acquires ownership of beer that is produced anywhere outside Washington by a brewery ((~~which does not hold a certificate of approval issued by the board,~~)) who does not distribute those brands for transportation into and resale in the state of Washington((~~.~~));

(((~~(d)~~))) (4) Is appointed by the brewery referenced in (((~~(c)~~))) subsection (3) of this ((~~subsection~~)) section as its ((~~exclusive~~)) authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the brewery. ((~~The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products.~~))

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-050 Beer distributors—Importers—Brewers—Records—Preservation. (1) Breweries, microbreweries, beer certificate of approval holders, and beer distributors must keep beer accounts separate and independent from other accounts and maintain proper records in a form approved by the board, showing all transactions in beer.

(2) Breweries, microbreweries, beer distributors, and beer importers must in case of beer exported or beer sold, transferred or shipped to another distributor, preserve all bills of lading or other evidence of shipment for a period of ((~~two~~)) three years after such exportation, and must in the case of sales to retailers preserve all sales slips and keep the same on file in the office of the wholesaler for at least ((~~two~~)) three years after each sale.

(3) Each brewery, beer distributor, and beer importer may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor control board and must include the following information:

(a) Records proposed to be reproduced.

(b) Reproduction process.

(c) Manner of preserving the reproduction.

(d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(4) If the brewery, beer distributor, or beer importer keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(5) The provisions contained in subsections (3) and (4) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-100 Beer suppliers and distributors ((price postings)). RCW 66.28.180 requires beer distributors and suppliers to ((file price postings with the board)) maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions**—For the purposes of this chapter:

(a) A (("beer price posting" or "price posting")) "price list" means a declaration of the prices ((of beer sold from a supplier to a distributor or from a distributor to a retailer, in effect as filed with the liquor control board either electronically or hard copy, under the provisions of RCW 66.28.180 and Title 314 WAC)) at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(2) ((Filing deadlines.

(a) Beer supplier filing deadlines	(b) Beer distributor filing deadlines
All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

(c) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current price posting period. The board may in individual cases, for good cause shown, extend the filing date.

(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.

(3) **Filing date exceptions**—Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than midnight the next business day.

(4) **No changes from previous month**—If a beer supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.

(5) **Temporary**)) **Products and** price ((**reductions**)) **lists**—If a beer supplier or distributor ((files price postings that)) lists selected items on which prices are temporarily reduced ((for one posting period only)), these prices ((postings)) must clearly reflect all items((,)) and the selling price((, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective)). All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

(((6))) (3) **Distributor changes**—

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines ((outlined in subsection (2) of this rule:

(i))). The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

(((ii) The new distributor must agree to take the currently posted prices of the old distributor until the new distributor is

~~able to post his/her own prices during the next regular posting period.~~

~~(iii) If a beer supplier has a territory or brand agreement with a distributor and wants to change a distributor appointed to a certain brand(s) or territory(ies), the board may allow the new distributor to assume the prior distributor's price postings for the brand and/or territory in order to avoid disruption of the market.~~))

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party. ((~~The board may immediately authorize a price posting if a beer distributor assumes the wholesale price postings from the previously appointed distributor.~~

~~(c) Prices and other conditions of price postings in effect at the time of the distributor change may not be changed until subsequent filings are submitted to the board and become effective.~~

~~(7)~~)) (4) **Price ((~~postings~~)) lists for new distributors**—When the board issues a new beer distributor license, the licensee ((~~may file an initial price posting and request that the price posting be placed into effect immediately. The board may grant this immediate approval if the price posting is in compliance with this rule and with all other applicable laws and rules~~)) must have a price list available.

(((~~8~~))) (5) **Accommodation sales**—The provisions of this rule do not apply((~~, and filings are not required,~~)) when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-24-001 Definitions. (((~~1~~))) **Per RCW 66.04.010(2), an "authorized representative"** means a person who:

(((~~a~~))) (1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

(((~~b~~))) (2) Has its business located in the United States outside of the state of Washington;

(((~~c~~))) (3) Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not ((~~hold a certificate of approval issued by the board,~~)) distribute those brands for transportation into and resale in the state of Washington((~~.~~));

(((~~d~~))) (4) Is appointed by the winery referenced in (((~~c~~))) subsection (3) of this ((~~subsection~~)) section as its ((~~exclusive~~)) authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the winery. ((~~The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.~~))

AMENDATORY SECTION (Amending Order 184, Resolution No. 193, filed 5/13/86)

WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in section 23-D of the Washington State Liquor Act (RCW 66.24.140), or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1), and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery returning previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery must keep on file for audit purposes clear source records (shipping documents, etc.) with

monthly reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

NEW SECTION

WAC 314-24-107 Winery warehouse license. (1) A licensee holding a domestic winery license under RCW 66.24.170 and acting as a distributor of its own products may apply for a winery warehouse license. There is no fee for this license.

(2) A winery warehouse is a premises located off the winery premises that is used for the storage of bulk wine and the distribution of the winery's own products. Storage of bulk wine may require a federal registry number.

(3) No part of the production process may take place at the winery warehouse premises.

(4) There may be no retail sales from the winery warehouse premises.

(5) The winery warehouse must be approved by the board under RCW 66.24.010 and the number of warehouses off the winery premises may not exceed one.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-150 Wine records—Preservation. (1) Every domestic winery, wine distributor, wine certificate of approval holder, wine shipper permit holder, and wine importer shall keep wine accounts separate from other accounts, and maintain proper records in a form approved by the board showing all transactions in wine.

(2) Every domestic winery, wine distributor, and wine importer, shall, in the case of sales of wine within the state, keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, in the office of the domestic winery, wine distributor or wine importer for at least ((~~two~~)) three years after each sale.

(3) Every domestic winery, wine distributor, and wine importer, shall, in the case of wine exported from the state, keep and preserve all bills of lading and other evidence of shipment in the office of the domestic winery, wine distributor, or wine importer for at least ((~~two~~)) three years after each shipment.

(4) Both the shipping and receiving licensees and permittees, as the case may be, shall keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, transfer or shipment in their respective offices for at least ((~~two~~)) three years after each sale, transfer or shipment.

(5) Licensees and permittees may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor control board and must include the following information:

(a) Records proposed to be reproduced.

(b) Reproduction process.

(c) Manner of preserving the reproduction.

(d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee or permittee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(6) If the licensee or permittee keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(7) The provisions contained in subsections (5) and (6) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-190 Wine suppliers and distributors ((~~price postings~~)). RCW 66.28.180 requires wine distributors and suppliers to ((~~file price postings with the board~~)) maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions**—For the purposes of this chapter:

(a) A ((~~"wine price posting" or "price posting"~~)) "price list" means a declaration of the prices ((~~of wine sold from a supplier to a distributor or from a distributor to a retailer, in effect as filed with the liquor control board either electronically or hard copy, under the provisions of RCW 66.28.180 and Title 314 WAC~~)) at which any and all brands of wine and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each supplier functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of wine sold by the supplier or distributor shall be available to retailers within the state.

(b) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(c) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) ((~~Filing deadlines.~~

~~(a) Wine supplier filing deadlines~~	~~(b) Wine distributor filing deadlines~~
~~All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.~~	~~All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.~~

~~(c) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current posting period. The board may in individual cases, for good cause shown, extend the filing date.~~

~~(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.~~

~~(3) **Filing date exception**—Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than the close of business the next business day.~~

~~(4) **No changes from previous month**—If a wine supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.~~

~~(5) **Temporary**~~)) **Products and price ((reductions)) lists**—If a wine supplier or distributor ((~~files price postings that~~)) lists selected items on which prices are temporarily reduced ((~~for one posting period only~~)), ((~~these~~)) the prices ((~~postings~~)) must clearly reflect all items((~~,~~)) and the selling price((~~, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective~~)). All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

(((~~6~~))) (3) **Distributor changes**—

(a) The following guidelines apply when a wine supplier makes a distributor change outside of the regular distributor appointment timelines ((~~outlined in subsection (2) of this rule:~~

~~(i)~~)). The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

(((~~(ii) The new distributor must agree to take the currently posted prices of the old distributor until the new distributor is able to post his/her own prices during the next regular posting period.~~

~~(iii) If a wine supplier has a territory or brand agreement with a distributor and wants to change a distributor appointed to a certain brand(s) or territory(ies), the board may allow the new distributor to assume the prior distributor's price postings for the brand and/or territory in order to avoid disruption of the market.~~))

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party. ((~~The board may immediately authorize a price posting if a wine distributor assumes the wholesale price postings from the previously appointed distributor.~~

~~(c) Prices and other conditions of price postings in effect at the time of the distributor change may not be changed until subsequent filing are submitted to the board and become effective.~~

~~(7)~~)) (4) **Price ((~~postings~~)) lists for new distributors**—When the board issues a new wine distributor license, the licensee ((~~may file an initial price posting and request that the price posting be placed into effect immediately. The board may grant this immediate approval if the price posting is in compliance with this rule and with all other applicable laws and rules~~)) must have a price list available.

(((~~(8)~~))) (5) **Accommodation sales**—The provisions of this rule do not apply((~~, and filings are not required,~~)) when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

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

WAC 314-24-210 Return of wine by retailer—Replacement—Conditions. No wine shall be returned by any retail licensee to any wine distributor except as herein provided.

(1) Wine which is not in a salable condition may be returned by a retail licensee to the wine distributor from whom purchased, provided it is immediately replaced by the wine distributor with an identical quantity, type and brand of wine: Provided, That if the brand of wine is not presently in the wine distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee upon the approval of the board first being obtained.

(a) Every wine distributor shall maintain on the licensed premises for a period of ((~~two~~)) three years complete records of all refunds and exchanges made under this section including an inventory of unsalable wine returned to such distributor by any retail licensee.

(b) Such unsalable wine which requires reconditioning or destruction shall be returned by the wine distributor to the domestic winery which manufactured or produced the same, or to the importer who imported such wine. When wine

which has been returned to a domestic winery by any person for reconditioning or destruction has been assembled at the winery, a complete inventory in duplicate of unsalable wine shall be filed with the board by the winery with a request that inspection be made of the returned wine before the reconditioning process or destruction is started. When wine has been returned by the distributor to the importer who imported such wine, a complete inventory of said wine shall be filed in duplicate with the board by the importer with a request that inspection be made of the returned wine before the wine is destroyed or returned to the out-of-state manufacturer.

(c) Wine which is not in a salable condition and has been returned to a domestic winery or importer by a distributor may be replaced by the supplier with an identical quantity, type, and brand of wine: Provided, That if the brand of wine is not presently in the winery or importer's stock and is not available to the supplier in the immediate future, a cash refund or credit may be made to the distributor by the supplier. Credit extended for the return of product should be noted on a separate document from the original invoice. Except as provided herein, no other adjustment, by way of a cash refund or otherwise, shall be made by the winery or wine distributor.

(2) Wine may be returned by a retail licensee or by a governmental agency who has seized the same to the wine distributor selling such wine in the event the retailer goes out of the business of selling wine at retail or has their license changed to a wine restricted license, and in such case a cash refund may be made upon return of the wine, provided that consent of the board is first had and obtained.

(3) Wine different from that ordered which has been delivered in error to a retail licensee may be returned to a wine distributor and either replaced with that wine which was ordered or a cash refund may be made upon the approval of the board first being obtained: Provided, That the error in delivery shall be discovered and corrected within eight days of the date the delivery was made.

(4) A distributor may return salable wine to a Washington winery provided the winery reimburses the distributor for the cost of the wine plus the wine tax which was paid by the distributor. The winery will then put any wine returned from a distributor into their tax paid area at the winery.

NEW SECTION

WAC 314-28-005 Definitions. The following definition applies to distilleries.

"Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

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

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items ((~~shall~~)) which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but ((~~shall~~)) are not ((~~be~~)) limited to((~~,~~)): Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, ((~~wearing apparel,~~)) mugs, glasses, ((~~knives, lamp shades, or similar items on which the logo, liquor brand name or name of a manufacturer of an alcoholic beverage has been imprinted.~~

~~(2) No liquor manufacturer, distributor, or importer, or employee thereof, shall provide without charge, directly or indirectly, any novelty advertising items to any retail licensee; nor shall any retail licensee, or employee thereof, accept without charge any liquor novelty advertising items directly or indirectly, from any manufacturer, distributor, or importer, or employee thereof.~~

~~(3) A manufacturer, distributor, or importer,~~)) bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only;

(c) May only be provided by industry members to retailers and their employees;

(d) May not be provided by or through retailers or their employees to retail customers.

(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.

Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.

(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(4) An industry member or their employee ((~~thereof~~)), may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price ((~~thereof~~)) shall be not less than the ((~~manufacturer's, importer's, or distributor's~~)) industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for ((~~two~~)) three years on the licensed premises and available for immediate inspection by board enforcement officers.

(((~~(4) A manufacturer, importer, or distributor~~)) (5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original((~~s~~)) or ((~~copies~~)) copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items ((~~from~~)) by the ((~~supplier or manufacturer of such items~~)) industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the ((~~manufacturer,~~

~~importer, or distributor~~)) industry member for a period of at least ((~~two~~)) three years after each purchase or sale. Any manufacturer which does not maintain a principal office within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

WSR 10-01-091
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed December 16, 2009, 11:24 a.m., effective January 16, 2010]

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

Purpose: Regulations relating to retail liquor licenses were impacted by 2009 legislative action. Certain rules were amended and new rules were created as part of implementing SSB 5367, creating a nightclub liquor license, ESHB 2358, increases in the fees for most retail liquor licenses, and part of SSB 5834, allowing beer/wine specialty shops to sell kegs, and allowing private clubs to sell bottled wine for off-premises consumption. Changes in current rules and creation of new rules clarify and provide further guidance to licensees who are impacted by the new regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-005, 314-02-010, 314-02-020, 314-02-035, 314-02-045, 314-02-060, 314-02-065, 314-02-070, 314-02-090, 314-02-095, 314-02-100, 314-02-105, 314-02-125, 314-02-130, 314-16-040, 314-16-110, and 314-16-160.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.600.

Adopted under notice filed as WSR 09-22-101 on November 4, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 17, 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 17, Repealed 0.

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

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

Date Adopted: December 16, 2009.

Sharon Foster
Board Chairman

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

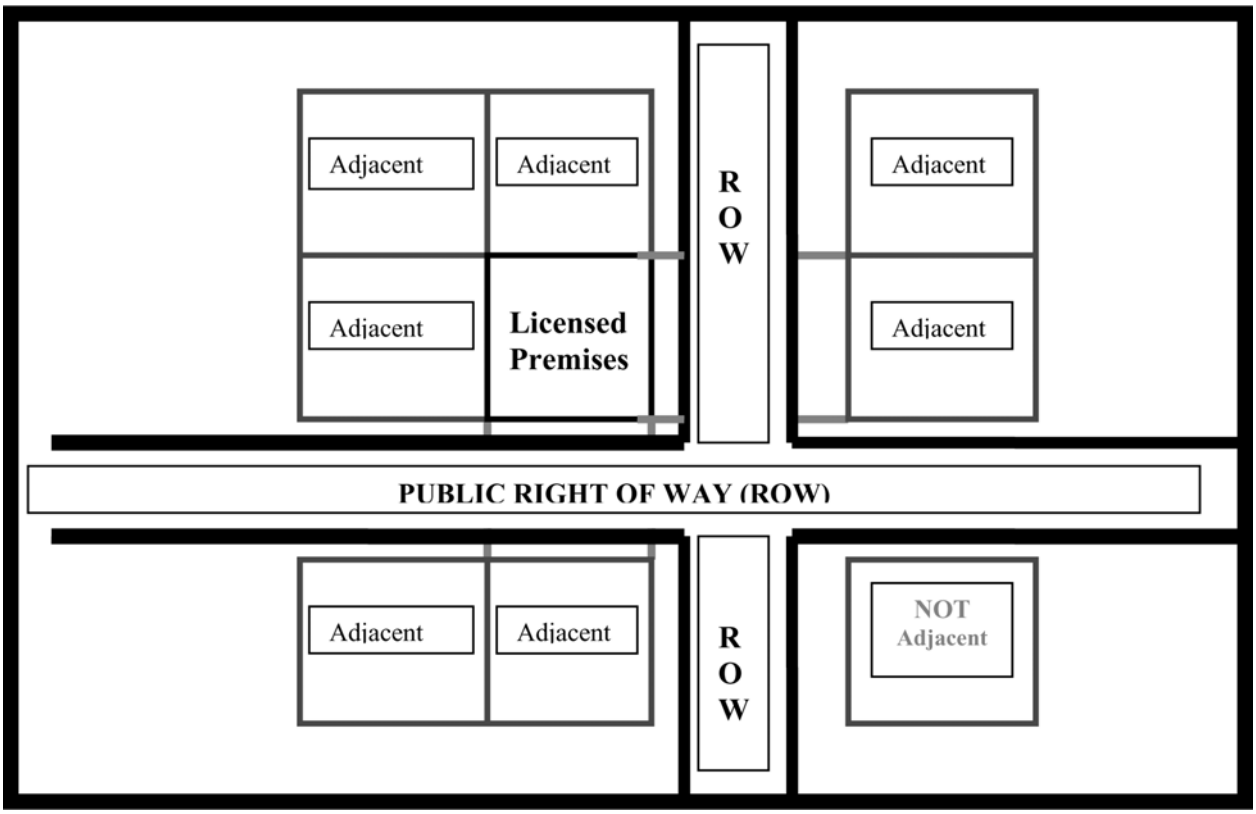
WAC 314-02-005 What is the purpose of chapter 314-02 WAC? Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

(1) Spirits, beer, and wine restaurants;
(2) Nightclubs;
(3) Hotels;
(((~~3~~))) (4) Beer and/or wine restaurants;
(((~~4~~))) (5) Snack bars;
(((~~5~~))) (6) Taverns;
(((~~6~~))) (7) Motels;
(((~~7~~))) (8) Bed and breakfasts;
(((~~8~~))) (9) Nonprofit arts organizations;
(((~~9~~))) (10) Public houses;
(((~~10~~))) (11) Grocery stores;
(((~~11~~))) (12) Beer/wine specialty shops; and
(((~~12~~))) (13) Beer/wine gift delivery business.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

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

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



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

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

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

(5) "Designated area" means a space where alcohol may be sold, served, or consumed.

(6) "Entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment services for the licensee. An entertainer is considered an employee of the liquor licensee per WAC 314-01-005. Patrons participating in entertainment are not considered employees.

(7) "Entertainment" means dancing, karaoke, singing, comedy shows, concerts, TV broadcasts, contests with patron participation and/or performing for an audience.

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

(((~~(7)~~))) (9) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

(((~~(8)~~))) (10) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

(((~~(9)~~))) (11) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

(((~~(10)~~))) (12) "Minimum food service" means items such as sandwiches, salad, soup, hamburgers, and fry orders.

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

(((~~(11)~~))) (14) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(15) "Snack food" means items such as peanuts, popcorn, and chips.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

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

Amount of customer service area dedicated to dining	Annual fee
100%	$((~~1,000~~)) 1,105
50 - 99%	$((~~1,600~~)) 1,768
Less than 50%	$((~~2,000~~)) 2,210

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

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

(b) Areas dedicated to games or gaming devices.

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

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

Type of Business	Annual fee per duplicate license
Airport terminal	25% of annual license fee
Civic center (such as a convention center)	$((~~10~~)) 11
Privately owned facility open to the public	$20

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1) A spirits, beer, and wine restaurant licensee must serve at least four complete meals. Per RCW 66.24.410(2), a complete meal does not include hamburgers, sandwiches, salads, or fry orders. For purposes of this title:

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

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

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section and RCW 66.24.410(2).

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 314-02-036 What is a spirits, beer, and wine nightclub license? (1) This license allows a nightclub as defined in RCW 66.04.010(28) to:

(a) Sell and serve spirituous liquor by the individual drink for on-premises consumption;

(b) Sell and serve beer by the open bottle, can, or by tap for on-premises consumption; and

(c) Sell and serve wine for on-premises consumption.

(2) To obtain and maintain a spirits, beer, and wine nightclub license the nightclub must have primary business hours between 9:00 p.m. and 2:00 a.m.

(3) There are no food requirements for a spirits, beer, and wine nightclub license. Food sales and service are incidental to the sale and service of alcohol.

(4) The annual fee for a spirits, beer, and wine nightclub license is two thousand dollars.

NEW SECTION

WAC 314-02-037 What are the floor space requirements for a spirits, beer, and wine nightclub license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of a licensed premises are off limits to minors.

(a) Any areas in the licensed premises where alcohol is sold, served, or consumed is classified as off-limits to minors (RCW 66.44.310(2)).

(b) Minors may be allowed on the licensed premises but only in areas where alcohol is not served or consumed.

(2) **Barriers -** Licensees must place barriers separating restricted areas from areas where minors will be allowed.

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

(b) The barriers may be moveable.

(c) Liquor bars cannot be used as barriers (see definition of liquor bar in WAC 314-02-010(10)).

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

(e) "Minor prohibited" signs, as required under WAC 314-11-060(1), must be posted at each entrance to a restricted area.

(3) If the business allows minors, the primary entrance must open directly into a nonrestricted area. Minors must be able to access restrooms without passing through a restricted area.

(4) **Floor plans -** When applying for a spirits, beer, and wine nightclub license, the applicant must provide to the board's licensing and regulation division two copies of a detailed drawing of the entire premises. If there will be different floor plans for different types of events that change the location and/or dimensions of the restricted area(s), the applicant must provide two copies of a detailed drawing for each floor plan. All restricted areas must be designated on the floor plan(s) and be approved by the board. The drawing must be labeled with the type of event. The drawing must:

(a) Have all rooms labeled according to their use; e.g., lounge, dance floor, stage area, foyer, restrooms, etc.; and

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

NEW SECTION

WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

(1) To exclude minors from the entire licensed premises at all times, the applicant must:

(a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.

(2) Spirits, beer, and wine nightclub licensees who exclude minors from the premises may not employ minors. (See WAC 314-11-040 for more information on employing minors.)

NEW SECTION

WAC 314-02-039 What type of restrictions may be placed on a spirits, beer, and wine nightclub license? (1) Local government may petition the board to request further restrictions be imposed on a spirits, beer, and wine nightclub license in the interest of public safety. Public safety does not include items such as noise ordinances and trash pickup.

(a) The local authority must request any additional restrictions within twenty days from the date of the local authority notice sent by the board.

A request for additional restrictions must be accompanied by a written explanation for the restriction and how the restriction relates to public safety.

(b) If the local authority requests further restrictions on the license, the board will notify the applicant of the local authorities' request.

(c) Any restrictions requested by the local authority and approved by the board may be enforced by the board.

(d) The board may impose the restriction of a "good neighbor agreement" requested by the local authority, but will not enforce agreements between a local authority and liquor licensee or applicant.

(2) The local authority, the applicant, or the licensee may request an administrative hearing per chapter 34.05 RCW if they disagree with the decision the board makes on additional restrictions to the license, based on the interest of public safety.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

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

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	$((~~200~~)) 221
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	$((~~200~~)) 221
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	$((~~120~~)) 133
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30). Minimum food service is required, as defined in WAC 314-02-010(12).

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

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

WAC 314-02-060 What is a caterer's endorsement? (1) A spirits, beer, and wine restaurant and a beer and/or wine restaurant applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at approved locations other than the licensed premises. See RCW 66.24.420(6) and RCW 66.24.320(2) for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred ((~~fifty~~)) eighty-seven dollars.

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

WAC 314-02-065 What is a snack bar license? (1) Per RCW 66.24.350, a snack bar license allows a licensee to serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(15), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is one hundred ((~~twenty-five~~)) thirty-eight dollars.

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

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	$((~~200~~)) 221
(b) Serve wine for on-premises consumption.	$((~~200~~)) 221
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	$((~~120~~)) 133
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

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

WAC 314-02-090 What is a nonprofit arts organization license? (1) Per RCW 66.24.495, this license allows a bona fide nonprofit organization to sell beer, wine, and spirits by the individual serving in conjunction with artistic or cultural exhibitions or performances.

(2) The nonprofit organization must be organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs for viewing by the general public. See RCW 66.24.495(2) for specific organizational requirements.

(3) Alcohol sales and consumption may only occur in the lobby area and/or restricted bar area of the premises prior to the commencement of an exhibition or performance and during intermission.

Alcohol is not allowed in the performance seating areas of the facility.

(4) The annual fee for this license is two hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

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

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

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

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

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

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

(4) Public house licensees may apply for a spirits, beer, and wine restaurant license, in order to sell spirits by the individual serving for on-premises consumption (see WAC 314-02-015).

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

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred ((~~fifty~~)) sixty-six dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

AMENDATORY SECTION (Amending WSR 04-19-156, filed 9/22/04, effective 10/23/04)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

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

(3) Qualifications for license—To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample—A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either ((~~subsection~~)) (a) or ((~~subsection~~)) (b) of this ((~~rule~~)) subsection:

(a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons ((~~and less than five and one-half gallons~~)) of beer. See WAC 314-02-115 regarding keg registration requirements.

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

WAC 314-02-125 What types of activities on a licensed premises require notice to the board? Liquor licensees must notify their local enforcement office in writing at least forty-eight hours before conducting the following activities:

(1) Male/female dance reviews, subject to the provisions of WAC ((~~314-16-125~~)) 314-11-050;

(2) Live boxing or wrestling;

(3) Contests or games where patrons are part of the entertainment; and

(4) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption.

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

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
(1) • excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • reclassifying a lounge as open to persons under twenty-one years of age;	(a) The board's licensing and regulation division will respond to the request for alteration within five business days. (b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received.

Type of alteration	Approval process and timeline
• extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); • storing liquor off of the licensed premises; • initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; • installing a pass-through window for walk-up customers; and • using a licensed premises as an access to another business.	(c) Board approval will be based on the alteration meeting the requirements outlined in this title.
(2) • any alteration that affects the size of a premises' customer service area.	(a) The board's licensing and regulation division will respond to the licensee's request for alteration within five business days. (b) The licensee must contact their local liquor control agent when the alteration is completed. (c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent. (d) Board approval will be based on the alteration meeting the requirements outlined in this title.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-16-040 ((~~Price list.~~)) Drink menu. No holder of a beer and/or wine restaurant license shall advertise for sale, nor sell, any mixed drink under the name of "Old Fashioned," "Whiskey Sour," "Singapore Sling," "Martini," "Manhattan," nor any other name which, by long and general usage, has become associated in the public mind as being the name of a mixed drink made from spirituous liquor, unless the name of such drink is prefaced by the word "wine," such as Wine Old Fashioned. The holder of a beer and/or wine restaurant license may advertise for sale, mix, compound or sell upon order, mixed drinks made from one or more wines under a name which does not conflict with this section.

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

WAC 314-16-110 Liquor purchases by spirits, beer, and wine ((~~restaurant, club and sports/entertainment facility~~)) licensees. (1) Any employee authorized by the board may sell spirituous liquor at a discount of fifteen percent from the retail price fixed by the board, together with all taxes, to any spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee upon presentation to such employee at the time of purchase of a special permit issued by the board to such licensee or through such other means of insuring identification of the authorized purchaser as are approved by the board((~~: Provided, however, That~~)). Prior to license delivery, a new licensee ((~~or transferee~~)) may, with board authorization, be sold discount liquor and beer and wine purchased under Title 66 RCW for the purpose of stocking the premises. The employee shall at the time of selling any spirituous liquor to a spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee make a record of the liquor so sold, together with the name of the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee making the purchase. No sale of beer, wine, or spirituous liquor shall take place until the premises of the new licensee ((~~or transferee~~)) have been inspected by the board and the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility license is delivered.

(2) Every spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee, upon purchasing any spirituous liquor from the board, shall immediately cause such liquor to be delivered to his or her licensed premises, and he or she shall not ((~~thereafter~~)) remove or permit to be removed from said premises any bottle or other container containing such liquor, except pursuant to chapter 314-70 WAC or to return it to a state liquor store or agency, nor shall he or she dispose or allow to be disposed the liquor contained therein in any manner except as authorized by his or her license((~~: Provided, however, That~~)). A delivery service business may pick up more than one liquor order on the same day so long as each of said orders are delivered in the normal course of business on the same day without detour or diversion, except for those stops and deliveries as may be necessary to make deliveries to the other licensees whose order is also on the particular delivery vehicle. The possession of any bottle or other container purchased from the board at a discount by any person other than the licensee or said licensee's agents or employees who purchased the same, or the possession thereof at any place which is not the licensed premises of the licensee who purchased such liquor, shall be prima facie evidence that the licensee unlawfully permitted the removal thereof from his or her licensed premises((~~: Provided,~~)). The licensee who permanently discontinues business, other than

as a result of a legal distraint action, may remove open bottles of liquor from the premises for personal use upon payment to the board of an amount to be determined by the board in lieu of the discount and tax exemption in effect at that time.

(3) No licensee shall keep in or on the licensed premises any spirituous liquor which was not purchased from the board at a discount((~~: Provided, That~~)). Spirituous liquor not purchased at a discount from the board may be kept in or on the licensed premises under authority of a banquet permit issued pursuant to RCW 66.20.010(3) and chapter 314-18 WAC, but only during the specific date and time for which the banquet permit was issued((~~: Provided, further, That~~)). Notwithstanding any other provision of Title 314 WAC, a spirits, beer and wine licensee may display antique, unusual, or unique liquor bottles with or without liquor on the licensed premises if such bottles are used as part of the decor, and any such bottles containing liquor are locked securely in display cases, and are not for sale.

(4) No person, including anyone acting as the agent for another other than a spirits, beer and wine licensee shall keep or possess any bottle or other container containing spirituous liquor which was purchased from the board at a discount except as provided in subsection (2) of this section.

(5) All spirituous liquor in and on the licensed premises shall be made available at all times by every licensee for inspection by the board, and such licensee shall permit any authorized inspector of the board to make such tests or analyses, by spirit hydrometer or otherwise, as the inspector deems proper. Such inspectors are authorized to seize as evidence any bottles or other containers and the contents thereof which they have determined have been reused, refilled, tampered with, adulterated, diluted, fortified or substituted.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-16-160 Purchases—Reports. (1) Failure by ((~~licensees~~)) industry members and retailers to keep accurate accounting records which result in the extension of or receipt of credit from ((~~a manufacturer, importer, or distributor~~)) an industry member through the use of a prior cash deposit which is overextended may result in administrative action being taken against the liquor license.

(2) Prior to license delivery, a new beer and/or wine ((~~licensee or transferee~~)) retailer may, with board authorization, be sold beer and/or wine for the purpose of stocking the premises. No retail sale of beer and/or wine shall take place until the applicant premises have been inspected by the board and the liquor license is delivered.

WSR 10-01-097
PERMANENT RULES
CENTRAL WASHINGTON UNIVERSITY

[Filed December 16, 2009, 1:45 p.m., effective January 16, 2010]

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

Purpose: New rule for creation of a carpool permit.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

Adopted under notice filed as WSR 09-22-103 on November 4, 2009.

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

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

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

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

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

Date Adopted: December 11, 2009.

James L. Gaudino
President

NEW SECTION

WAC 106-116-313 Carpool permits. (1) Carpool permits may be issued to employees and students. One transferable permit will be issued by parking services for each carpool. This permit is transferable only among the registered members of the carpool. This permit must be displayed in accordance with the instructions provided with the permit. Parking services will establish the number of persons needed to make up a carpool group. A carpool group must commute to the campus in the same vehicle and live outside the buffer zone established by parking services (http://www.cwu.edu/~parking). Carpool vehicles must be parked in designated parking stalls.

(2) Violations of this section will be subject to a fine and/or revocation of the carpool permit.

WSR 10-01-099
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 17, 2009, 9:08 a.m., effective January 17, 2010]

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

Purpose: This rule establishes approval criteria and processes for multidistrict on-line learning providers intending to serve students in grades K through 12 enrollment in Washington public school districts. SSB 5410, chapter 542, Laws of 2009, requires the office of superintendent of public instruction to develop and implement approval criteria and a process for approving multidistrict on-line providers, a process for monitoring and if necessary rescinding the approval of courses or programs offered by an on-line course provider, and an appeals process. The criteria and processes shall be adopted by rule by December 1, 2009.

Beginning with the 2011-12 school year, school districts may claim state basic education funding, to the extent otherwise allowed by state law, for students enrolled in on-line courses or programs only if the on-line courses or programs are: (a) Offered by an approved multidistrict on-line provider; (b) offered by a school district on-line learning program if the program serves the district's own resident students and ten percent or fewer nonresident students; or (c) offered by a regional on-line learning program via an interdistrict cooperative programs agreement.

Citation of Existing Rules Affected by this Order: None, new chapter 392-502 WAC, On-line learning—Approval of multidistrict on-line providers.

Statutory Authority for Adoption: SSB 5410, chapter 542, Laws of 2009.

Adopted under notice filed as WSR 09-19-150 on September 23, 2009.

Changes Other than Editing from Proposed to Adopted Version: Based on feedback from the public hearing, a new section was added describing requirements for school board policy on on-line learning. Also based on public comment and feedback from the on-line learning advisory committee, text was added to provide additional clarity to existing requirements, but no substantive changes to the purpose and intent of the rule were made.

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 11, 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 11, Amended 0, Repealed 0.

Date Adopted: December 1, 2009.

Randy I. Dorn
State Superintendent
of Public Instruction

Chapter 392-502 WAC

ON-LINE LEARNING—APPROVAL OF MULTIDISTRICT ON-LINE PROVIDERS

NEW SECTION

WAC 392-502-001 Authority. The authority for these rules is chapter 34.05 RCW which authorizes the superintendent of public instruction to adopt rules regarding approval of multidistrict on-line providers.

NEW SECTION

WAC 392-502-005 Purposes. The purpose of this chapter is to develop and implement criteria and processes for approving multidistrict on-line providers in order to further on-line learning opportunities for K-12 students in Washington state.

NEW SECTION

WAC 392-502-010 Definitions. As used in this chapter, the term:

(1) "Multidistrict on-line provider" means:

(a) A private or nonprofit organization that enters into a contract with a school district to provide on-line courses or programs to K-12 students from more than one school district;

(b) A private or nonprofit organization or a school district that enters into contracts with multiple school districts to provide on-line courses or programs to K-12 students from those districts; or

(c) Except as provided in (c)(i) and (ii) of this subsection, a school district that provides on-line courses or programs to students who reside outside the geographic boundaries of the school district.

(i) "Multidistrict on-line provider" does not include a school district on-line learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225. If, at the end of a school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a school district and are enrolled in a school district on-line program increases to ten percent or more of the total program enrollment headcount, the program shall be required to apply as a multidistrict on-line provider in the next approval cycle. The program can continue operating the year of the required approval review, but not the following school year unless approved as a multidistrict on-line provider.

(ii) "Multidistrict on-line provider" also does not include regional on-line learning programs that are jointly developed and implemented by two or more school districts or an educational service district through an interdistrict cooperative program agreement that addresses, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students unless at the end of a school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of those school districts and are enrolled in the regional on-line program increases to ten percent or more of the total program enrollment headcount, the program shall be required to apply as a multidistrict on-line provider in the next approval cycle. The program can continue operating the year of the required approval review, but not the following school year unless approved as a multidistrict on-line provider.

(2) "On-line course" means a course that:

(a) Is delivered primarily electronically using the internet or other computer-based methods; and

(b) Is taught by a teacher primarily from a remote location. Students enrolled in an on-line course may have access to the teacher synchronously, asynchronously, or both.

An on-line course may be delivered to students at school as part of the regularly scheduled school day. An on-line course also may be delivered to students, in whole or in part, independently from a regular classroom schedule, but such courses must comply with RCW 28A.150.262 and WAC 392-121-182 to qualify for state basic education funding.

(3) "On-line school program" means a school program that:

(a) Is delivered primarily electronically using the internet or other computer-based methods;

(b) Is taught by a teacher primarily from a remote location. Students enrolled in an on-line program may have access to the teacher synchronously, asynchronously, or both;

(c) Delivers a part-time or full-time sequential program; and

(d) Has an on-line component of the program with on-line lessons and tools for student and data management.

An on-line school program may be delivered to students at school as part of the regularly scheduled school day. An on-line school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule, but such programs must comply with RCW 28A.150.262 and WAC 392-121-182 to qualify for state basic education funding.

(4) "Accrediting organizations" means the designated bodies identified by the superintendent of public instruction after consultation with the Washington council for on-line learning and published on the superintendent of public instruction web site. Accrediting organizations are for providers to use to satisfy the accreditation qualification for being an approved multidistrict on-line provider.

(5) "Approval" means the provider may offer courses/programs taught by Washington certified teachers to Washington students, and districts can claim the students for basic education funding starting with the 2011-12 school year.

(6) For the purposes of this section, "primarily" is defined as more than half.

NEW SECTION

WAC 392-502-020 Multidistrict on-line provider approval process and timeline. (1) Multidistrict on-line providers as defined in WAC 392-502-010 must complete the approval process as specified in this subsection in order to be eligible for listing as an approved multidistrict provider on the OSPI web site; and for school districts to claim state basic education funding for students enrolled in those approved multidistrict on-line courses or programs beginning in the 2011-12 school year and to the extent otherwise allowed by state law.

When questions arise whether an entity is subject to approval as a multidistrict on-line course or program provider, the final determination will be made by the superintendent of public instruction taking into consideration the intent of the SSB 5410 legislation.

(2) The superintendent of public instruction shall make a first round of approval decisions by April 1, 2010, for those multidistrict on-line providers applying for approval. Subsequent approval decisions shall be made annually by November 1, 2010, and each subsequent year.

	Application for approval available	Application due date	Approval decisions made by
Initial Approval	December 31, 2009	January 31, 2010	April 1, 2010
Fall 2010 Approval Cycle	July 1, 2010	September 1, 2010	November 1, 2010
Subsequent Approvals	April 1	September 1	November 1

For each of the dates on the table above, the effective dates move to the subsequent business day if they fall on a holiday or weekend; all are 5:00 p.m. deadlines.

(3) Any multidistrict on-line provider that was approved by the digital learning commons or accredited by the Northwest association of accredited schools before July 26, 2009, and meets the Washington state teacher certification requirements is exempt from the initial approval process until August 31, 2012, but must comply with the process for renewal of approvals and must comply with approval requirements including the approval assurances and criteria.

(4) If at the end of a given school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a school district or regional on-line learning program and are enrolled in a school district on-line program or regional on-line learning program increases to ten percent or more of the total program enrollment headcount, the program shall:

(a) Be required to seek approval in the upcoming November cycle in order to be eligible to claim state basic education funding the subsequent school year.

(b) Continue operating the year of the required review, but not the following school year unless approved as a multidistrict on-line provider.

(5) Multidistrict on-line providers seeking approval will submit an application outlined on the superintendent of public instruction web site which will be reviewed for compliance with the requested assurances and designated approval criteria and must meet or exceed the acceptable defined score.

(6) The superintendent of public instruction will notify provider applicants of the results of the review, including feedback about the assurances and criteria that were not in compliance, by April 1, 2010, for the initial round of approvals and by November 1, 2010, and each subsequent year after that.

(7) Any modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction web site by July 1, 2010, and April 1st each subsequent year.

NEW SECTION

WAC 392-502-030 Approval assurances and criteria. (1) In order to be approved, multidistrict on-line providers must meet the following assurances and criteria.

(a) The following required assurances include, but are not limited to:

(i) Have accreditation through an accrediting body as defined in WAC 392-502-010.

(ii) Offer courses/programs eighty percent aligned to Washington state academic standards.

(iii) Demonstrate that all teachers are certificated in accordance with chapter 181-82 WAC.

(iv) For multidistrict on-line providers that offer high school courses, the courses offered by the provider must be eligible for high school credit per WAC 180-51-050. (However, final decisions regarding the awarding of high school credit shall remain the responsibility of school districts.)

(v) Courses meet the credit/content requirements as outlined in any respective WACs.

(vi) Advanced placement courses have all been approved via the college board advanced placement course audit.

(vii) Data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act (FERPA).

(viii) Web systems meet specified accessibility conformance levels.

(ix) Provide all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) Inform the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) Uphold any pertinent federal or state laws, rules or regulations, in the delivery of the on-line courses or programs.

(xii) The applicant retains responsibility for the quality of courses and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the on-line courses or programs.

(xiii) Comply with the state assessment requirements.

(xiv) All career and technical education (CTE) courses are aligned to Washington state CTE program standards.

(b) The following criteria categories must be met through evidence submitted with the application at an acceptable level established by the superintendent of public instruction. Criteria shall include, but are not limited to:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the on-line learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) Mentor support incorporating strategies and systems to allow them to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and on-line instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(2) The approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site by December 31, 2009, and any modifications to those will appear by July 1, 2010, and by April 1st each subsequent year after review by the on-line learning advisory committee and the state board of education.

(3) Applications will be reviewed by a committee selected by the superintendent of public instruction for their experience and expertise. The committee will be provided orientations and training to review and score the multidistrict on-line provider applications using the approval criteria and scoring protocols.

(4) When developing local or regional on-line learning programs, school districts shall incorporate the approval criteria developed by the superintendent of public instruction into the program design.

NEW SECTION

WAC 392-502-040 Appeal of the superintendent's decision. (1) Provider applicants not approved may file an appeal to the superintendent of public instruction for reconsideration within fifteen business days of notification of denial. The provider must provide specific, objective information that details the basis for their appeal.

(2) The superintendent of public instruction shall act upon the appeal and notify the applicant in writing whether the appeal was approved or denied within forty-five business days. This deadline for acting on the appeal may be extended if additional information is required from the applicant.

(3) Decisions made by the superintendent of public instruction under WAC 392-502-020 may be appealed as provided for in RCW 34.05.514.

NEW SECTION

WAC 392-502-050 Approval duration and conditions for approval. Approvals will be for the four subsequent consecutive full school years.

(1) Grandfathered multidistrict on-line providers are granted their initial approval only until August 31, 2012, and must be approved in a renewal process prior to that date in order to continue offering their courses/school programs for the 2012-13 school year.

(2) Multidistrict providers that have been approved shall annually be required to provide information on the following:

(a) On-line provider's overall instructional program;

(b) Content of individual on-line courses and on-line school programs;

(c) Direct link to the on-line provider's web site;

(d) Registration information for on-line learning programs and courses;

(e) Teacher qualifications;

(f) Student-to-teacher ratios as defined by the superintendent of public instruction;

(g) Course completion and pass rates as defined by the superintendent of public instruction; and

(h) Other evaluative and comparative information requested by the superintendent of public instruction.

(3) Carry out the program/courses described in the approval application, abide by the assurances listed in WAC 392-502-030 and certified in the application process and maintain the approval criteria listed in WAC 392-502-030.

NEW SECTION

WAC 392-502-060 Rescinding approvals. (1) Approved multidistrict on-line providers that fail to comply with the conditions of approval in WAC 392-502-050, may be subject to rescindment of approval.

(2) Process for rescindment.

(a) Providers will be notified when there is substantial evidence that they are not meeting one or more of the approval conditions and that rescindment is being considered. The letter shall state the specific areas of concern.

(b) The provider will be invited to submit a corrective action plan with a timeline to address the specific areas of concern.

(c) The superintendent of public instruction shall consider the corrective action plan and make a determination whether it satisfactorily addresses the specific areas of concern, whether additional actions are necessary, or the plan is substantially incomplete and the approval should be immediately rescinded. Before making this decision, the superintendent shall provide an opportunity for the multidistrict on-line provider to clarify and adjust their plan.

(d) Recognizing the serious nature of rescindment and its potential impact on students, districts and providers, the superintendent of public instruction will only rescind approvals if he or she finds that the multidistrict on-line provider is unwilling to take the necessary corrective actions to bring the courses/programs in compliance with the approval assurances and criteria. If the superintendent of public instruction determines that a multidistrict on-line provider's approval must be rescinded, the implementation of the rescindment shall, to the greatest extent possible, be timed to prevent unnecessary disruption to the education of the students.

(e) The superintendent of public instruction reserves the right to immediately rescind approval of any provider where conditions exist that jeopardize academic or fiscal integrity or compromise the health and safety of students or staff.

(3) Rescinded providers are responsible for communicating that change in status to their clients. The superintendent of public instruction will remove rescinded providers from the agency's web site.

(4) Rescinded providers are permitted to submit for reapproval during subsequent approval application periods.

NEW SECTION

WAC 392-502-070 Renewal process. (1) The approval period is four years, and the renewal process is the same as the approval process.

(2) Approved providers must initiate their renewal no later than the approval cycle in their fourth year of approved status in order to maintain approval for the following school year.

NEW SECTION

WAC 392-502-080 Approval required for state funding. (1) Beginning with the 2011-12 school year, school districts may claim state basic education funding, to the extent otherwise allowed by state law, for students enrolled in on-line courses or programs only if the on-line courses or programs are:

(a) Offered by a multidistrict on-line provider approved by the superintendent of public instruction;

(b) Offered by a school district on-line learning program if the program serves students who reside within the geographic boundaries of the school district, including school district programs in which fewer than ten percent of the program's students reside outside the school district's geographic boundaries; or

(c) Offered by a regional on-line learning program jointly developed and offered by two or more school districts or an educational service district through an interdistrict cooperative or consortium program agreement in which fewer than ten percent of the program's students reside outside the school districts' geographic boundaries.

(2) Criteria shall be established by the superintendent of public instruction to allow on-line courses that have not been approved by the superintendent of public instruction to be eligible for state funding if the course is in a subject matter in which no courses have been approved and, if it is a high school course, the course meets Washington high school graduation requirements. These criteria will be posted on the superintendent of public instruction web site by December 31, 2009, and any modifications to those will appear by July 1, 2010, and April 1st each subsequent year after review by the on-line learning advisory committee and the state board of education.

WSR 10-01-109
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed December 17, 2009, 12:54 p.m., effective January 17, 2010]

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

Purpose: Chapter 446-16 WAC provides definitions and a scope of rules for Washington criminal history. It includes expungement of records, inspection of personal records, dis-

position reports, content, limitations, and reporting responsibilities by law enforcement, prosecutorial agencies, and the courts and auditing of the reporting compliance. Chapter 446-20 WAC applies to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies.

Citation of Existing Rules Affected by this Order: Amending chapters 446-16 and 446-20 WAC.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Adopted under notice filed as WSR 09-22-080 on November 3, 2009.

Changes Other than Editing from Proposed to Adopted Version: Minor clean up was made to punctuation.

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 53, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 53, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 14, 2009.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-010 Definitions. For the purposes of these rules, the following words and phrases ((~~shall~~)) will have the following meanings:

(1) "Criminal history record information" includes, and ((~~shall~~)) will be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" ((~~shall~~)) will not include intelligence, analytical or investigative reports and files.

(2) "Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(3) "Disposition" ((~~shall~~)) means that result which is reached at a determination of criminal proceedings against an individual at any stage in the criminal justice system and resulting in the culmination or final disposal of the criminal charge.

(4) "Section" ((~~shall~~)) means the ((~~section on~~)) identification and criminal history section of the Washington state patrol ((~~established in RCW 43.43.700, et seq~~)).

AMENDATORY SECTION (Amending Order 1, filed 2/11/74)

WAC 446-16-020 Scope of the rules. Criminal offender record information ((~~shall~~)) will not be released or inspected except in accordance with RCW 43.43.700 et seq. and these rules.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-025 ((~~Expungement~~)) Deletion of arrest records. (1) A person desiring the destruction of his or her fingerprints and/or other identifying data, pursuant to RCW 43.43.730, ((~~shall~~)) must make his or her request ((~~therefor~~)) on a form furnished by the ((~~Washington state patrol identification and criminal history~~)) section.

(2) The request ((~~shall~~)) must be completed, signed by the person whose record is sought to be ((~~expunged~~)) deleted and his or her signature witnessed. It ((~~shall~~)) must include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of ((~~expungement~~)) deletion is made.

(3) The request ((~~shall~~)) must include reasonable proof that the person making the request for ((~~expungement~~)) deletion is the same person whose fingerprints or other identifying data are sought to be ((~~expunged~~)) deleted. Such proof ((~~shall~~)) must include fingerprints of the applicant if requested by the section.

(4) The request ((~~shall~~)) must include ((~~reasonable proof that the person making the request has no prior criminal record and that he has been found not guilty of the offense for which the fingerprints and/or other identifying data were taken or was finally released without a conviction for such offense having been obtained or has other lawful grounds for expungement. Such proof shall include the furnishing of~~)) the information necessary for the section to determine whether the request is consistent with RCW 10.97.060 including all details pertaining to the ((~~finding of not guilty or release without conviction of such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified or xeroxed copy of the court order~~)) decision not to prosecute, dismissal, or acquittal of the offense for which the fingerprints or other identifying data were taken.

AMENDATORY SECTION (Amending WSR 01-20-039, filed 9/26/01, effective 10/27/01)

WAC 446-16-030 Inspection by the subject of their record. (1) Any person desiring to inspect his or her criminal history record information ((~~which refers to themself~~)) may do so at the central office of the ((~~Washington state patrol~~

~~identification and criminal history~~)) section, ((~~between the hours of 8 a.m. and 5 p.m.~~)) during normal business hours, Monday through Friday, ((~~excepting~~)) except legal holidays.

(2) Any person desiring to inspect his or her criminal history record information ((~~pertaining to themself shall~~)) must first permit their fingerprints to be taken by the section for identification purposes if requested ((~~to do so~~)). The section, in ((~~their~~)) its discretion, may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, ((~~shall~~)) will be allowed to each individual to examine his or her criminal history record information ((~~pertaining to themselves~~)).

(4) No person ((~~shall~~)) will be allowed to retain or reproduce any criminal history record information ((~~pertaining to themselves~~)) except for the purpose of ((~~challenge~~)) challenging or ((~~correction of~~)) correcting entries of arrests by submitting law enforcement agencies of the state of Washington. Visual examination only ((~~shall~~)) will be permitted of such information unless the individual asserts ((~~their~~)) the belief that their criminal history record information from a submitting law enforcement agency of the state of Washington ((~~concerning them~~)) is inaccurate, incomplete or maintained in violation of the law; and unless they request correction or completion of the information on a form furnished by the section, or requests ((~~expungement~~)) deletion pursuant to WAC 446-16-025.

(5) If any person who desires to examine his or her own criminal history record information ((~~pertaining to themself~~)) is unable to read or is otherwise unable to examine same because of a physical disability, they may designate another person of their own choice to assist them. The person about whom the information pertains ((~~shall~~)) must execute, with their mark, a form provided by the section consenting to the inspection of their criminal history record information ((~~pertaining to themself~~)) by another person for the purpose of it being read or otherwise described to them. Such designated person ((~~shall~~)) must then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

AMENDATORY SECTION (Amending Order 1, filed 2/11/74)

WAC 446-16-060 Disposition reports—When required. In every case where a fingerprint record or other report of the arrest of an individual on criminal charges has been submitted to the section, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made ((~~shall~~)) must report the disposition of such charges to the section.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-070 Report contents—General. The report of disposition ((~~shall~~)) must be made on forms provided by the section or shall be transferred electronically on forms approved by the section. The disposition report ((~~shall~~)) must include all arrest details as they appeared on the fingerprint card or arrest record previously forwarded to the section. The state identification number and process control number (PCN) should be indicated on the disposition report if known.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report ((~~shall~~)) must be completed and the report mailed or electronically transferred to the ((~~Washington state patrol identification and criminal history~~)) section, within ten days of the date that a disposition becomes effective.

AMENDATORY SECTION (Amending WSR 92-15-014, filed 7/6/92, effective 8/6/92)

WAC 446-16-090 Law enforcement agencies—Reporting responsibilities. (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and ((~~mail~~)) submit same to the section. If the disposition is known at the time ((~~and~~)) the arrest record or fingerprint card is submitted to the section, this information should be noted thereon. In this case, it ((~~shall~~)) will be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the charges on which he was arrested, the name of the contributor of the arrest or fingerprint record, the process control number, the arrest number and any other information that may identify the individual. At this stage the disposition of charges ((~~shall~~)) will be left blank, but the agency ((~~shall~~)) will note the action that it has taken, e.g., referred to the prosecutor((~~, etc~~)). The partially completed disposition report ((~~shall~~)) must then be included as part of the individual's case file and ((~~shall~~)) must be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities. ((~~(1)~~)) The prosecutor or county clerk ((~~shall~~)) must promptly transmit the completed disposition information to the section if the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor or county clerk ((~~shall~~)) must mail or transfer the completed disposition report to the section within ((~~10~~)) ten days from the date that it is determined no further judicial action will be taken on the charges.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-110 Courts—Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges ((~~shall~~)) must be reported to the ((~~identification and criminal history~~)) section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-120 Audit of reporting compliance. The ((~~identification and criminal history~~)) "section" ((~~shall~~)) will administer a compliance audit procedure at least once annually to insure that all disposition reports have been received and added to the criminal history record information. The identification and criminal history section ((~~shall prepare listings of all~~)) will identify criminal history record information for which no disposition report has been received and has been outstanding for ((~~more than nine months~~)) one year or longer since the date of arrest. Each ((~~criminal justice~~)) open arrest will be researched for a final disposition by section staff or the criminal justice agency ((~~shall~~)) will be furnished with a list of outstanding disposition reports for criminal history record information of persons who were arrested or against whom charges were filed by that agency. ((~~Within thirty days of receipt of such list,~~)) Each criminal justice agency ((~~shall~~)) will provide the ((~~identification and criminal history~~)) section with a current disposition report or status ((~~report for each person for whom a disposition report is overdue~~)) within sixty days of receipt of notification of open arrest.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-010 General applicability. The regulations in this chapter ((~~shall~~)) will apply to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations ((~~shall~~)) will also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies. The provisions of chapter 10.97 RCW do not generally apply to the courts and court ((~~record keeping~~)) recordkeeping agencies. The courts and court ((~~record keeping~~)) recordkeeping agencies have the right to request and receive criminal history record information from criminal justice agencies. The regulations are intended to cover all criminal justice records systems that contain criminal history record information, whether the systems are manual or automated. Chapter 10.97 RCW defines the rights and privileges relating to criminal history record information and should not be interpreted to redefine or amend rights or privileges relevant to any other kinds of records or information.

AMENDATORY SECTION (Amending Order 91-004, filed 12/4/91, effective 1/4/92)

WAC 446-20-020 Definitions. For the purpose of this section the following apply:

(1) The definitions in RCW 10.97.030 ((~~shall~~)) will apply to these regulations.

(2) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," will apply whenever applicable in these regulations.

(3) "Nonconviction data" has the meaning set forth in RCW 10.97.030(2), but ((~~shall~~)) will not include dismissals following a period of probation, or suspension, or deferral of sentence.

(((~~(3)~~))) (4) "Section" means the identification and criminal history section of the Washington state patrol.

(5) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030(6), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

((~~(4) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," shall apply whenever applicable in these regulations.~~))

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-030 Convictions under appeal or review. A conviction followed by an appeal or other court review may be treated as conviction information or as information pertaining to an incident for which a subject is currently being processed by the criminal justice system until such time as the conviction is reversed, vacated, or otherwise overturned by a court; but, notations of pending appeals or other court review ((~~shall~~)) will be included as a part of a person's criminal record if the agency disseminating the record has received written confirmation of such proceedings from the court.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-050 Criminal justice agencies. (1) The following agencies ((~~shall~~)) will be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol((~~, including the state identification section~~));

(b) Foreign, federal, state, and local governmental law enforcement agencies;

(c) ((~~The adult corrections division of the department of social and health services or the department of corrections as specified in chapter 72.02 RCW, including institutions as specified in chapter 72.01 RCW and probation and parole~~

~~services as specified in chapter 72.04A RCW;~~)) State, county, or municipal agencies that have responsibility for the detention, pretrial release, posttrial release, correctional supervision, or rehabilitation of accused persons or criminal offenders;

(d) ((~~The board of prison terms and paroles;~~)) Indeterminate sentence review board;

(e) Courts at any level((~~, if they exercise criminal jurisdiction,~~)) for the administration of criminal justice.

(2) ((~~Only that subunit of the following agencies which detects, prosecutes, or that work under the direction of the courts shall be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations:~~

~~(a) Federal, state and local prosecutorial, correctional programs, agencies or departments;~~

~~(b) The liquor control board as specified in RCW 66.44.010 (enforcement division);~~

~~(c) The department of labor and industries as specified in chapter 7.68 RCW (victims of crime compensation);~~

~~(d) The state fire marshal as specified in RCW 48.48.060(2);~~

~~(e)~~)) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-060 Certification of agencies. (1) An agency or portion of an agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency ((~~shall~~)) must show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The ((~~Washington state patrol shall~~)) section will certify such an agency or portion of an agency, based on a showing that the agency ((~~devotes a substantial portion of its annual budget to, and has as a primary function, the administration of criminal justice~~)) or portion of an agency, meets the definition of a criminal justice agency in RCW 10.97.030. Agencies or portions of agencies which assert ((~~their~~)) the right to be certified as a criminal justice agency ((~~shall~~)) must submit a written request for certification to the ((~~Washington state patrol~~)) section on the form provided under WAC 446-20-430.

(2) ((~~A noncriminal justice~~)) An agency or portion of an agency that asserts a right to receive nonconviction criminal history record information ((~~shall~~)) must show satisfactory evidence of certification to receive such information. Certification by the ((~~Washington state patrol~~)) section will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application ((~~shall~~)) must include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The ((~~Washington state patrol shall~~)) section will make a ((~~finding~~)) determination in writing on the eligibility or noneligibility of the applicant. The written ((~~finding~~)) determination, together with reasons for the decisions, ((~~shall~~)) will be sent to the applicant.

(5) The ((~~Washington state patrol shall~~)) section must keep a current list of all agencies that have been certified to receive criminal history record information.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-070 Inspection—Individual's right to review record. Every criminal justice agency ((~~shall~~)) must permit an individual who is, or believes he may be, the subject of a criminal record maintained by that agency to come to the central records keeping office of that agency during its normal business hours and request to inspect said criminal history record.

To the extent that criminal history record information (CHRI) exists (which includes and ((~~shall~~)) will be limited to identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions arising therefrom, including sentences, correctional supervision and release) is interfiled with other records of the department the agency may extract the CHRI for review.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-080 Inspection—Forms to be made available. The criminal justice agency ((~~shall~~)) must make available a request form to be completed by the person who is, or believes he or she may be, the subject of a criminal record maintained by that agency. The form ((~~shall~~)) must be substantially equivalent to that set forth in WAC 446-20-400.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect his or her criminal history record information ((~~which pertains to himself~~)) may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol identification and criminal history section, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information ((~~pertaining to himself shall~~)) must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes, if requested to do so. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, ((~~shall~~)) will be allowed each individual to examine criminal history record information pertaining to himself or herself.

(4) Visual examination only ((~~shall~~)) will be permitted of such information unless the individual asserts ((~~his~~)) the belief that their criminal history record information ((~~concerning him~~)) is inaccurate, or incomplete; and unless ((~~he~~)) the person requests correction or completion of the information on a form furnished by the criminal justice agency, or

requests ((~~expungement~~)) deletion pursuant to RCW 10.97.-060. Retention or reproduction of nonconviction data is authorized only when it is the subject of challenge.

(5) If any person who desires to examine his or her criminal history record information ((~~pertaining to himself~~)) is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of ((~~his~~)) their own choice to assist him or her. The person about whom the information pertains ((~~shall~~)) must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person ((~~shall~~)) will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(6) Each criminal justice agency ((~~shall~~)) will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection ((~~shall~~)) will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection ((~~shall~~)) must respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the ((~~Washington state patrol identification and criminal history~~)) section, the agency ((~~shall~~)) must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the ((~~identification~~)) section, the agency upon request of the subject of the record, ((~~shall~~)) must forward the request to the ((~~Washington state patrol identification and criminal history~~)) section for processing.

(c) ((~~At the Washington state patrol identification and criminal history~~)) The section ((~~the request shall cause a~~)) will copy ((~~of~~)) all Washington state criminal history record information in the files of the ((~~Washington state patrol identification and criminal history~~)) section relating to the individual requester ((~~to be forwarded~~)) and forward it to the criminal justice agency submitting the request.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information ((~~from the Washington state patrol identification and criminal history section~~)), the agency ((~~shall~~)) will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-120 Challenge—Individual's right to challenge. A subject seeking to challenge the accuracy or completeness of any part of ((~~the~~)) his or her criminal history record information ((~~pertaining to himself shall~~)) must do so in writing, clearly identifying that information which he or she asserts to be inaccurate or incomplete. This includes only records generated by Washington state criminal justice agencies.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-130 Challenge—Forms to be made available. Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information ((~~shall~~)) must provide an appropriate challenge form and the address of the agency whose record entry is being challenged. Such forms ((~~shall~~)) must be substantially equivalent to that set forth in WAC 446-20-450.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-140 Challenge—Agency to make determination. The agency which initiated the criminal history record information being challenged ((~~shall~~)) must:

(1) Not later than ten business days after receiving the written challenge, acknowledge receipt of the challenge in writing; and

(2) Promptly, but in no event later than ten business days after acknowledging receipt of the challenge, either:

(a) Make any correction of any portion of the criminal history record information which the person challenging such information has designated as being inaccurate or incomplete.

(b) Inform the person challenging the criminal history record information, in writing, of the refusal to amend the criminal history record information, the reason for the refusal, and the procedures for review of that refusal.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-150 Correction of erroneous information. (1) The originating agency must send information correcting the previously incorrect information to all agencies and persons to which the previously incorrect information was disseminated by the originating agency. This obligation ((~~shall~~)) will be limited to disseminations made within one year of the date on which the challenge was initiated.

(2) Any criminal justice agency maintaining criminal history record information within the state ((~~shall~~)) must adopt a procedure which, when significant information in a criminal history record maintained on an individual is determined to be inaccurate, leads to the dissemination of corrected information to every agency and person(s) to which the prior erroneous information was disseminated within the preceding one year.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review ((~~shall~~)) must be in writing, and ((~~shall~~)) must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged ((~~shall~~)) must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he ((~~shall~~)) or she must state his or her reasons in a written decision, a copy of which ((~~shall~~)) must be provided to the subject of the record. Denial by the agency head ((~~shall~~)) will constitute a final decision under RCW 34.04.130.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-170 Secondary dissemination. (1) Criminal justice agencies that receive state criminal history record information from the ((~~identification~~)) section ((~~of the Washington state patrol~~)) may disseminate them further, "but only to the same extent to which the ((~~identification~~)) section itself would be authorized to make ((~~a~~)) dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies ((~~certified~~)) authorized to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of ((~~certification~~)) authorization.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-180 Dissemination pursuant to contract for services. (1) Criminal history record information which includes nonconviction data may be disseminated pursuant to a contract to provide services, as set forth in RCW 10.97.050(5). The contract must contain provisions giving notice to the individual or agency to which the information is to be disseminated that the use of such information is subject to the provisions of chapter 10.97 RCW and these regulations, and federal statutes and regulations, which ((~~shall~~)) must be cited with express reference to the penalties provided for a violation thereof.

(2) When a criminal justice agency uses an information system containing criminal history record information that is controlled and managed by a noncriminal justice agency, the noncriminal justice agency may disseminate criminal history record information only as authorized by the criminal justice agency. Authorization ((~~shall~~)) must be established in a contract between the criminal justice agency and the noncriminal justice agency providing the management service or support. Any criminal justice agency entering a contract with a noncriminal justice agency ((~~shall~~)) must require that the noncriminal justice agency and personnel, who utilize criminal history record information, meet the same physical security and personnel standards as set forth by the Washington state patrol under RCW 10.97.090.

All programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to criminal history record information, and all personnel involved in the development, maintenance, or operation of an automated information system containing criminal history record information, are subject to the requirements of RCW 10.97.050(5) and these regulations. A statement to this effect ((~~shall~~)) must be included in the contract.

The contract for support services ((~~shall~~)) must be substantially similar to that set forth in WAC 446-20-440.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-190 Dissemination—Research purposes. Criminal history record information which includes nonconviction data may be disseminated for research purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section ((~~shall~~)) must be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-200 Disclosure to assist victim. A criminal justice agency may, but need not, disclose investigative information to "persons who have suffered physical loss, property damage, or injury compensable through civil action" as contemplated by RCW 10.97.070. Disclosure may be made to the apparent victim; an attorney, parent or guardian acting for the victim or an executor or administrator of an estate of a decedent victim; an authorized agent of the victim; another law enforcement or criminal justice agency making inquiry on behalf of the victim; and/or, upon an appropriate showing, an indemnitor, assignee, insurer, or subrogee of the victim. Written capacity to act on behalf of the victim may be required by the agency. Investigative information which ". . .

may be of assistance to the victim in obtaining civil redress" may include but is not limited to:

(1) The name, address, and other location information about a suspect, witness, and in the event of a juvenile, the suspect's parent or guardian;

(2) Copies of the incident report; and in person review of documents, photographs, statements, and other materials collected in the course of an investigation;

(3) The location of, and identity of receivers and custodians of stolen property and of property recovered as lost and found property;

(4) The progress of proceedings arising from the incident and the disposition of any prosecution or other action.

An agency making a disclosure is not expected to evaluate the merits of a victim's claim for civil relief. Disclosure merely indicates the information has been received and the agency reasonably believes the information may be useful to the recipient in seeking civil redress. Disclosure does not constitute an opinion or comment upon the existence or merits of a claim and it does *not* vouch for the accuracy or completeness of the information.

Disclosures made to victims under the authority of RCW 10.97.070 ((~~shall~~)) must be considered in conjunction with chapter 42.56 RCW ((~~42.17.310, The Public Disclosure Act (exemptions)~~)), chapter 46.52 RCW (Confidentiality of accident reports and statements), civil and criminal court rules governing discovery and other state and federal laws.

((~~Criminal justice agencies are advised to consult with their own legal counsel in implementing the dissemination authorization of RCW 10.97.070.~~))

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-210 Protection from accidental loss or injury. Criminal justice agencies (hereinafter, agency(s)) and noncriminal justice contractors, (hereinafter, contractor(s)) which collect, retrieve, and/or store and disseminate criminal history record information in manual and automated systems, ((~~shall~~)) must institute procedures for the protection of criminal history record information from environmental hazards, including fire, flood, power failure, or other natural or man-made disasters, or in accordance with local fire, safety, and building codes.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-220 Protection against unauthorized access. Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information ((~~shall~~)) must be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract with the noncriminal justice agency as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-230 Personnel security. (1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information ((~~shall~~)) must: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.

(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, ((~~shall~~)) must initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-240 Personnel training. (1) Criminal justice agencies ((~~shall~~)) will be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with

all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.

(2) Training to be provided ((~~shall~~)) must include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-250 Contractor personnel clearances. (1) No personnel of a noncriminal justice agency ((~~shall~~)) will be granted access to criminal history record information without appropriate security clearance by the contracting agency or agencies.

(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances ((~~shall~~)) must rest with the grantor.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-260 Auditing of criminal history record information systems. (1) Every criminal justice agency, including contractors authorized to collect, retrieve, maintain, and disseminate criminal history record information pursuant to WAC 446-20-180, ((~~shall~~)) must make its records available under RCW 10.97.090(3) to determine the extent of compliance with the following:

(a) Dissemination records as required under RCW 10.97.050(7);

(b) Security procedures as required by RCW 10.97.-090(1); and

(c) Personnel standards as required by RCW 10.97.-090(2).

(2) Personnel engaged in the auditing function ((~~shall~~)) will be subject to the same personnel security requirement as required under WAC 446-20-230, 446-20-240, and 446-20-250, as employees who are responsible for the management and operation of criminal history record information systems.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-270 Establishment of procedures. Every criminal justice agency which collects, retrieves, maintains, and/or disseminates criminal history record information ((~~shall~~)) must establish written rules and regulations setting forth security and personnel procedures for authorized access to criminal history record information files or adopt administrative regulations promulgated by the Washington state patrol.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-280 Employment—Conviction records. (1) A conviction record will be furnished consistent with the provisions of RCW 43.43.815, upon the submission of a written or electronic request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints ((~~shall~~)) must be submitted on cards of the type specified by the ((~~Washington state patrol identification and criminal history~~)) section, and ((~~shall~~)) must contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

AMENDATORY SECTION (Amending WSR 03-05-007, filed 2/7/03, effective 3/10/03)

WAC 446-20-285 Employment—Conviction records—Child and adult abuse information. After January 1, 1988, certain child and adult abuse conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 9A.44 RCW;

(2) Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision((~~;~~)) for the businesses and professions defined in chapter 9A.44 RCW; and

(3) ((~~Civil adjudications of child abuse, as amended by chapter 9A.44 RCW.~~)) Criminal history information will be furnished from the ((~~Washington state patrol~~)) section, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The ((~~state patrol shall~~)) section will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request ((~~shall~~)) will not make an inquiry to the Washington state

patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the ((~~Washington state patrol identification and criminal history~~)) section, and ((~~shall~~)) must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, ((~~adjudication record,~~)) or equivalent response from a federal law enforcement agency shows no evidence of crimes against persons, an identification declaring the showing of no evidence ((~~shall~~)) will be issued to the business or organization by the ((~~Washington state patrol identification and criminal history~~)) section within fourteen working days of receipt of the request. Possession of such identification ((~~shall~~)) will satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization ((~~shall~~)) must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer ((~~shall~~)) must provide a copy of the response to the applicant and ((~~shall~~)) must notify the applicant of such availability.

(f) The business or organization ((~~shall~~)) will be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

AMENDATORY SECTION (Amending WSR 92-15-015, filed 7/6/92, effective 8/6/92)

WAC 446-20-300 Privacy—Security. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815, ((~~shall~~)) must comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records of crimes against persons((~~,~~)) or disciplinary board final decision information((~~, or a civil adjudication record pursuant to RCW 43.43.815 and 43.43.830 through 43.43.845, shall~~)) must comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

(a) The business or organization ((~~shall~~)) must use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to a civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

AMENDATORY SECTION (Amending Order 91-004, filed 12/4/91, effective 1/4/92)

WAC 446-20-310 Audits. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815((~~, shall~~)) must comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the ((~~record keeping~~)) recordkeeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons((~~,~~)) or disciplinary board final decision information ((~~or civil adjudication records pursuant to RCW 43.43.830 through 43.43.845,~~)) may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-400 Form of request to inspect record.

INSPECTION OF RECORD REQUEST
(RCW 10.97.080/WAC 446-20-070)

Agency . . . . . .
Agency No . . . . . .
Date . . . . . .
Time . . . . . .

I, ... , request to inspect ((~~such~~)) my criminal history record information ((~~pertaining to myself and~~)) maintained in the files of the above named agency.

I was born (Date of Birth), in (Place of Birth), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.

(Fill in and check applicable box)

Because I am unable to read ❑ ; I do not understand English ❑ ; otherwise need assistance in reviewing my record ❑ ; I designate and consent that (Print Name), whose address is . . . . . , assist me in examining the criminal history record information concerning myself.

. . . . . .
. . . . . .

Prints of right four fingers taken simultaneously

(Signature or mark of Applicant)
. . . . . .

(Address)

. . . . . .

. . . . . .

(Signature of Designee)

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-410 Form of request to review refusal to modify record.

REQUEST FOR REVIEW OF REFUSAL TO MODIFY RECORD
(RCW 10.97.080/WAC 446-20-160)

Date. . . . . .

I, (Print Name), request the head of (Agency Name), to review and make a final determination of my challenge to the accuracy or completeness of my criminal history record information ((~~pertaining to myself and~~)) maintained by (Agency Name).

My challenge, a copy of which is attached, was made on (Date of Challenge), and was refused on (Date of Refusal). I request that my challenge be allowed and my record be modified in accordance with such challenge.

. . . . . .
(Signature of Applicant)

. . . . . .
(Address of Applicant)

. . . . . .

AMENDATORY SECTION (Amending WSR 92-15-015, filed 7/6/92, effective 8/6/92)

WAC 446-20-420 Model agreement for research, evaluative or statistical purposes.

AGREEMENT made this . . . . day of . . . . . , ((~~199~~)) 20. . . , between . . . . . , (hereinafter referred to as "RESEARCHER") and . . . . . , (hereinafter referred to as "CRIMINAL JUSTICE AGENCY")*

WHEREAS the RESEARCHER had made a written request to the CRIMINAL JUSTICE AGENCY dated. . . . . , a copy of which is annexed hereto and made a part hereof, and

WHEREAS the CRIMINAL JUSTICE AGENCY has reviewed said written request and determined that it clearly specifies (1) the criminal history record information sought, and (2) the research, evaluative or statistical purpose for which the said information is sought,** and

WHEREAS the RESEARCHER represents that (he) (she) (it) is in receipt of, and is familiar with, the provisions of chapter 10.97 RCW, 28 CFR Part 22, including provisions for sanctions at Parts 22.24(c) and 22.29 thereof,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The CRIMINAL JUSTICE AGENCY will supply the following items of information to the RESEARCHER:

(Describe in detail)***

. . . . . .
. . . . . .
. . . . . .
. . . . . .

2. The RESEARCHER will:

(a) Use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated. . . . . , and for no other purpose;

(b) Limit access to said information to the RESEARCHER and those of the RESEARCHER'S employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply with, the provisions of this agreement, and of 28 CFR Part 22;****

(c) Store all said information received pursuant to this agreement in secure, locked containers;

(d) So far as possible, replace the name and address of any record subject with an alpha-numeric or other appropriate code;

(e) Immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material changes in the purposes or objectives of its research, or in the manner in which said information will be used.

3. The RESEARCHER will not:

(a) Disclose any of the said information in a form which is identifiable to an individual, in any project report or in any manner whatsoever, except pursuant to 28 CFR Part 22.24 (b)(1)(2).

(b) Make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies ((~~shall~~)) will not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals ((~~shall~~)) must be used for research tasks. Where this is not possible, every reasonable effort ((~~shall~~)) must be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)

(c) Utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2.(e) until specific written authorization therefor is received from the CRIMINAL JUSTICE AGENCY.

4. In the event the RESEARCHER deems it necessary, for the purposes of the research, to disclose said information to any subcontractor, (he) (she) (it) ((~~shall~~)) must secure the written agreement of said subcontractor to comply with all the terms of this agree-

ment as if (he) (she) (it) were the RESEARCHER named herein.****

5. The RESEARCHER further agrees that:

   (a) The CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and

   (b) Upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.

6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY ((~~shall~~)) will have the right to take such action as it deems appropriate, including termination of this Agreement. If the CRIMINAL JUSTICE AGENCY so terminates this Agreement, the RESEARCHER and any subcontractors ((~~shall~~)) must forthwith return all the said information, and all copies made thereof, to the CRIMINAL JUSTICE AGENCY or make such alternative disposition thereof, as is directed by the CRIMINAL JUSTICE AGENCY. The exercise of remedies pursuant to this paragraph ((~~shall~~)) will be in addition to all sanctions provided by law, and to legal remedies available to parties injured by disclosures.

7. INDEMNIFICATION. The RESEARCHER agrees to indemnify and hold harmless (CRIMINAL JUSTICE AGENCY) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (RESEARCHER) in the exercise or enjoyment of this agreement. Such indemnification ((~~shall~~)) will include all costs of defending any such suit, including attorney fees.

IN WITNESS WHEREOF the parties have signed their names hereto this . . . . day of . . . . . , ((~~199. . .~~)) 20. . .

. . . . . (CRIMINAL JUSTICE AGENCY)

by. . . . . .

(Name)

Title: . . . . . .

. . . . . (RESEARCHERS)

by. . . . . .

(Name)

Title: . . . . . .

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

(I) (We), employee(s) of, consultant to, (and) (or) subcontractor of the RESEARCHER, acknowledge familiarity with the terms and conditions of the foregoing agreement between the CRIMINAL JUSTICE AGENCY and RESEARCHER, and agree to comply with the terms and conditions thereof in (my) (our) use and protection of the criminal history record information obtained pursuant to the foregoing agreement.

. . . . .	. . . . .
(date)	(signature)
. . . . .	. . . . .
(date)	(signature)

AMENDATORY SECTION (Amending WSR 92-15-015, filed 7/6/92, effective 8/6/92)

WAC 446-20-440 Contract for support services model agreement under WAC 446-20-180. (Some provisions may not be applicable in all cases and are noted accordingly.)

I. **General Provisions**

A. Parties: This agreement is made and entered into this. . . . . day of . . . . . , ((~~199. . .~~)) 20. . ., by and between ((head of agency)), Administrator of ((criminal justice agency)) and ((head of agency)) of (Support Services Agency of "User").

B. Purpose of Agreement: This agreement authorizes (user) to collect, retrieve, maintain and/or disseminate criminal history record information (hereinafter, CHRI) pursuant to RCW 10.97.050(5), WAC 446-20-180, and the terms of this contract. In addition, it provides for the security and privacy of information in that dissemination to criminal justice agencies ((~~shall~~)) must be limited for the purposes of the administration of justice and criminal justice agency employment. Dissemination to other individuals and agencies ((~~shall~~)) must be limited to those individuals and agencies authorized by either the Washington state patrol, under chapter 10.97 RCW or local ordinance, as specified by the terms of this contract, and ((~~shall~~)) must be limited to the purposes for which it was given and may not be disseminated further.

II. **Duties of Criminal Justice Agency**

A. In accordance with federal and state regulations, (criminal justice agency) agrees to furnish complete and accurate criminal history information to user, pursuant to RCW 10.97.040.

B. (Criminal justice agency) ((~~shall~~)) must specify and approve those individuals or agencies authorized to obtain CHRI, which includes nonconviction data, pursuant to RCW 10.97.050(4) or by local ordinance.

III. **Duties of User**

A. (User) will collect, retrieve, maintain and/or disseminate all information covered by the terms of this agreement in strict compliance with all present and future federal and state laws and regulations. In addition, all programs, tapes, source documents,

listings, and other developmental or related data processing information containing or permitting any person to gain access to CHRI and all personnel involved in the development, maintenance, or operation of an automated information system containing CHRI are subject to the requirements of RCW 10.97.050(5) and WAC 446-20-180.

B. (User) will obtain the assistance of the (criminal justice agency) to familiarize its personnel with and fully adhere to section 524(b) of the Crime Control Act 1973 (42 USC 3771(b)), 28 CFR Part 20, chapter 10.97 RCW and chapter 446-20 WAC, promulgated by the Washington state patrol.

C. (User) will disseminate CHRI only as authorized by chapter 10.97 RCW and as specified by (criminal justice agency) in this agreement.

D. (User) agrees to fully comply with all rules and regulations promulgated by the Washington state patrol, pursuant to RCW 10.97.090(2), regarding standards for the physical security, protection against unauthorized access and personnel procedures and safeguards.

E. (User) agrees to permit access to its records system for the purposes of an audit, as specified under RCW 10.97.090(3).

IV. **Suspension of Service**

(Criminal justice agency) reserves the right to immediately suspend furnishing information covered by the terms of this agreement to (User), when any terms of this agreement are violated. (Criminal justice agency) ((~~shall~~)) will resume furnishing information upon receipt of satisfactory assurances that such violations have been fully corrected or eliminated.

V. **Cancellation**

Either (criminal justice agency) or (user) may cancel this agreement upon thirty days notice to the other party.

VI. **Indemnification**

User hereby agrees to indemnify and hold harmless (criminal justice agency) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (user) in the exercise or enjoyment of this agreement. Such indemnification ((~~shall~~)) will include all costs of defending any suit, including attorney fees.

VII. **Construction**

This agreement ((~~shall~~)) will be liberally construed to apply to both manual and automated information systems wherever and whenever possible.

(CRIMINAL JUSTICE AGENCY)	(USER)
By:	By: . . . . .
Title:	Title: . . . . .
Date:	Date: . . . . .

AMENDATORY SECTION (Amending WSR 98-01-021, filed 12/8/97, effective 1/8/98)

WAC 446-20-500 Sex offender and kidnapping offender registration. RCW 9A.44.130 requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense to register with the county sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the ((~~Washington state patrol identification and criminal history~~)) section within five working days. The Washington state patrol is mandated to maintain a central registry of sex offenders and kidnapping offenders consistent with chapters 10.97, 10.98, and 43.43 RCW.

AMENDATORY SECTION (Amending WSR 98-01-021, filed 12/8/97, effective 1/8/98)

WAC 446-20-510 History retention. Sex and kidnapping offender registration information will be maintained in the offender's criminal history file according to retention periods outlined in RCW 9A.44.140. Once an offender is registered, a notation of "registered sex offender" or "registered kidnapping offender" ((~~shall~~)) will be printed on the transcript of record for that individual.

AMENDATORY SECTION (Amending Order 91-005, filed 9/24/91, effective 10/25/91)

WAC 446-20-515 Photograph/fingerprint requirement. Registration requires the offender be fingerprinted and photographed and also provide the sheriff with the following information which must be forwarded to the Washington state patrol identification and criminal history section within five working days:

Name;
Address;
Date of birth;
Place of birth;
Social Security number;
Institution of higher education enrolled, attending;
Place of employment;
Crime for which convicted;
Date/place of conviction; and
Aliases used.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-520 Photographs. Photographs ((~~should be of the polaroid type and~~)) must be in color. These are not to be file ((~~photos~~)) photographs. A new ((~~photo~~)) photograph is required.

((~~On the reverse side of the photo~~)) For paper submissions, write full name, date of birth, and ((~~SID~~)) state identification number (SID). Paperclip (no staples please) the ((~~photo~~)) photograph to the fingerprint card with the registration information completed and forward to Washington state patrol, identification and criminal history section. For electronic submissions, color photographs may be electronically

mailed to a designated e-mail address at the section. Identifying information (full name, date of birth, and SID) must accompany the photograph.

AMENDATORY SECTION (Amending WSR 98-01-021, filed 12/8/97, effective 1/8/98)

WAC 446-20-525 Change of address form. Registered sex and kidnapping offenders who change residence within the same county are required to ((~~send a "~~)) submit change of address((~~" form WSP-CRD-502~~)) information to the county sheriff at least fourteen days before moving.

Registered sex and kidnapping offenders who change residence from one county to another are required to send written notice fourteen days before moving to the county sheriff in the new county residence and must register with that county sheriff within twenty-four hours of moving. The offender must send ((~~a~~)) "change of address" ((~~form~~)) information within ten days of moving in the new county to the county sheriff with whom the offender last registered.

Registered sex and kidnapping offenders who move to another state or county must ((~~send a~~)) submit "change of address" ((~~form~~)) information ten days before moving to the new state or county to the county sheriff with whom the offender last registered in Washington state.

County sheriffs must forward "change of address" ((~~forms~~)) information to the Washington state patrol identification and criminal history section within five working days upon receipt.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-530 Refundable fee. ((~~Agencies are to bill the Washington state patrol identification and criminal history~~))

The section will reimburse sheriffs' offices for the actual registration cost, not to exceed thirty-two dollars for each registration, which ((~~shall~~)) must include photographs and fingerprints submitted pursuant to RCW 9A.44.130. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by the ((~~Washington state patrol identification and criminal history~~)) section on a monthly basis based upon ((~~receipt of an invoice from the county sheriff indicating~~)) the number of registrations submitted.

AMENDATORY SECTION (Amending WSR 05-03-034, filed 1/10/05, effective 2/10/05)

WAC 446-20-600 Fees. (1) A nonrefundable fee ((~~of thirty-five dollars shall~~)) must accompany each request for conviction records submitted for a name and date of birth background check or a ((~~ten-dollar fee for a name and date of birth electronic request, thirty dollar fee if the request is submitted~~)) background check requested by fingerprint ((~~card~~)) search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee ((~~of twenty-four dollars shall~~)) will be charged for fingerprint cards submitted for federal searches. It ((~~shall~~)) will be the responsibility of the ((~~Washington state patrol~~)) section to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee ((~~of thirteen dollars shall~~)) will be charged for taking fingerprint impressions by the ((~~Washington state patrol~~)) section. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The ((~~Washington state patrol identification and criminal history~~)) section ((~~shall~~)) must adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(5) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

AMENDATORY SECTION (Amending WSR 05-07-141, filed 3/23/05, effective 4/23/05)

WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. One fingerprint card is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW ((~~as follows:~~

~~(a) The fee for the state search is twenty dollars for school district employees.~~

~~(b) The fee for the state search is thirty dollars for persons applying for their certification or for contractual employees.~~

~~(c) The fee for the FBI search is twenty-four dollars.~~

~~(d) In addition, an eleven-dollar processing fee will be charged for each fingerprint background check processed under chapter 28A.410 RCW. The Washington state patrol will reimburse the superintendent of public instruction eleven dollars for each fingerprint background check processed under this chapter for applicants who are certificated, contractual or classified~~)).

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors ((~~shall~~)) must pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

AMENDATORY SECTION (Amending WSR 05-07-157, filed 3/23/05, effective 4/23/05)

WAC 446-20-630 Department of social and health services—Child care licensing—Fees. (1) In addition to the state search, an FBI search is required for requests submitted

under chapter 74.15 RCW. One fingerprint card is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Department of social and health services (DSHS) ((~~shall~~)) will process fingerprint background checks under chapter 74.15 RCW, RCW 43.43.837 and 43.20A.710. ((~~Under "reason fingerprinted," cards will be marked "DSHS Child Care Licensing RCW 74.15.030" or "DSHS Child Care Licensing RCW 74.15.030 DDD."~~

~~(3) Department of social and health services, division of children and family services (DCFS) shall pay the expense and submit a waiver of fee form on licensees if the background check expense would work a hardship on the licensee. The six-dollar processing fee will not be applicable when a waiver of fee form is submitted to the Washington state patrol or the fingerprint card is marked "volunteer."~~

~~(4) A monthly billing account will be established for the DSHS division of developmental disabilities (DDD). The six-dollar processing fee will not be applicable on any fingerprint cards indicated as "DDD."~~

~~(5) Each month the Washington state patrol shall prepare a billing statement and detail report for waiver of fee forms from DCFS and for all DDD fingerprint cards submitted.~~

~~(6) All fees collected under chapter 74.15 RCW, will be deposited into the Washington state patrol fingerprint identification account.~~

~~(7) Nonrefundable fees are to be charged to:~~

~~(a) "DSHS child care licensing RCW 74.15.030" (division of children and family services (DCFS)) as follows:~~

~~(i) The fee for the state search is thirty dollars.~~

~~(ii) The fee for the FBI search is twenty-four dollars.~~

~~(iii) A six-dollar processing fee.~~

~~(b) "DSHS division of children and family services (DCFS) for fee waivers" as follows:~~

~~(i) The fee for the state search is thirty dollars.~~

~~(ii) The fee for the FBI search is twenty-four dollars.~~

~~(c) "DSHS child care licensing RCW 74.15.030 division of developmental disabilities (DDD)" as follows:~~

~~(i) The fee for the state search is thirty dollars.~~

~~(ii) The fee for the FBI search is twenty-four dollars.~~

~~(d) "DSHS child care licensing RCW 74.15.030" division of developmental disabilities "volunteers" as follows:~~

~~(i) The fee for the state search is thirty dollars.~~

~~(ii) The FBI fee shall be eighteen dollars on those fingerprint cards clearly designated as "volunteer" pursuant to provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.~~

~~(iii) "Chapter 74.15 RCW" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.~~))

(3) All nonrefundable fees collected will be deposited into the Washington state patrol fingerprint identification account.

(4) A nonrefundable state and FBI fee will be charged on fingerprint cards clearly designated as "volunteer" pursuant to the provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

"RCW 43.43.837" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

WSR 10-01-110
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed December 17, 2009, 12:59 p.m., effective January 17, 2010]

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

Purpose: Provides additional standards that will increase public safety. Adding new restrictions to WAC 204-36-040 that would prohibit signs, shield markings, accessories and insignia used on uniforms, clothing or equipment which may imply that the operator is a law enforcement officer. Also adding langue [language] to restrict the use of the word police or patrol in the name of the applicant.

Citation of Existing Rules Affected by this Order: Amending WAC 204-36-040.

Statutory Authority for Adoption: RCW 46.37.194 and 46.37.005.

Adopted under notice filed as WSR 09-22-077 on November 3, 2009.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@wsp.wa.gov.

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

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

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

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

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

Date Adopted: December 14, 2009.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

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

(a) Only by the operators named in the original or amended application approved by the patrol. If the applicant

wishes to add or remove operator(s) from the permit, such request must be made to the patrol in writing.

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

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

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

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

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

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

(4) No permit will be issued to an applicant if the name of the applicant portrays the applicant as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police" or "patrol."

(5) An operator under an approved emergency vehicle permit will not be allowed to display or use any of the following:

(a) A name that includes the word "police," "patrol," or "law enforcement," or other word which portrays the individual or business as a public law enforcement agency.

(b) A sign, shield, marking, accessory or insignia on their uniform, clothing or equipment to imply that he or she is a law enforcement officer.

(6) Subsections (4) and (5) of this section do not apply:

(a) If the applicant is recognized under Washington state law as a municipal corporation and certifies to the patrol that the applicant is a municipal corporation; or

(b) If the sign, shield, marking, accessory or insignia on the operator's uniform or equipment is issued by a public law enforcement agency; the operator is employed by the public law enforcement agency that the operator is representing with the sign, shield, marking, accessory or insignia on the operator's uniform or equipment; and the operator is approved to operate the vehicle by that public law enforcement agency for the purposes outlined under the authorized emergency vehicle permit.

(7) All current permit holders as of December 31, 2010, will have until January 1, 2012, to make changes necessary to comply with the requirements outlined in subsections (4) and (5) of this section.

WSR 10-01-118
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-04—Filed December 17, 2009, 4:21 p.m., effective January 17, 2010]

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

Purpose: These rules require health care service contractors (HCSCs) and health maintenance organizations (HMOs) to file rates and form filings through the system for electronic rate and form filing (SERFF).

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 09-22-086 on November 3, 2009.

A final cost-benefit analysis is available by contacting Donna Dorris, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7040, fax (360) 586-3109, e-mail donnad@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 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 24, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 24, 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 24, Amended 0, Repealed 0.

Date Adopted: December 17, 2009.

Mike Kreidler
Insurance Commissioner

Chapter 284-44A WAC

HEALTHCARE SERVICE CONTRACTOR GENERAL RULES FOR ELECTRONIC FILING OF FORMS AND RATES IN SERFF

NEW SECTION

WAC 284-44A-010 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for an HCSC; or

(b) A person employed by the HCSC to file under this chapter.

(4) "Form" means a:

(a) "Contract" as defined in WAC 284-43-910; and includes:

(i) Applications;

(ii) Certificates of coverage;

(iii) Disclosure forms;

(iv) Enrollment forms;

(v) Policy forms, including riders;

(vi) Termination notice forms;

(vii) Short form filing summary, as outlined in the SERFF filing instructions; and

(viii) All other forms that are part of the contract.

(b) "Contract form" as defined in WAC 284-43-910;

(c) Network enrollment forms described in WAC 284-43-220(2);

(d) Participating provider agreements as required by RCW 48.44.070; and

(e) Medicare supplement forms required to be filed under chapter 48.66 RCW.

(5) "Health care service contractor" or "HCSC" means the same as in RCW 48.44.010.

(6) "NAIC" means the National Association of Insurance Commissioners.

(7) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.44.020 or 48.44.-070.

(8) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules that must be filed under RCW 48.44.040 or 48.66.035.

(9) "Rate schedule" means the same as in WAC 284-43-910.

(10) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

(11) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

NEW SECTION

WAC 284-44A-020 Purpose of this chapter. The purpose of this chapter is to:

(1) Adopt processes and procedures for filers and HCSCs to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Effective July 1, 2010, designate SERFF as the method by which filers and HCSCs must submit all forms and rates to the commissioner.

NEW SECTION

WAC 284-44A-030 Scope of this chapter. This chapter applies to all HCSCs that must file forms and rates under RCW 48.44.040, 48.44.070, and 48.66.035.

NEW SECTION

WAC 284-44A-040 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Health and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-44A-050 General form and rate filing rules. (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State Health and Disability Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

(4) Filers must submit separate filings for each type of insurance.

NEW SECTION

WAC 284-44A-060 Specific rate filing rules. (1) If a rate filing is required under RCW 48.44.040 or 48.66.035, the filer must submit it:

(a) Separate from any corresponding form filing; and

(b) Concurrently with the corresponding form filing if new forms are being introduced.

(2) Each rate filing must include, if appropriate:

(a) Rates schedules;

(b) Actuarial data that supports the:

(i) Proposed rate schedules; and

(ii) Anticipated loss ratio; and

(c) Any additional data or information requested by the commissioner.

NEW SECTION

WAC 284-44A-070 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-44A-040, 284-44A-050, or 284-44A-060. If the commissioner rejects a filing, the filer has not filed forms or rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-44A-080 Filing authorization rules. A HCSC may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing regulatory compliance services.

(1) If an HCSC delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the HCSC authorizing the third-party filer to make filings on behalf of the HCSC.

(2) The HCSC may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the HCSC.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the HCSC.

NEW SECTION

WAC 284-44A-090 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or rate filing or provide clarification or additional information. The objection letter will state the reason(s) for disapproval, including relevant case law, statutes and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include:

(a) A separate response to each objection, and if appropriate;

(b) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or

(c) Revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-44A-100 Rules for revised or replaced forms. If an HCSC files a revised or replaced form, the filer must provide the supporting documentation described below:

(1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved form.

(2) If a form which received final action is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:

(a) A draft form that strikes through deletions and underlines additions or changes in the form;

(b) A draft form that includes comments in the margins explaining the changes in the form; or

(c) A side-by-side comparison of current and proposed language.

NEW SECTION

WAC 284-44A-110 Effective date rules. (1) Filers must include a common implementation date for all forms or rates submitted in a filing.

(2) Filers may submit a request to change the implementation date of a filing as a note to reviewer.

NEW SECTION

WAC 284-44A-120 Rules that apply to forms translated from English to another language. HCSCs may issue forms written in languages other than English.

(1) If the HCSC translates the form from English to another language, the HCSC must:

(a) File the translated version of the form.

(b) Include written disclosure statements on the translated contract indicating that it is issuing the translated form on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated form and printed in bold face type of at least twelve-point font.

(c) Submit a certification with the filing by an officer employed by the HCSC that they will issue the English version of the form with the translated form.

(2) When filing a translated form, the filer must:

(a) Identify the approved English version of the form by providing, as applicable, the:

(i) SERFF filing number;

(ii) Form number, edition date or edition identifier; and

(iii) Effective date of the filing.

(b) Submit certification by a professional translator certified by the American Translators Association or a comparable organization that the:

(i) Translator has translated the English version of the form; and

(ii) Translation is accurate.

(3) The commissioner will file but not review or approve translated form.

Chapter 284-46A WAC

HEALTH MAINTENANCE ORGANIZATION GENERAL RULES FOR ELECTRONIC FILING OF FORMS AND RATES IN SERFF

NEW SECTION

WAC 284-46A-010 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and

exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for an HMO; or

(b) A person employed by the HMO to file under this chapter.

(4) "Form" means a:

(a) "Contract" as defined in WAC 284-43-910; and includes:

(i) Applications;

(ii) Certificates of coverage;

(iii) Disclosure forms;

(iv) Enrollment forms;

(v) Policy forms, including riders;

(vi) Termination notice forms;

(vii) Short form filing summary, as outlined in the SERFF filing instructions; and

(viii) All other forms that are part of the contract.

(b) "Contract form" as defined in WAC 284-43-910;

(c) Network enrollment forms described in WAC 284-43-220(2);

(d) Prepayment agreements described in RCW 48.46.-060;

(e) Participating provider agreements as required by RCW 48.46.243; and

(f) Medicare supplement forms required to be filed under chapter 48.66 RCW.

(5) "Health maintenance organization" or "HMO" means the same as in RCW 48.46.020.

(6) "NAIC" means the National Association of Insurance Commissioners.

(7) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.46.060 or 48.46.243.

(8) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules that must be filed under RCW 48.46.060 or 48.66.035.

(9) "Rate schedule" means the same as in WAC 284-43-910.

(10) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

(11) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

NEW SECTION

WAC 284-46A-020 Purpose of this chapter. The purpose of this chapter is to:

(1) Adopt processes and procedures for filers and HMOs to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Effective July 1, 2010, designate SERFF as the method by which filers and HMOs must submit all forms and rates to the commissioner.

NEW SECTION

WAC 284-46A-030 Scope of this chapter. This chapter applies to all HMOs that must file forms and rates under RCW 48.46.060, 48.46.243, and 48.66.035.

NEW SECTION

WAC 284-46A-040 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Health and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-46A-050 General form and rate filing rules. (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State Health and Disability Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

(4) Filers must submit separate filings for each type of insurance.

NEW SECTION

WAC 284-46A-060 Specific rate filing rules. (1) If a rate filing is required under RCW 48.46.060, or 48.66.035, the filer must submit it:

(a) Separate from any corresponding form filing; and

(b) Concurrently with the corresponding form filing if new forms are being introduced.

(2) Each rate filing must include, if appropriate:

(a) Rates schedules;

(b) Actuarial data that supports the:

(i) Proposed rate schedules; and

(ii) Anticipated loss ratio; and

(c) Any additional data or information requested by the commissioner.

NEW SECTION

WAC 284-46A-070 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-46A-040, 284-46A-050, or 284-46A-060. If the commissioner rejects a filing, the filer has not filed forms or rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-46A-080 Filing authorization rules. An HMO may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing regulatory compliance services.

(1) If an HMO delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the HMO authorizing the third-party filer to make filings on behalf of the HMO.

(2) The HMO may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the HMO.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the HMO.

NEW SECTION

WAC 284-46A-090 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or rate filing or provide clarification or additional information. The objection letter will state the reason(s) for disapproval, including relevant case law, statutes and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include:

(a) A separate response to each objection, and if appropriate;

(b) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or

(c) Revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-46A-100 Rules for revised or replaced forms. If an HMO files a revised or replaced form, the filer must provide the supporting documentation described below:

(1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved form.

(2) If a form which received final action is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:

(a) A draft form that strikes through deletions and underlines additions or changes in the form;

(b) A draft form that includes comments in the margins explaining the changes in the form; or

(c) A side-by-side comparison of current and proposed language.

NEW SECTION

WAC 284-46A-110 Effective date rules. (1) Filers must include a common implementation date for all forms or rates submitted in a filing.

(2) Filers may submit a request to change the implementation date of a filing as a note to reviewer.

NEW SECTION

WAC 284-46A-120 Rules that apply to forms translated from English to another language. HMOs may issue forms written in languages other than English.

(1) If the HMO translates the form from English to another language, the HMO must:

(a) File the translated version of the form.

(b) Include written disclosure statements on the translated contract indicating that it is issuing the translated form on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated form and printed in bold face type of at least twelve-point font.

(c) Submit a certification with the filing by an officer employed by the HMO that they will issue the English version of the form with the translated form.

(2) When filing a translated form, the filer must:

(a) Identify the approved English version of the form by providing, as applicable, the:

(i) SERFF filing number;

(ii) Form number, edition date or edition identifier; and

(iii) Effective date of the filing.

(b) Submit certification by a professional translator certified by the American Translators Association or a comparable organization that the:

(i) Translator has translated the English version of the form; and

(ii) Translation is accurate.

(3) The commissioner will file but not review or approve translated form.

WSR 10-01-129
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed December 21, 2009, 8:09 a.m., effective January 21, 2010]

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

Purpose: During the 2008 legislative process HB 1843 was passed [in] reference [to] intrastate carriers and high risk carriers being placed out of service for nonpayment and for failure to comply with regulations. Due process requires the Washington state patrol (WSP) to allow a carrier the abiltiy [ability] to request an administrative hearing through an administrative law judge.

The updated WAC outlines the process the carrier would need to do as far as penalty, submitting a written application for mitigation or requesting an administrative hearing. By providing this process, the WSP can mitigate a penalty as long as the carrier shows through a carrier safety action plan that they are now in compliance to state and federal guidelines. This process also allows for the WSP to deny mitigation and proceed to an administrative hearing to recover monies owed to the WSP for nonpayment or outstanding penalties due. The new administrative hearing process puts the burden or requesting an administrative hearing on the carrier and provides them with a twenty day time frame to do so.

Citation of Existing Rules Affected by this Order: Amending chapter 446-65 WAC.

Statutory Authority for Adoption: RCW 46.30.020.

Other Authority: Title 49 Code of Federal Regulations (C.F.R.).

Adopted under notice filed as WSR 09-22-079 on November 3, 2009.

Changes Other than Editing from Proposed to Adopted Version: Addition of RCW reference and addition of the word after which was inadvertently left out.

A final cost-benefit analysis is available by contacting CVEO 4 William Balcom, 210 11th Avenue S.E., Olympia, WA 98504, phone (360) 596-3807, fax (360) 596-3829, e-mail William.balcom@wsp.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 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 14, 2009.

John R. Batiste
Chief

NEW SECTION

WAC 446-65-040 Compliance review hearing process. (1) A carrier that receives a written notice of penalty from the state patrol has twenty business days from receipt of notice to:

(a) Pay the penalty as stated in the notice; or

(b) Submit a written application for mitigation of the penalty; or

(c) Submit a written request for an administrative hearing.

(2) **Mitigation.** A carrier may submit a request for mitigation of a penalty, except as provided in RCW 46.32.100.

(a) A carrier's request for mitigation must:

(i) Be in writing;

(ii) Contain a statement explaining what the steps the carrier has taken to come into compliance, or what steps the carrier proposes to take in the future to come into compliance;

(iii) Contain a notarized signature of the requestor; and

(iv) Be received by the state patrol within twenty business days of the receipt of notice.

(b) Upon timely receipt of a written request for mitigation of a penalty, the state patrol will:

(i) Review the materials submitted by the requestor; and

(ii) Notify the carrier in writing of the disposition of the request for mitigation.

(3) **Administrative hearing.** A carrier may request an administrative hearing to contest the violation or penalty, or both.

(a) A carrier's request for an administrative hearing must:

(i) Be in writing; and

(ii) Be received by the state patrol within twenty business days after receipt of the notice of penalty **or** receipt of the disposition of a request for mitigation.

(b) A carrier may request an administrative hearing without first requesting mitigation of the penalty.

(c) An administrative hearing will be conducted under chapter 34.05 RCW (Washington Administrative Procedure Act).

(d) The following process applies to administrative hearings under this chapter:

(i) The state patrol will notify the assistant attorney general of the carrier's request for an administrative hearing.

(ii) The assistant attorney general will draft an administrative complaint and send it to the carrier and to the office of administrative hearings.

(iii) The office of administrative hearings will schedule a hearing date, and will notify the carrier, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(iv) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(v) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the WSP.

(vi) At the hearing, the carrier may be represented by an attorney or may choose to represent himself or herself. The carrier or his/her attorney will be allowed to present witnesses and other evidence.

(e) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(4) **Initial and final order.** At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the carrier and the assistant attorney general.

(a) Either the carrier or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the chief or his/her designee for review. Following this review, the chief or his/her designee will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

WSR 10-01-138
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed December 21, 2009, 12:02 p.m., effective January 21, 2010]

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

Purpose: **Major change:** The department is no longer covering orally-administered enteral nutrition for clients twenty-one years of age and older.

Other changes/updates to the enteral nutrition chapter 388-554 WAC include:

- Reorganized the chapter to mirror other recently reorganized medical program chapters.
- Changed references from "MAA" to the "department."
- Clarified when the department will pay for enteral nutrition products.
- Updated the definition for "women, infants, and children (WIC) program" to match the department of health's current definition.
- Added children's healthcare programs as defined in WAC 388-505-0210 to the list of eligible clients.
- Clarified that "emergency medical only programs" are eligible only when the services are necessary to treat the client's emergency medical condition.
- Removed language that the department would pay separately for oral enteral nutrition for a client who resides in a nursing facility when the client's need for enteral nutrition meets one hundred percent of the client's nutritional needs. Adult family homes, assisted living facilities, boarding homes, or any other residence where the provision of food is part of the per diem rate are require [required] to provide food for their clients.
- Added the "client's caregiver" as a sufficient person for providers to confirm with whether the client's next months delivery of authorized orally administered enteral nutrition products is necessary. Current language states that the provider must confirm with the client.
- Clarified that when a client has indicated that he or she is not using the enteral nutrition product as prescribed, in addition to notifying the client's physician, the provider must also document the notification in the client's file.
- Clarified what the department means by a "valid" prescription.
- Clarified that providers must request prior authorization for covered orally-administered enteral nutrition products and tube-delivered enteral equipment and related supplies as required in the chapter or when the clinical criteria is not met. Requests for prior authorization must be submitted to the department on DSHS 13-743 form (Oral Enteral Nutrition Worksheet Prior Authorization Request).
- Codified expedited prior authorization (EPA) criteria for oral enteral nutrition for clients twenty years of age and younger.
- Created a new noncovered section (WAC 388-554-800) to include orally-administered enteral nutrition for clients twenty-one years of age and older and nonmedical equipment, supplies, and related services, including but not limited to, backpacks, pouches, bags, baskets, or other carrying containers. The department does not pay for these items but needed to codify this.

Citation of Existing Rules Affected by this Order: Amending WAC 388-554-100, 388-554-200, 388-554-300, 388-554-400, 388-554-500, 388-554-600, 388-554-700, and 388-554-800.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244); RCW 74.04.050, 74.08.090.

Adopted under notice filed as WSR 09-18-093 on September 1, 2009.

A final cost-benefit analysis is available by contacting Maureen Guzman–DSHS/HRSA, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-2033, fax (360) 586-9727, e-mail guzmam@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 1, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 8, Repealed 0.

Date Adopted: December 11, 2009.

Susan N. Dreyfus
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-02 issue of the Register.

WSR 10-01-146
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed December 21, 2009, 3:54 p.m., effective January 21, 2010]

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

Purpose: The purpose of this rule-making order is to repeal WAC 415-200-020, as it has been determined to be no longer necessary. WAC 415-200-020 addresses the frequency and location of meetings of the employee retirement benefits board (ERBB). The frequency of ERBB meetings is dictated by statute, RCW 41.50.086. The department notifies the public of the date and location of all ERBB meetings by complying with the public meeting notice requirements of chapter 42.30 RCW, the Open Public Meetings Act, by filing a yearly schedule of ERBB meetings with the office of the code reviser. Repealing this rule provides the department the flexibility of changing the location of ERBB meetings as needed, without having to amend its rules each time.

As permitted by RCW 34.05.353 (1)(a), the department is repealing a rule that relates only to internal government operations and is not subject to violation by a person.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-200-020.

Statutory Authority for Adoption: RCW 41.05.050.

Adopted under notice filed as WSR 09-19-030 on September 9, 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 1.

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

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: December 21, 2009.

Steven Hill
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-200-020	Regular board meetings.

WSR 10-01-156
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed December 22, 2009, 10:07 a.m., effective January 22, 2010]

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

Purpose: Consistent with RCW 50.04.900, the purpose of the proposal is to amend unemployment insurance rules to incorporate individuals in a state registered domestic partnership when using the terms spouse, marriage, family, immediate family, family member and similar terms. For purposes of consistency with other rules, the term "siblings" is added to the definition of "immediate family."

Citation of Existing Rules Affected by this Order: Amending WAC 192-150-055, 192-150-110, 192-150-112, 192-310-150, 192-310-160, and 192-310-190.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 34.05.120.

Adopted under notice filed as WSR 09-14-008 on June 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, 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: December 3, 2009.

Paul Trause
Deputy Commissioner

NEW SECTION

WAC 192-100-075 Domestic partner. For purposes of this title "domestic partner" or "state registered domestic partner" means two adults who meet the requirements of RCW 26.60.030 and have been issued a certificate of state registered domestic partnership by the Washington secretary of state.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

(a) You left work primarily because of such illness, disability, or death; and

(b) The illness, disability, or death made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:

(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

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

(a) "Disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (1)(b)(iii) and (2)(b)(iii). (1) Any military transfer is considered mandatory if your spouse or domestic partner receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may show good cause to quit work if you relocate for your spouse or domestic partner's employment that was due to a mandatory military transfer if:

(a) Your spouse or domestic partner's new duty station is outside your existing labor market. For claims with an effective date prior to July 2, 2006, the new duty station must be in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued to work for your previous employer for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse or domestic partner to a new duty location; or

(b) Your spouse or domestic partner leaves military service and you elect to relocate to your home of record or elsewhere.

AMENDATORY SECTION (Amending WSR 05-13-156, filed 6/21/05, effective 7/22/05)

WAC 192-150-112 Definitions—Domestic violence and stalking—RCW 50.20.050 (1)(b)(iv) and (2)(b)(iv). To constitute good cause for leaving work, your job separation must have been necessary to protect yourself or a member of your immediate family from domestic violence or stalking.

(1) **Immediate family** is defined in WAC 192-150-055 and means your spouse, domestic partner, and the children (including your unborn children), siblings, stepchildren, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household. ((~~In addition, for purposes of this section only, the term shall also include your siblings.~~))

(2)(a) **Domestic violence** is defined in RCW 26.50.010. It includes the following acts committed between family or household members:

(i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault;

(ii) Sexual assault; or

(iii) Stalking.

(b) The perpetrator of domestic violence must be a family or household member, which means:

(i) Spouses, domestic partners, ((~~and~~)) former spouses, and former domestic partners,

(ii) Persons who have a child in common regardless of whether they have been married or have lived together at any time,

(iii) Adult persons related by blood or marriage,

(iv) Adult persons who are presently residing together or who have resided together in the past,

(v) Persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship,

(vi) Persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and

(vii) Persons who have a biological or legal parent-child relationship, including stepparents, stepchildren, grandparents, and grandchildren.

(c) "Dating relationship" means a social relationship of a romantic nature.

(3) **Stalking** is defined by RCW 9A.46.110. It means:

(a) Intentionally and repeatedly harassing or following another person; and

(b) Placing the person being harassed or followed in fear of injury to self or property, or to another person or the property of another person; and

(c) Intending to frighten, intimidate, or harass the other person; or

(d) Knowing or having reason to know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(i) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose.

(ii) "Repeatedly" means on two or more separate occasions.

(iii) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(iv) "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

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

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

WAC 192-310-150 Are corporate officers covered for unemployment insurance? (1) For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state. For purposes of this section, it includes state registered domestic partnerships authorized under Chapter 26.60 RCW.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

AMENDATORY SECTION (Amending WSR 07-23-127 [09-07-010], filed 11/21/07 [3/5/09], effective 1/1/09 [4/5/09])

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

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

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

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

(b) Who is a shareholder of the corporation;

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

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

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

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

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

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

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

WSR 10-01-158
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed December 22, 2009, 11:25 a.m., effective January 22, 2010]

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

Purpose: DSHS is amending WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services, to remove reference to the alien emergency medical program in nursing facilities, and adding WAC references regarding noncitizens and the state funded nursing facility program. The state funded nursing facility program rule will be filed as new WAC 388-438-0125 by the health and recovery services administration (HRSA).

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

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

Adopted under notice filed as WSR 09-21-073 on October 16, 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 1, Repealed 0.

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

Date Adopted: December 15, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-036, filed 3/10/09, effective 4/10/09)

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

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

(c) Be eligible for CN apple health for kids described in WAC 388-505-0210; or CN family medical described in WAC 388-505-0220; or family and children's institutional medical described in WAC 388-505-0230 through 388-505-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services require prior approval for the state funded nursing facility program described in WAC 388-438-0125 for noncitizen children; or

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

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

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

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

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

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

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

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

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

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

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

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

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for the state funded nursing facility ((~~and hospice services under the alien emergency medical (AEM)~~)) program described in WAC 388-438-0110 ((~~for a client age nineteen or over who meets all other requirements for such services but does not meet citizenship requirements~~)) and 388-438-0125. Nursing facility ((~~and hospice~~)) services under the ((~~AEM~~)) state funded nursing facility program must be preapproved by ((~~the department's medical consultant~~)) aging and disability services administration (ADSA).

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

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

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

(b) Is under the age of twenty-one at the time of application; or

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

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

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

(15) If an individual under age twenty one is not eligible for medicaid under SSI related in WAC 388-475-0050 or general assistance (GA) described in WAC 388-448-0001 and 388-505-0110(6) consider eligibility under WAC 388-505-0255 or 388-505-0260.

(16) Noncitizen individuals under age nineteen can be considered for the apple health for kids program described in WAC 388-505-0210 if they are admitted to a medical institution for less than thirty days. Once an individual resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 388-505-0260 and must be preapproved for coverage by ADSA as described in WAC 388-438-0125.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

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

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

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

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

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

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

WSR 10-01-165
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed December 22, 2009, 12:10 p.m., effective January 22, 2010]

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

Purpose: The community services division, economic services administration is proposing to revise WAC 388-452-0005 Do I need to be interviewed in order to get benefits?, to establish when households must have an interview in order to be eligible for department programs, and to allow a telephone interview instead of having an interview at the local office.

The department will amend rules for Basic Food consistent with approved waivers to interview requirements under 7 C.F.R. § 273.2 (e) related to required interviews for the supplemental nutrition assistance program (SNAP). SNAP was previously known as the food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-452-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.120, and 74.08A.903.

Other Authority: 7 CFR 273.9.

Adopted under notice filed as WSR 09-22-067 on November 2, 2009.

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

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

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

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

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

Date Adopted: December 16, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-10-102, filed 5/4/04, effective 7/1/04)

WAC 388-452-0005 Do I have to be interviewed in order to get benefits? (1) Unless you are applying for medical only, you or your authorized representative must have an interview with the department:

(a) At initial certification; and

(b) At least once every twelve months ((~~if your assistance unit (AU) is certified for twelve months or less~~)).

(2) ((~~You do not have to attend~~)) An interview is not required if you are applying for or recertifying medical benefits only. If we deny your application for cash or Basic Food because you did not have an interview, we continue to process your request for medical benefits.

(3) You will have just one interview even if you are applying for or are having a review for benefits from more than one program.

(4) We hold interviews either in person or over the phone.

(5) If we do not interview you on the same day that we ((~~get~~)) receive your application, we will schedule an interview appointment for you((~~. We schedule your appointment the day we get your application or on the next business day if we get your application outside of our scheduled business hours, on a holiday or a weekend.~~

~~(5) We schedule an interview so your AU has at least ten days after the interview to provide needed verification:~~

~~(a) Before the end of the thirty-day processing period for applications; or~~

~~(b) Before your certification period ends for eligibility reviews or recertifications~~)) or have you contact us by phone during our business hours to complete your interview.

(6) If we schedule an interview, we will set your appointment to allow you at least ten days after the interview to provide needed verification:

(a) Before the end of the thirty-day processing period for applications; or

(b) Before your certification period ends for eligibility reviews or recertifications.

(((~~6~~))) (7) If you miss your first interview and ask for another interview within thirty days of the date you applied for benefits, we schedule a second interview ((~~for you~~)) or have you call us and complete the interview over the phone.

(((~~7~~))) (8) If you must have an interview for benefits, you or someone who can give us the information we need about your AU must participate in the interview. You may ((~~bring any person you choose to~~)) ask any person you choose to help with your interview.

(((~~8) You may choose someone to take your place in your interview:~~

~~(a) For cash assistance if you cannot come to the local office for us to decide if you are eligible for benefits; or~~

~~(b)~~))) (9) For Basic Food ((~~if the person is~~)) only, your authorized representative as described in WAC 388-460-0005 may take your place during your interview.

(((~~(9) We usually have interviews at the local office. You can have a scheduled telephone interview if there is **any reason** you cannot attend an interview at the local office. Examples of reasons you may be unable to attend an interview include:~~

~~(a) Your work or training schedule make it inconvenient for you to attend an in-office interview during regular business hours;~~

~~(b) You are unable to take time off of work to attend an in-office interview, because you would not get paid for this time or you fear you could lose your job;~~

~~(c) Someone in your AU is ill, or you have to stay home to care for an AU member;~~

~~(d) You are having transportation problems;~~

~~(e) You can't safely get to the office because of severe weather;~~

~~(f) You live in a remote area and can't easily get to the local office;~~

~~(g) All the people in your AU are elderly, mentally disabled, or physically disabled;~~

~~(h) Someone in your AU is affected by family violence such as physical or mental abuse, harassment, or stalking by the abuser; or~~

~~(i) You have **any other** situation that makes it difficult for you to come into the office for an interview.~~

~~(10) If you currently get benefits from the department and you are completing an eligibility review or recertification for ongoing benefits under chapter 388-434 WAC, you can have a scheduled phone interview even if you do not meet the requirements for a phone interview listed above.~~))

WSR 10-01-174
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed December 22, 2009, 12:57 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 1244, Section 222(1) includes a restriction on implementation of new or amended rules pertaining to primary and secondary school facilities without funding by the legislature.

Purpose: Chapter 246-366 WAC, Primary and secondary schools and chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools. These chapters provide minimum environmental

health and safety standards for all primary and secondary schools in Washington.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version:

Amendment	Published Language, Alternative B	Language Adopted by Board
Revise WAC 246-366-005	"The purpose of this chapter is to maintain minimum environmental health and safety standards for school facilities until the legislature permits full or partial implementation of chapter 246-366A WAC. To the extent funded or otherwise approved by the legislature, chapter 246-366A WAC is intended to replace or supersede this chapter or corresponding portions thereof as identified by the Washington state board of health."	"The purpose of this chapter is to maintain minimum environmental health and safety standards for school facilities until legislative action allows for full or partial implementation of chapter 246-366A WAC. To the extent the legislature funds or otherwise allows for its implementation, chapter 246-366A WAC is intended to replace or supersede this chapter."
Revise WAC 246-366A-001(2)	"Implementation of this chapter is subject to the state legislature providing funding to public schools in accordance with section 222 of the 2009-11 biennial operating budget, chapter 564, laws of 2009, or other form of legislative action. Unless and until the legislature approves full or partial implementation of this chapter, chapter 246-366 WAC shall take precedent and this chapter shall not be implemented or enforced in any manner."	"Implementation of this chapter is subject to the state legislature providing funding to public schools in accordance with section 222 of the 2009-11 biennial operating budget, chapter 564, laws of 2009, and may be subject to future legislative requirements. Unless and until legislative action allows for full or partial implementation of this chapter, chapter 246-366 WAC shall take precedent and this chapter shall not be implemented or enforced in any manner."
In WAC 246-366A-003(1) strike "by the legislature"	"Implementation of this chapter, in whole or in part, requires one or more of the following actions by the legislature…"	"Implementation of this chapter, in whole or in part, requires one or more of the following actions…"
Strike WAC 246-366A-003(2) and replace with new language		"The state board of health shall amend as necessary any order adopting this chapter, filed in accordance with RCW 34.05.060, and any effective dates listed therein to ensure no portion of this rule is implemented at a time and in a manner prohibited by the legislature."
Strike WAC 246-366A-003(3) and replace with revised notification provisions of former WAC 246-366A-003(2)	"Within thirty-one days after the effective date of any law or legislative resolution that funds or otherwise approves full or partial implementation of this chapter, the state board of health shall provide notice of implementation by submitting an interpretive statement for publica-	"Before implementing this rule, in whole or in part, the state board of health, in addition to filing an amended rule making order for publication in the *Washington State Register*, shall provide notice of implementation."

Amendment	Published Language, Alternative B	Language Adopted by Board
	tion in the *Washngton State Register* in accordance with RCW 34.05.230 …"	
Renumber WAC 246-366A-003 (2)(a) and revise	"The interpretive statement shall identify the legislative action being interpreted, the section or sections of chapter 246-366A WAC being implemented, the implementation date or dates for each section or sections, the corresponding section or sections of chapter 246-366 WAC that will be superseded, and a brief explanation of significant differences between the requirements of this chapter and the corresponding sections of chapter 246-366 WAC."	"The notice shall identify the action taken by the legislature that allows for implementation, the section or sections of chapter 246-366A WAC being implemented as a result of that action, the effective date or dates for each section or sections, the corresponding section or sections of chapter 246-366 WAC that will be superseded or repealed, and a brief explanation of significant differences between the requirements of this chapter that are being implemented and the corresponding requirements of chapter 246-366 WAC."
Renumber WAC 246-366A-003 (2)(b); replace "interpretive statement" with "notice"	"The state board of health shall maintain a roster of interested persons and shall send an electronic copy of the interpretive statement to each person on the roster as well as to the following agencies and organizations…"	"The state board of health shall maintain a roster of interested persons and shall send an electronic copy of the notice to each person on the roster as well as to the following agencies and organizations…"
Renumber WAC 246-366A-003 (2)(c) and revise	"The office of superintendent of public instruction shall forward the notice of implementation electronically to school districts, school principals and private schools."	"The office of superintendent of public instruction shall forward, to the extent possible, the notice of implementation electronically to school districts and approved private schools."
Revise WAC 246-366A-003(4)	"The state board of health shall maintain a web page showing the sections of this chapter that have been or are scheduled to be implemented, the implementation dates, and the corresponding sections of chapter 246-366 WAC that have been or will be replaced or superseded."	"The state board of health shall maintain a web page showing the sections of this chapter that have been or are scheduled to be implemented, their effective dates, and the corresponding sections of chapter 246-366 WAC that have been or will be superseded or repealed.
Revise WAC 246-366A-005(1)	"To the extent funded or implemented through legislative action, this chapter…"	"To the extent implemented in accordance with legislative action, this chapter…"
Revise WAC 246-366A-005(8)	"If the local permitting jurisdiction received a complete building permit application for school construction prior to the implementation date of any construction-related requirements of this chapter, the construction-related requirements of chapter 246-366 WAC in effect at	"If the local permitting jurisdiction received a complete building permit application for school construction prior to the effective date of any construction-related requirements of this chapter, the construction-related requirements of chapter 246-366 WAC and this chapter in

Amendment	Published Language, Alternative B	Language Adopted by Board
	the time of application apply."	effect at the time of application apply.["]
Replace "implementation date" with "effective date" in WAC 246-366A-020 (2)(a)(i), 246-366A-030(6), 246-366A-090(3), 246-366A-090 (4)(c), 246-366A-095 (2)(a), 246-366A-095 (2)(b), 246-366A-0130 (3)(a), 246-366A-0130 (3)(b)(i), 246-366A-0130 (3)(b)(ii), 246-366A-0130 (4)(a)(i), 246-366A-0130 (4)(a)(ii), 246-366A-0130 (4)(a)(iii), 246-366A-0135 (3)(a), 246-366A-0135 (3)(b), 246-366A-0135 (3)(c)		
Revise WAC 246-366A-170 (2)(d)	"…The report must be submitted by March 1st of each year, beginning in 2013…"	"…The report must be submitted by March 1st of each year, beginning the third year after the effective date of this section…"

A final cost-benefit analysis is available by contacting Ned Therien, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4103, fax (360) 236-4088, e-mail ned.therien@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 35, 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 35, Amended 0, Repealed 0.

Date Adopted: August 12, 2009.

Craig McLaughlin

Executive Director

NEW SECTION

WAC 246-366-005 Purpose. The purpose of this chapter is to maintain minimum environmental health and safety standards for school facilities until legislative action allows for full or partial implementation of chapter 246-366A WAC. To the extent the legislature funds or otherwise allows for its implementation, chapter 246-366A WAC is intended to replace or supersede this chapter.

NEW SECTION

WAC 246-366-160 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Chapter 246-366A WAC

ENVIRONMENTAL HEALTH AND SAFETY STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS

NEW SECTION

WAC 246-366A-001 Introduction and purpose. (1) The purpose of this chapter is to replace chapter 246-366 WAC with a more modern set of minimum environmental health and safety standards for school facilities to promote healthy and safe school environments.

(2) Implementation of this chapter is subject to the state legislature providing funding to public schools in accordance with section 222 of the 2009-11 biennial operating budget, chapter 564, laws of 2009, and may be subject to future legislative requirements. Unless and until legislative action allows for full or partial implementation of this chapter, chapter 246-366 WAC shall take precedent and this chapter shall not be implemented or enforced in any manner.

(3) It is the intent of the Washington state board of health to work with the legislature to develop a strategy and timeline for funding and implementation of this chapter.

NEW SECTION

WAC 246-366A-003 Implementation. (1) Implementation of this chapter, in whole or in part, requires one or more of the following actions:

(a) Authorization of expenditures in the Omnibus Appropriations Act for the expressed purpose of funding implementation for public schools;

(b) Repeal, modification or expiration of statutory restrictions on implementation; or

(c) Enactment of any statute or resolution authorizing implementation.

(2) The state board of health shall amend as necessary any order adopting this chapter, filed in accordance with RCW 34.05.060, and any effective dates listed therein to ensure no portion of this rule is implemented at a time and in a manner prohibited by the legislature.

(3) Before implementing this rule, in whole or in part, the state board of health, in addition to filing an amended rule making order for publication in the *Washington State Register*, shall provide notice of implementation.

(a) The notice shall identify the action taken by the legislature that allows for implementation, the section or sections of chapter 246-366A WAC being implemented as a result of that action, the effective date or dates for each section or sections, the corresponding section or sections of chapter 246-366 WAC that will be superseded or repealed, and a brief explanation of significant differences between the

requirements of this chapter that are being implemented and the corresponding requirements of chapter 246-366 WAC.

(b) The state board of health shall maintain a roster of interested persons and shall send an electronic copy of the notice to each person on the roster as well as to the following agencies and organizations:

(i) The Washington state code reviser;

(ii) The Washington state department of health;

(iii) The Washington state office of superintendent of public instruction;

(iv) Washington state local health jurisdictions;

(v) Washington state professional associations representing school officials;

(vi) The Washington federation of independent schools;

(vii) Washington state labor organizations representing school employees;

(viii) The Washington state association of local public health officials;

(ix) The Washington state PTA; and

(x) The Washington state legislature through the chairs of the fiscal, health, and education committees of both houses.

(c) The office of superintendent of public instruction shall forward, to the extent possible, the notice of implementation electronically to school districts and approved private schools.

(4) The state board of health shall maintain a web page showing the sections of this chapter that have been or are scheduled to be implemented, their effective dates, and the corresponding sections of chapter 246-366 WAC that have been or will be superseded or repealed.

NEW SECTION

WAC 246-366A-005 Applicability. (1) To the extent implemented in accordance with legislative action, this chapter, or such portions thereof funded or approved as part of a phase-in or partial implementation, shall apply to all school facilities operated for the primary purpose of providing education at the kindergarten through twelfth grade (K-12) levels, and preschools that are part of such facilities except:

(a) Private residences used for home-based instruction as defined by RCW 28A.225.010(4);

(b) Facilities hosting educational programs where educational instruction is not a primary purpose, including, but not limited to, detention centers, jails, hospitals, mental health units, or long-term care facilities;

(c) Private facilities where tutoring is the primary purpose; and

(d) Public or private postsecondary education facilities providing instruction to students primarily enrolled in secondary school.

(2) These rules are in addition to all other requirements that apply to schools and, except as specified, do not affect the applicability of those requirements.

(3) Additional environmental health and safety rules that apply to school facilities include, but are not limited to:

(a) Chapter 246-215 WAC Food services;

(b) Chapter 246-217 WAC Food worker cards;

(c) Chapter 246-260 WAC Water recreation facilities;

(d) Chapter 246-262 WAC Recreational water contact facilities;

(e) Chapter 246-272A WAC On-site sewage systems;

(f) Chapter 246-272B WAC Large on-site sewage system regulations;

(g) Chapter 246-290 WAC Public water supplies; and

(h) Chapter 246-291 WAC Group B public water systems.

(4) This chapter, or portions thereof, are intended to replace or supersede chapter 246-366 WAC, or corresponding portions thereof as identified by the state board of health, once the legislature has provided funding for implementation by public schools or taken other action to authorize implementation.

(5) These rules are not intended to replace or supersede the department of labor and industries' authority and jurisdiction over employee safety and health.

(6) These rules are not intended to replace requirements of the building code council under Title 51 WAC, but may be more stringent to protect health and safety.

(7) For a school undergoing an alteration or addition, WAC 246-366A-040, 246-366A-060, 246-366A-090, 246-366A-100, 246-366A-110, 246-366A-120, 246-366A-150, and 246-366A-160 apply only to:

(a) Areas that are part of the addition;

(b) Areas undergoing alteration; and

(c) Changes to existing building systems, such as heating and ventilation systems, when those changes are included in construction documents or a building permit application describing the alteration or addition.

(8) If the local permitting jurisdiction received a complete building permit application for school construction prior to the effective date of any construction-related requirements of this chapter, the construction-related requirements of chapter 246-366 WAC and this chapter in effect at the time of application apply.

NEW SECTION

WAC 246-366A-010 Definitions. The following definitions apply to these rules:

(1) "Addition" means an extension or increase in floor area or height of a building or structure.

(2) "Air contaminants of public health importance" means pollutants in the indoor air that could, depending on dose and circumstances, have health impacts, including but not limited to:

(a) Volatile organic compounds, for example, formaldehyde and benzene;

(b) Combustion by-products, for example, carbon monoxide and nitrogen oxides;

(c) Vapors and gases, for example, chlorine, mercury, and ozone;

(d) Heavy metal dusts and fumes, for example, chromium and lead; and

(e) Particulates, for example, wood and ceramic dust.

(3) "Alteration" means any construction or renovation to an existing structure other than repair or addition.

(4) "Construction" or "construction project" means any activity subject to state or local building codes.

(5) "Construction documents" means written, graphic, and pictorial documents prepared or assembled for describing the design, location, and physical characteristics of the elements of a project necessary for obtaining a building permit.

(6) "Contaminant" means any hazardous material that occurs at greater than natural background levels.

(7) "Decibel (dB)" means a standard unit of measurement of sound pressure.

(8) "Decibel, A-weighted (dBA)" means a decibel measure that has been weighted in accordance with the A-weighting scale. The A-weighting adjusts sound level as a function of frequency to correspond approximately to the sensitivity of human hearing.

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

(10) "Drinking fountain" means the type of plumbing fixture that delivers a stream of water for drinking without actively cooling the water.

(11) "Emergency eye wash" means a hands-free device that:

(a) Irrigates and flushes both eyes simultaneously with tepid potable water;

(b) Activates an on-off valve in one second or less and remains on without user assistance until intentionally turned off; and

(c) Delivers at least 0.4 gallons (1.5 liters) of water per minute for at least fifteen minutes.

(12) "Emergency shower" means a hand-activated shower that delivers tepid potable water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for at least fifteen minutes.

(13) "Equivalent sound level (L_{eq})" means the level of a constant sound that, over a given time period, contains the same amount of sound energy as the measured fluctuating sound.

(14) "Faucet" means a type of plumbing fixture that is a valved outlet device attached to a pipe that normally serves a sink or tub and can discharge hot water, cold water, or both.

(15) "First draw sample" means a water sample collected immediately upon opening a plumbing fixture that has not been used for at least eight hours prior to collection.

(16) "Flush sample" means a water sample collected after allowing cold water to run for at least thirty seconds from a plumbing fixture that has not been used for at least eight hours prior to collection.

(17) "Foot-candle" means a unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot.

(18) "Hazardous materials" means toxic, corrosive, flammable, explosive, persistent, or chemically reactive substances that, depending on dose and circumstances, pose a threat to human health.

(19) "Imminent health hazard" means a significant threat or significant danger to health or safety that requires immediate action to prevent serious illness, injury, or death.

(20) "Implementation" or "implemented" means being given or having the force of law, requiring compliance, and being subject to enforcement.

(21) "Laboratory" means instructional areas of the school facility where students might be exposed to greater potential health and safety hazards than typically exist in general academic classrooms. Such laboratories may include, but are not limited to, chemistry, physics, material science, and biology laboratories or art studios (for example: Darkrooms, ceramic studios, and print making studios).

(22) "Local board of health" means the county or district board of health as defined in RCW 70.05.010(3).

(23) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department as defined in RCW 70.05.010, or his or her authorized representative, including, but not limited to, the environmental health director.

(24) "Mechanical exhaust ventilation" means the removal of indoor air to the outside of the building by mechanical means.

(25) "Noise criterion (NC)" means a system for rating the noise level in an occupied area by comparing actual or calculated sound level spectra with a series of established octave band spectra.

(26) "Noise criterion 35 (NC35)" means the curve for specifying the maximum permissible sound pressure level for each frequency band.

(27) "Preschool" means an instructional curriculum and portion of a school facility designed to instruct children not old enough to attend kindergarten.

(28) "Portable" means any relocatable structure that is transported to a school site and is placed or assembled there for use by students as part of a school facility.

(29) "Repair" means the reconstruction or renewal of any part of an existing school facility for the purpose of its maintenance.

(30) "School" means any public, religious-affiliated, or private institution for instructing students in any grade from kindergarten through twelfth grade.

(31) "School board" means an appointed or elected board whose primary responsibility is to operate schools or to contract for school services and includes the governing body or owner of a private school.

(32) "School facility" means buildings or grounds owned or leased by the school or donated to the school for the primary purpose of student use including, but not limited to, portables, playgrounds and sports fields.

(33) "School officials" means those persons designated by the school board as responsible for planning, policy development, budgeting, management, or other administrative functions.

(34) "Shop" means instructional areas of the school facility where students are exposed to greater health and safety hazards than typically exist in general academic classrooms. Shops include, but are not limited to, industrial and agricultural shops, including career and technical education (for example: Metal-working, wood-working, construction, automotive, and horticulture).

(35) "Site" means any real property used or proposed to be used as a location for a school facility.

(36) "Source capture system" means a mechanical exhaust system designed and constructed to capture air contaminants at their source and release air contaminants to the outdoor atmosphere.

(37) "Tempered water" means water having a temperature range between eighty-five degrees Fahrenheit and one hundred ten degrees Fahrenheit.

(38) "Tepid water" means water having a temperature range between sixty degrees Fahrenheit and ninety-five degrees Fahrenheit.

(39) "Toxic" means having the properties to cause or significantly contribute to death, injury, or illness.

(40) "Variance" means an alternative to a specific requirement in these rules, approved by the local health officer, that provides a comparable level of protection.

(41) "Very low lead plumbing fixture" means plumbing fittings or fixtures used in the installation or repair of any plumbing providing water for human consumption that contain less than 0.3% lead by weight.

(42) "Water cooler" means a type of mechanical plumbing fixture that actively cools the water.

NEW SECTION

WAC 246-366A-015 Guidance. (1) The department, in cooperation with the office of superintendent of public instruction, shall:

(a) Update the *Health and Safety Guide for K-12 Schools in Washington* (the guide) at least every four years; and

(b) Make the guide available on the department's web site.

(2) The guide is the primary source of guidance for local health officers and school officials implementing these rules.

NEW SECTION

WAC 246-366A-020 Responsibilities—General. (1) Responsibilities of school officials. School officials shall:

(a) Maintain conditions within the school environment that will not endanger health and safety.

(b) Identify, assess, and mitigate or correct environmental health and safety hazards in their school facilities, establish necessary protective procedures, use appropriate controls, and take action to protect or separate those at risk from identified hazards, consistent with the level of risk presented by the specific hazard, until mitigation or correction is complete.

(c) When conditions are identified that pose an imminent health hazard:

(i) Take immediate action to mitigate hazards and prevent exposure;

(ii) Promptly notify the local health officer; and

(iii) Promptly inform school facility staff, students, and parents about the conditions and actions taken in response.

(d) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(i) Health and safety inspections of the school facilities, including the final report findings, correction schedules established in consultation with the local health officer, and recommended actions;

(ii) Imminent health hazards identified under this section and WAC 246-366A-190, and actions taken in response;

(iii) Site assessment, review, and approval as required under WAC 246-366A-030;

(iv) Construction project plan review and approval as required under WAC 246-366A-040; and

(v) Playground plan review and approval as required under WAC 246-366A-150.

(e) Have the records described in this subsection available to the public, except where otherwise provided by applicable public disclosure law.

(f) Prepare a report to the public and the school board at least annually about environmental health and safety conditions in the schools. The report must include an explanation of:

(i) Variances obtained from the local health officer regarding requirements of these rules;

(ii) Dates of environmental health and safety inspections conducted under requirements of these rules and any deficiencies not corrected within the time frame established by the local health officer in accordance with subsection (2) of this section;

(iii) Any imminent health hazards identified; and

(iv) A method for school officials to receive public comment about the report.

(2) Responsibilities of the local health officer.

(a) Except as provided in (b) of this subsection, the local health officer shall:

(i) Periodically conduct an environmental health and safety inspection of each school facility within his or her jurisdiction. Beginning one year after the effective date of this section, those inspections must be conducted at least once each year.

(ii) Notify school officials at the time of discovery or immediately following the inspection if conditions that pose an imminent health hazard are identified, and recommend actions to mitigate the hazards and prevent exposure.

(iii) Consult with school officials upon completion of the inspection about findings and recommended follow-up actions and, if necessary, develop a correction schedule. Approaches and timelines used to address noncompliant conditions will depend on the level of risk to health and safety presented by the condition, and may include consideration of low-cost alternatives.

(iv) Develop draft and final inspection reports, in consultation with school officials, within sixty days after conducting an inspection. The report must include inspection findings related to this rule and any required correction schedule.

(v) Confirm, as needed, that corrections are accomplished.

(vi) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(A) Health and safety inspections of the school facilities performed by the local health officer, including, but not limited to, the final inspection report and correction schedules; and

(B) Imminent health hazards identified under this section and WAC 246-366A-190, and local health officer actions taken in response.

(vii) Have the records described in this subsection available to the public, except where otherwise provided by applicable public disclosure law.

(b) The local health officer may allow a school official or qualified designee to conduct a required inspection under a

program approved by the local health officer not more than two out of every three years. The program must include provisions for:

(i) Assuring that the school official or designee conducting the inspection has attended training in the standards, techniques, and methods used to conduct an environmental health and safety inspection;

(ii) Completing a standardized checklist at each inspection;

(iii) Providing a written report to the local health officer about the findings of the inspection;

(iv) Notifying the local health officer regarding any identified imminent health hazards and coordinating with the local health officer to mitigate hazards and prevent exposure; and

(v) Consulting with the local health officer on follow-up and corrective actions needed to address noncompliant conditions that do not pose an imminent health hazard.

(3) Responsibilities of the department.

(a) The department shall:

(i) Report to the state board of health once every three years. The report must include a summary of:

(A) Variances granted by local health officers; and

(B) Status of local rule implementation.

(ii) Make technical assistance and training available to local health jurisdictions, educational service districts, school districts, and school personnel for implementation of these rules, including:

(A) Inspection techniques and procedures;

(B) Inspection materials and checklists;

(C) Variance request evaluations; and

(D) Model environmental health and safety programs for schools and local health jurisdictions.

(b) The department, at the request of the local health officer, may assist in investigating environmental health and safety incidents at schools.

(c) Establish a school rule technical advisory committee to help promote consistent statewide interpretation and implementation of these rules.

NEW SECTION

WAC 246-366A-030 Site assessment, review, and approval. (1) A full site assessment and local health officer review and approval to determine environmental health and safety risk, is required for:

(a) Constructing a new school facility on a site that was previously undeveloped or developed for other purposes; or

(b) Converting an existing structure for primary use as a school facility.

(2) The local health officer shall determine, in consultation with school officials, the need for and scope of the site assessment, review, and approval process for:

(a) Constructing a new school facility on an existing school site;

(b) Constructing an addition to an existing school facility; or

(c) Converting part of an existing structure primarily used for other purposes into a school facility.

(3) A full site assessment must include:

(a) A Phase 1 Environmental Site Assessment (ESA) that meets the requirements of the *American Society for Testing and Materials (ASTM) Standard #1527-05* (published November 2005);

(b) Sampling and analysis of potential contaminants if the Phase 1 ESA indicates that hazardous materials may be present. Sampling and analysis must comply with applicable rules of the Washington state department of ecology;

(c) A noise assessment. Noise from any source must not exceed an hourly average of 55 dBA (the mean sound energy level for a specified time ($Leq_{60\ minutes}$)) and must not exceed an hourly maximum (the maximum sound level recorded during a specified time period (Lmax)) of 75 dBA during the time of day the school is in session. Sites exceeding these sound levels are acceptable if a plan for noise reduction is included in the new construction proposal and the plan for noise reduction is approved by the local health officer.

(4) School officials shall:

(a) Notify the local health officer within ninety days of starting preliminary planning for school construction that may require a site assessment with local health officer review and approval.

(b) Consult with the local health officer throughout the plan development phase regarding the scope of the site assessment and the timeline for completion of the site assessment.

(c) Have a site assessment completed when required under this section.

(d) Submit a written report to the local health officer assessing the potential impact of health and safety risks presented by the proposed site, including, but not limited to the following:

(i) The findings and results obtained under subsection (3) of this section;

(ii) Analysis of the findings;

(iii) Description of any mitigation proposed to address identified health and safety risks present at the site; and

(iv) Any site assessment-related information requested by the local health officer to complete the site assessment review and approval process.

(e) Obtain site review and written site approval from the local health officer when required under subsection (1) or (2) of this section.

(5) The local health officer shall:

(a) Conduct an inspection of the proposed site;

(b) Review the site assessment for environmental health and safety risk;

(c) For site assessments according to subsection (1) of this section, provide written approval, describe site deficiencies needing mitigation to obtain approval, or deny use of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline; and

(d) For site assessments according to subsection (2) of this section, provide written approval or describe site deficiencies needing mitigation to obtain approval of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline.

(6) If school officials notified the local health officer in writing prior to the effective date of this section that construction is planned for a particular site, the site review requirements in effect at the time of notification apply, provided that school officials comply with all agreed on timelines for completion.

NEW SECTION

WAC 246-366A-040 Construction project review. (1) The following school facility construction projects must be reviewed by the local health officer:

(a) Construction of a new school facility;

(b) Schools established in all or part of any existing structures previously used for other purposes;

(c) Additions or alterations consisting of more than five thousand square feet of floor area or having a value of more than ten percent of the total replacement value of an existing school facility;

(d) Any construction of a shop or laboratory for use by students; and

(e) Installation of a portable.

(2) Review and approval requirements for installation of a playground are established in WAC 246-366A-150.

(3) School officials shall:

(a) Consult with the local health officer during preliminary planning for school construction projects that are subject to the requirements of this section;

(b) Invite the local health officer to a predevelopment conference with school officials and project design professionals to participate in the discussion about the preliminary design to highlight health and safety matters and requirements of these rules;

(c) Obtain construction project review and written approval from the local health officer regarding environmental health and safety requirements in these rules before starting construction;

(d) Provide construction documents to the local health officer at the same time as the local building official to facilitate a concurrent and timely review; and

(e) Provide additional documents requested by the local health officer, which may include, but are not limited to, written statements signed by the project's licensed professional engineer verifying that design elements comply with requirements specified by these rules.

(4) The local health officer shall:

(a) Consult with school officials and determine what is required for plan review and approval;

(b) Review construction documents to confirm that the health and safety requirements of these rules are met;

(c) Identify and request any additional documents required to determine compliance with requirements specified by these rules; and

(d) Provide written approval, or describe plan deficiencies needing change to obtain approval, of the construction project within sixty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline.

NEW SECTION

WAC 246-366A-050 Preoccupancy inspection of construction projects. (1) School officials shall:

(a) Obtain a preoccupancy inspection by the local health officer of construction projects subject to WAC 246-366A-040(1), conducted in coordination with a final inspection by the local building official, in order to ensure imminent health hazards are corrected before allowing school facilities to be occupied; and

(b) Notify the local health officer at least five business days before a desired preoccupancy inspection.

(2) The local health officer:

(a) Shall coordinate all construction-related inspections with the on-site project manager or other appropriate person identified by school officials.

(b) May inspect for compliance with these rules during the construction phase.

(c) Shall conduct a preoccupancy inspection for construction projects subject to WAC 246-366A-040(1) to verify compliance with these rules before the building is occupied and not more than five business days after the date requested by school officials or as otherwise agreed to by the school officials and the local health officer.

(i) If an imminent health hazard is identified, a solution must be identified and agreed to by school officials, the local health officer, and the local building official and implemented by school officials before the affected portion of the building is occupied.

(ii) If other conditions of noncompliance with these rules are identified, school officials shall be provided with a written list of items and consulted in developing a correction schedule, based on the level of risk to health and safety.

(d) May reinspect to confirm satisfactory correction of the items identified under (c) of this subsection.

NEW SECTION

WAC 246-366A-060 General construction requirements. School officials shall:

(1) Design school facilities to minimize conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the installation of window screens nor does it prohibit the installation of retention ponds or rain gardens.

(2) Design school facilities with windows in sufficient number, size, and location to enable students to see outside at least fifty percent of the school day. Windows are optional in special purpose instructional areas including, but not limited to, theaters, music areas, multipurpose areas, gymnasiums, auditoriums, shops, laboratories, libraries, and seminar areas.

(3) Provide sun control to exclude direct sunlight from window areas and skylights of instructional areas, assembly rooms and meeting rooms during at least eighty percent of the normal school hours. Each area must be considered as an individual case. Sun control is not required for sun angles less than forty-two degrees up from the horizontal. Sun control is not required if air conditioning is provided or special glass is installed having a total solar energy transmission factor less than sixty percent.

(4) Provide surfaces on steps that reduce the risk of injury caused by slipping.

(5) Provide floors throughout the school facility that are appropriate for the intended use, easily cleanable and can be dried effectively to inhibit mold growth. These floor materials include, but are not limited to, wood, vinyl, linoleum, and tightly woven carpets with water impervious backing.

(6) Provide reasonably sufficient space for the storage of play equipment, instructional equipment, and outdoor clothing. The space must be reasonably accessible, lighted, and ventilated.

(7) Provide measures to reduce potential injury from fall hazards, including but not limited to, retaining walls; performance arts stages and orchestra pits; balconies; mezzanines; and other similar areas of drop-off to a lower floor.

(8) Provide the following items for health rooms, if health rooms are provided:

(a) The means to visually supervise and provide privacy of room occupants;

(b) Surfaces that can be easily cleaned and sanitized;

(c) A handwashing sink in the room;

(d) An adjoining restroom; and

(e) Mechanical exhaust ventilation so that air does not flow from the health room to other parts of the school facility.

NEW SECTION

WAC 246-366A-065 General operation and maintenance requirements. School officials shall:

(1) Keep school facilities clean and in good condition.

(2) Mitigate any environmental health and safety hazards.

(3) Control conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the routine installation of window screens nor does it prohibit the proper operation of retention ponds or rain gardens.

(4) Label, use, store and dispose of hazardous materials to:

(a) Prevent health and safety hazards;

(b) Keep incompatible substances apart from each other;

(c) Prevent unauthorized access and use; and

(d) Follow procedures according to material safety data sheet instructions.

(5) Select supplies and methods of use that reduce exposure to hazardous materials.

(6) Allow only those hazardous materials in schools that they have approved for use. Types of commercial products that might contain hazardous materials include, but are not limited to, cleaners, sanitizers, maintenance supplies, pesticides, herbicides, and instruction-related supplies.

(7) Safely store play equipment, instructional equipment, and outdoor clothing where reasonably accessible.

(8) Use products that comply with American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 (2007) to coat, line, seal, or patch drinking water contact surfaces, if the interior of water piping or plumbing fixtures is coated or lined.

(9) Immediately clean and sanitize the contaminated area and prevent human exposure when sewage backups occur.

(10) Notify the local health officer when sewage backups:

(a) Result from failure of an on-site sewage system serving the school facility;

(b) Impact student use areas outside restrooms; or

(c) Occur in a food preparation, food storage, or food service area.

(11) Allow upholstered furniture, such as couches and overstuffed chairs, in school facilities only if the furniture has been purchased or approved by school officials.

NEW SECTION

WAC 246-366A-070 Moisture control, mold prevention, and remediation. School officials shall:

(1) Visually monitor the school facility for water intrusion and moisture accumulation that may lead to mold growth, especially after severe weather events.

(2) Begin corrective action within twenty-four hours of discovering water intrusion or moisture accumulation to inhibit and limit mold growth by:

(a) Identifying and eliminating the cause of the water intrusion or moisture accumulation; and

(b) Drying the affected portions of the school facility.

(3) When mold growth is observed or suspected, use recognized remediation procedures such as those provided by the Environmental Protection Agency (Mold Remediation in Schools and Commercial Buildings, EPA 402-K-01-001, March 2001). Begin recognized procedures within twenty-four hours to:

(a) Identify and eliminate the cause of the moisture or water contributing to the mold growth;

(b) Dry the affected portions of the school facility;

(c) Investigate the extent of the mold growth, including evaluation of potentially affected materials and surfaces inside walls and under floor coverings, when moisture or water has entered those spaces;

(d) Minimize exposure to indoor mold spores and fragments until mold remediation is complete using methods including, but not limited to, containment and negative air pressure; and

(e) Remediate surfaces and materials contaminated with mold.

(4) When remediation is required under subsection (3) of this section and there is significant risk of exposure, including when the total area affected is greater than ten square feet, promptly inform school facility staff, students, and parents of the conditions and the plans and time frame for the remediation. The extent of this communication will depend on the likelihood of individual exposure, the scope of the remediation project, and the time required to complete it.

NEW SECTION

WAC 246-366A-080 Safety—Animals in school facilities. (1) School officials shall allow in school facilities only those animals, other than service animals, approved under written policies or procedures.

(2) School officials shall develop written policies or procedures for any animals allowed in school facilities to prevent:

(a) Injuries caused by wild, dangerous, or aggressive animals;

(b) Spread of diseases from animals known to commonly carry diseases including, but not limited to, rabies, psittacosis, and salmonellosis;

(c) Allergic reactions;

(d) Exposure to animal wastes; and

(e) Handling animals or their bedding without proper handwashing afterward.

(3) Written policies or procedures required under subsection (2) of this section shall address service animals in the school facility that are not well behaved or present a risk to health and safety.

NEW SECTION

WAC 246-366A-090 Heating and ventilation—Construction requirements. School officials shall:

(1) Provide mechanical exhaust ventilation that meets or exceeds the requirements in chapter 51-52 WAC at locations intended for equipment or activities that produce air contaminants of public health importance.

(2) Situate fresh air intakes away from building exhaust vents and other sources of air contaminants of public health importance in a manner that meets or exceeds the requirements in chapter 51-52 WAC. Sources of air contaminants include bus and vehicle loading zones, and might include, but are not limited to, parking areas and areas where pesticides or herbicides are commonly applied.

(3) Use materials that will not deteriorate and contribute particulates to the air stream if insulating the interior of air handling ducts. Insulation materials must be designed to accommodate duct cleaning and exposure to air flow without deteriorating. This subsection does not apply if the local permitting jurisdiction received a complete building permit application within three years after the effective date of this section.

(4) Use ducted air returns and not open plenum air returns consisting of the open space above suspended ceilings. This subsection does not apply to:

(a) Alterations to school facilities;

(b) Additions to school facilities that tie into existing ventilation systems that use open plenum air returns; or

(c) Facilities for which the local permitting jurisdiction received a complete building permit application within three years after the effective date of this section.

NEW SECTION

WAC 246-366A-095 Heating and ventilation—Operation and maintenance requirements. School officials shall:

(1) Heat occupied areas of school buildings during school hours and school-sponsored events to maintain a minimum temperature of sixty-five degrees Fahrenheit except for gymnasiums and hallways, which must be maintained at a minimum temperature of sixty degrees Fahrenheit.

(2) Ventilate occupied areas of school buildings during school hours and school-sponsored events. During periods of ventilation:

(a) For school facilities constructed or sited under a building permit for which the local permitting jurisdiction received a completed building permit application on or after the effective date of this section, provide, as a minimum, outdoor air according to WAC 51-52-0403, Table 403.3, Required Outdoor Ventilation Air.

(b) For school facilities constructed or sited under a building permit for which the local permitting jurisdiction received a completed building permit application before the effective date of this section, conduct standard operation and maintenance best practices including, but not limited to, making timely repairs, removing obstructions, and replacing filters and fan drive belts, and setting system controls so that, to the extent possible given the design of the ventilation system, outdoor air is provided consistent with WAC 51-52-0403, Table 403.3, Required Outdoor Ventilation Air.

(3) Use and maintain mechanical exhaust ventilation installed for equipment or activities that produce air contaminants of public health importance or moisture.

(4) Limit student exposure to air contaminants of public health importance produced by heat laminators, laser printers, photocopiers, and other office equipment by placing such equipment in appropriately ventilated spaces and providing instruction to users on how to operate and maintain equipment as recommended by the manufacturer.

(5) Take preventive or corrective action when pesticides, herbicides, or air contaminants of public health importance are likely to be drawn or are drawn into the building or ventilation system.

NEW SECTION

WAC 246-366A-100 Noise control—Construction requirements. (1) School officials shall design ventilation equipment and other mechanical noise sources in classrooms to provide background sound which conforms to a noise criterion curve or equivalent not to exceed NC-35. School officials shall certify, or hire the appropriate person to certify, that ventilation equipment and other mechanical noise sources that have been installed meet the NC-35 noise criterion design standard.

(2) Portable classrooms constructed before January 1, 1990, moved within the same school property or within the same school district, are exempt from the requirements of this section if the portable classrooms meet all of the following criteria:

(a) Noise abating or noise generating features are not altered in a manner that may increase noise levels;

(b) The portable classrooms were previously in use for instruction;

(c) Ownership of the portable classrooms remains the same; and

(d) The new site meets the noise standard in WAC 246-366A-030 (3)(c).

NEW SECTION

WAC 246-366A-105 Noise control—Operation and maintenance requirements. School officials shall:

(1) Maintain the background noise at any student location within classrooms constructed after January 1, 1990, at or below 45 dBA (Leq_x) where $_x$ is 30 seconds or more. Background noise levels must be determined when the ventilation system and the ventilation system's noise generating components, such as the condenser and heat pump, are operating and the room is unoccupied by students.

(2) Maintain the background noise level at any student location in laboratories and shops with local exhaust ventilation systems constructed after January 1, 1990, at or below 65 dBA (Leq_x) where $_x$ is 30 seconds or more. Background noise levels must be determined when all ventilation equipment is operating and the room is unoccupied by students.

(3) Maintain noise exposure for students below the maximum levels in Table 1.

Table 1
Maximum Noise Exposures Permissible

Duration per day (hours)	Sound level (dBA)
8	85
6	87
4	90
3	92
2	95
1-1/2	97
1	100
1/2	105
1/4	110

(4) Not allow student exposure to sound levels equal to or greater than 115 dBA.

(5) Provide and require students to use personal protective equipment, for example ear plugs or muffs, where noise levels exceed those specified in Table 1. Personal protective equipment must reduce student noise exposure to comply with the levels specified in Table 1.

NEW SECTION

WAC 246-366A-110 Lighting—Construction requirements. School officials shall equip school facilities with lighting systems designed to meet the requirements of WAC 246-366A-115. General, task or natural lighting may be used to achieve the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 of WAC 246-366A-115(1) may be used.

NEW SECTION

WAC 246-366A-115 Lighting—Operation and maintenance requirements. School officials shall:

(1) Provide light intensities that meet or exceed those specified in Table 2. General, task and/or natural lighting may be used to maintain the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 may be used.

Table 2
Lighting Intensities

Measured 30 inches above the floor or on working or teaching surfaces. Some lighting fixtures may require a start-up period before reaching maximum light output.	Minimum foot-candle intensity
General instructional areas, for example, study halls, lecture rooms, and libraries.	30
Special instructional areas where safety is of prime consideration or fine detail work is done, for example, family and consumer science laboratories, science laboratories (including chemical storage areas), shops, drafting rooms, and art and craft rooms.	50
Noninstructional areas, for example, auditoriums, lunch rooms, assembly rooms, corridors, stairs, storerooms, and restrooms.	10
Gymnasiums: Main and auxiliary spaces, shower rooms, and locker rooms.	20

(2) Control excessive brightness and glare in all instructional areas. Surface contrasts and direct or indirect glare must not cause excessive eye accommodation or eye strain problems.

(3) Provide lighting in a manner that minimizes shadows and other lighting deficiencies on work and teaching surfaces.

NEW SECTION

WAC 246-366A-120 Restrooms and showers—Construction requirements. School officials shall:

(1) Provide shower facilities for grades nine and above for classes in physical education and for team sports. Showers must supply hot water between one hundred and one hundred twenty degrees Fahrenheit.

(2) Provide floor surfaces in shower areas that are water impervious, slip-resistant, and sloped to floor drains. Walls must be water impervious up to showerhead height. Upper walls and ceilings must have an easily cleanable surface.

(3) Locate drying areas, if provided, adjacent to showers and locker or dressing rooms. Walls and ceilings must have an easily cleanable surface and floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

(4) Provide locker or dressing rooms adjacent to showers or drying rooms. Walls and ceilings must have an easily cleanable surface. When drying areas are provided, floor surfaces in locker or dressing rooms must be appropriate for the intended use, easily cleanable and dryable to effectively

inhibit mold growth. When drying areas are not provided, locker or dressing room floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

NEW SECTION

WAC 246-366A-125 Restrooms and showers—Operation and maintenance requirements. School officials shall:

(1) Provide in each restroom:

(a) Toilet paper in each toilet stall;

(b) Single service handwashing soap near each handwashing sink; and

(c) Single-service towels or an adequate number of warm-air dryers. Common use towels are not allowed.

(2) Provide hot water to all handwashing plumbing fixtures at a maximum temperature of one hundred twenty degrees Fahrenheit.

(3) Provide tempered water for those handwashing plumbing fixtures that do not allow the user to select water temperature.

(4) Provide any hand operated, self-closing handwashing plumbing fixtures with the capability of providing at least ten seconds of running water.

(5) Provide access to restrooms when:

(a) School buildings are in use; or

(b) Outdoor facilities or athletic fields are in use for school-sponsored events. School officials are not required to provide access to restrooms when outdoor facilities and athletic fields are in use after school hours or on weekends unless it is a school-sponsored event.

(6) Provide access to shower facilities with hot water between one hundred and one hundred twenty degrees Fahrenheit for classes in physical education and school-sponsored sports teams at grades nine and above.

(7) When cloth towels are supplied by the school, provide them for individual use and launder them after each use.

NEW SECTION

WAC 246-366A-130 Water quality monitoring—Lead. (1) School officials shall:

(a) Sample plumbing fixtures that are regularly used for drinking or cooking.

(b) Use a laboratory to analyze all required water samples that is accredited by the department of ecology, or other appropriate agency if outside Washington state, according to EPA drinking water laboratory certification criteria.

(2) Water sampling protocols. School officials shall:

(a) Collect representative samples, according to the percentages required by subsections (3) and (4) of this section, from each type and age of plumbing fixture regularly used for drinking or cooking.

(i) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(ii) For age of fixture, use at least two groupings: Those manufactured prior to 1999, and those manufactured since January 1, 1999.

(b) Sample as follows:

(i) Make sure cold water is the last to run through the fixture to be tested.

(ii) Allow water to sit in the plumbing system at least eight hours. No water may pass through the fixture during that time.

(iii) Place the 250 ml sample bottle under the faucet and open the cold water tap. Fill the bottle to the shoulder or the line marked "250 ml," turn off the water and cap the bottle tightly.

(3) Initial monitoring schedule for lead.

(a) School officials shall conduct initial monitoring by sampling fifty percent of the plumbing fixtures regularly used for drinking or cooking in elementary schools or used by preschool children in K-12 schools within one year after the effective date of this section. This may be either from fifty percent of the fixtures in each school or from all of the fixtures in fifty percent of the schools within a district. School districts shall sample the remaining fifty percent of the fixtures within two years after the effective date of this section.

(b) School officials shall conduct initial monitoring by sampling at least twenty-five percent of each type and age of plumbing fixture, as specified under subsection (2)(a) of this section, regularly used by students for drinking or cooking in:

(i) Middle and junior high schools within three years after the effective date of this section; and

(ii) High schools within four years after the effective date of this section.

(c) School officials, with local health officer approval, may apply samples collected after September 1, 2003, toward meeting the initial monitoring requirement if all plumbing fixtures with lead results above 0.020 milligrams per liter or 20.0 parts per billion have been removed from service, or have been or are being addressed according to subsection (5) of this section, and samples were:

(i) From plumbing fixtures regularly used for drinking or cooking; and

(ii) Collected consistent with subsection (2) of this section.

(4) Ongoing monitoring for lead.

(a) School officials shall repeat lead monitoring every five years, beginning within:

(i) Seven years after the effective date of this section for elementary schools;

(ii) Eight years after the effective date of this section for middle and junior high schools; and

(iii) Nine years after the effective date of this section for high schools.

(b) School officials shall use sampling protocols in subsection (2) of this section to collect samples in all schools from:

(i) No less than twenty-five percent of each type and age of plumbing fixture which is not a "very low lead" plumbing fixture; and

(ii) No less than ten percent of each type of plumbing fixture which is a "very low lead" plumbing fixture.

(c) Schools that are Group A public water systems are not required to do ongoing lead monitoring required by (a) of this subsection if the schools meet the lead monitoring requirements in chapter 246-290 WAC.

(5) Corrective actions. School officials shall:

(a) For all plumbing fixtures with sample results of lead above 0.020 milligrams per liter or 20.0 parts per billion, immediately shut off these fixtures or make them inoperable.

(b) For all plumbing fixtures of the same type and age as any fixture with results above 0.020 milligrams per liter or 20.0 parts per billion:

(i) Take immediate corrective action according to (a) of this subsection; or

(ii) Collect first draw samples within ten business days. Upon receipt of sample results, immediately shut off or make inoperable all plumbing fixtures with results of lead above 0.020 milligrams per liter or 20.0 parts per billion.

(c) To provide drinking water at the location of these fixtures, take one or more of the following remedies:

(i) Bottled water. If bottled water is used, provide bottled water that is produced by a Washington state department of agriculture-approved bottling operation or out-of-state or international bottler whose product meets federal Food and Drug Administration regulations.

(ii) Manual flushing. Manual flushing may be used only as a temporary remedy. If manual flushing is used:

(A) Take flush samples from twenty-five percent of each type and age of the fixtures planned to be included in the flushing program to determine the flushing time necessary to reduce lead to below 0.020 milligrams per liter or 20.0 parts per billion. Start by following the sample collection protocol of first-draw samples described in subsection (2)(b) of this section with the addition of letting the water run for thirty seconds before filling the bottle.

(B) Open the tap of every fixture included in the flushing program every morning before the school facility opens and let the water run for the length of time established in (c)(ii)(A) of this subsection.

(iii) Automated flushing. If automated flushing is used, take samples from twenty-five percent of each type and age of the fixtures included in the flushing program to demonstrate that the automated system reduces lead to below 0.020 milligrams per liter or 20.0 parts per billion.

(iv) Fixture replacement. If individual plumbing fixtures are replaced:

(A) Precondition the new plumbing fixtures by running water through the fixture continuously for twenty-four hours; and

(B) Collect first draw samples after preconditioning and verify sample results of lead below 0.020 milligrams per liter or 20.0 parts per billion. If the preconditioned plumbing fixture does not yield a sample result below this level, (a) of this subsection applies.

(v) Treatment. Before treatment is used, submit an engineering project report to the department, per WAC 246-290-110. Installation of treatment devices will result in the school's designation as a public water supply. School officials shall then ensure they comply with the Group A public water system rules and regulations, chapter 246-290 WAC and water works operator certification rules and regulations, chapter 246-292 WAC.

(6) Notification requirements. School officials shall:

(a) Notify school facility staff, students, parents, and the local health officer within five business days of the school officials receiving lead sampling results above 0.020 milligrams per liter or 20.0 parts per billion.

(b) Make all results available for review upon request.

NEW SECTION

WAC 246-366A-135 Water quality monitoring—Copper. (1) School officials shall collect water samples and have them tested for copper following the requirements of WAC 246-366A-130 (1) and (2)(b). The same water samples used for lead testing may be used for copper testing.

(2) School officials shall test water samples for copper from no less than twenty-five percent of each type and age of plumbing fixture regularly used for drinking or cooking.

(a) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(b) For age of fixture, use at least two groupings: Those manufactured prior to 1999 and those manufactured since January 1, 1999.

(3) School officials shall complete water sampling of plumbing fixtures for copper in:

(a) Elementary schools within two years after the effective date of this section;

(b) Middle and junior high schools within three years after the effective date of this section; and

(c) High schools within four years after the effective date of this section.

(4) If school officials, with local health officer approval, include lead samples collected after September 1, 2003, toward meeting the initial monitoring requirement for lead, as specified in WAC 246-366A-130, they may wait to monitor those plumbing fixtures for copper until they conduct the next ongoing lead monitoring per WAC 246-366A-130(4).

(5) School officials, with local health officer approval, may include samples collected after September 1, 2003, toward meeting monitoring requirements if all plumbing fixtures with copper results above 1.30 milligrams per liter or 1300 parts per billion have been or are being addressed according to subsection (6) of this section, and the samples were:

(a) From plumbing fixtures regularly used for drinking and cooking; and

(b) Collected using the sampling protocol specified in WAC 246-366A-130 (2)(b).

(6) Corrective actions. For all plumbing fixtures with first draw sample results of copper above 1.30 milligrams per liter or 1300 parts per billion, school officials shall:

(a) Within five business days of getting sample results, consult with the department to develop a corrective action plan; and

(b) Implement the corrective action plan.

(7) Notification requirements. School officials shall:

(a) Notify staff, students and parents, and the local health officer within five business days of the school officials receiving copper sampling results above 1.30 milligrams per liter or 1300 parts per billion; and

(b) Make all results available for review upon request.

NEW SECTION

WAC 246-366A-140 Water quality monitoring—Other drinking water contaminants. The local health officer may require:

(1) Sampling of drinking water when public health concerns exist about drinking water contaminants other than lead or copper;

(2) Corrective actions in response to sampling results for other contaminants; and

(3) School officials to notify school facility staff, students and parents, and the local health officer about test results.

NEW SECTION

WAC 246-366A-150 Playgrounds—Construction and installation requirements. (1) School officials shall:

(a) Consult with the local health officer regarding playground review and approval requirements consistent with the scope of the project when proposing to:

(i) Install new playground equipment or fall protection surfaces;

(ii) Add new playground features or equipment to an existing playground; or

(iii) Modify, other than repair and maintain, existing playground equipment, features, or fall protection surfaces.

(b) If required by the local health officer after consultation:

(i) Provide playground plans and equipment specifications and any additional information the local health officer requests; and

(ii) Obtain plan review and written approval from the local health officer before installing, adding, or modifying playground equipment or fall protection surfaces.

(c) Install playground equipment, including used equipment, and fall protection surfaces:

(i) That meet the ASTM F 1487-01: Standard Consumer Safety Performance Specification for Playground Equipment for Public Use; and

(ii) In a manner that is consistent with the manufacturer's instructions and *Consumer Product Safety Commission Handbook for Public Playground Safety*, 2008.

(d) Prohibit the use of chromated copper arsenate or creosote treated wood to construct or install playground equipment, landscape structures, or other structures on which students may play.

(2) The local health officer shall:

(a) Consult with school officials to determine what is required for playground plan review and approval consistent with the scope of the project.

(b) If playground review and approval is required:

(i) Review playground plans and equipment specifications to confirm that the requirements of these rules are addressed;

(ii) Identify and request any additional documents required to complete the review;

(iii) Provide written approval or denial of the playground plans and equipment specifications within thirty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline; and

(iv) Verify that playground installation complies with requirements of this section.

(c) Coordinate all playground-related inspections with school officials.

NEW SECTION

WAC 246-366A-155 Playgrounds—Operation and maintenance requirements. School officials shall:

(1) Monitor and operate playgrounds so that protective surfacing and use zones are maintained, and equipment is properly anchored and free of puncture, pinching, crushing, shearing, entanglement, and entrapment hazards.

(2) Prohibit the use of chromated copper arsenate or creosote treated wood to repair or maintain playground equipment, landscape structures, or other structures on which students may play.

NEW SECTION

WAC 246-366A-160 Laboratories and shops—Construction requirements. School officials shall:

(1) Provide an emergency eyewash fountain for each laboratory and shop where hazardous materials are used or eye irritants are produced.

(2) Provide an emergency shower for each laboratory where hazardous materials are used and the potential for chemical spills exists.

(3) Assure that all emergency eyewash fountains and showers have unobstructed access and are reachable within ten seconds.

(4) Provide handwashing and appropriate drying facilities in an easily accessible location in each laboratory and shop.

(5) Provide emergency shut-offs for gas and electricity connected to stationary machinery in laboratories and shops. Emergency shut-offs must:

(a) Be located in close proximity to the room exit door;

(b) Have unobstructed access; and

(c) Have signage readable from across the room for immediate identification during an emergency.

(6) Provide all stationary machinery in laboratories and shops with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the emergency shut-off.

(7) Provide mechanical exhaust ventilation in hazardous material storerooms, and in laboratories and shops where equipment or activities may produce air contaminants of public health importance.

(8) When activities or equipment in laboratories or shops produce air contaminants of public health importance, provide an appropriate source capture system to prevent those contaminants from entering the student's breathing zone. These activities and equipment include, but are not limited to, spray painting, welding, pottery kilns, chemistry experiments, and wood-working.

(9) Design ventilation systems to operate so that air is not recirculated and does not flow from the laboratory or shop to other parts of the school facility. Open plenum air

returns consisting of the space above suspended ceilings in laboratories and shops must not be used to recirculate air to other parts of the school facility.

NEW SECTION

WAC 246-366A-165 Laboratories and shops—Operation and maintenance requirements. In laboratories and shops, school officials shall:

(1) Select, label, use, store and dispose of hazardous materials in accordance with WAC 246-366A-065.

(2) Prohibit use and storage of compounds that are:

(a) Considered shock-sensitive explosives, for example, picric acid, dinitro-organics, isopropyl ether, ethyl ether, tetrahydrofuran, dioxane; or

(b) Lethal at low concentrations when inhaled or in contact with skin, for example, pure cyanides, hydrofluoric acid, toxic compressed gases, mercury liquid and mercury compounds, and chemicals identified as the P-list under WAC 173-303-9903.

(3) Adopt safety procedures and processes for instructing students regarding the proper use of hazardous materials and equipment.

(4) Provide and require use of appropriate personal protective equipment when exposure to potential hazards might occur. Potential hazards include, but are not limited to hazardous material exposures, burns, cuts, and punctures.

(5) Provide situation-specific emergency and protective equipment during demonstrations with hazardous materials and with hazardous procedures. Examples of protective equipment include, but are not limited to, safety shields for eyes, protective gloves that are fire retardant and chemical resistant, respiratory protection, and fire extinguishers.

(6) Properly maintain laboratory and shop equipment and mechanical exhaust ventilation.

(7) Provide single-use soap and single-use towels or warm-air dryers at handwashing sinks.

NEW SECTION

WAC 246-366A-170 Variances. (1) School officials:

(a) May request a variance from requirements in these rules from the local health officer if they wish to use an alternative to meet the intent of these rules.

(i) The request for a variance must be in writing and describe:

(A) The specific requirement the variance is requested to replace;

(B) The alternative proposed to meet the specific requirement; and

(C) How the proposed alternative will provide at least a comparable level of protection as that provided by the specific requirement.

(ii) The request for a variance must include information as needed to support and clarify the request, such as material descriptions and specifications, engineering reports, photos, drawings, or sketches.

(b) May implement a variance only after obtaining approval from the local health officer.

(2) The local health officer shall:

(a) Initially review documents submitted with the request for a variance and inform school officials if additional information is required.

(b) Compare the health and safety aspects of the specific requirement being addressed and the variance proposal to determine if the proposal provides at least a comparable level of protection as that provided by the specific requirement.

(c) Provide written approval or denial of a request for a variance within sixty days of receiving a complete written request, unless school officials and the local health officer agree to a different timeline.

(d) Submit an annual written report to the department regarding all variance requests. The report must be submitted by March 1st of each year, beginning the third year after the effective date of this section, and cover the calendar period January through December of the previous year.

NEW SECTION

WAC 246-366A-175 Temporary emergency waivers for disaster situations. The local health officer may grant school officials an emergency waiver from some or all of the requirements in these rules for the temporary use of a facility or site as a school when the facility normally used by the school is not safe to be occupied due to a natural or man-made disaster.

NEW SECTION

WAC 246-366A-180 Appeals. Decisions or actions of the local health officer may be appealed to the local board of health in a manner consistent with their established procedure.

NEW SECTION

WAC 246-366A-190 Complaints. (1) School officials shall establish a written complaint process, if such a written process does not already exist. The complaint process must clearly describe the means for a person to file a written complaint concerning failure to comply with a provision of these rules that jeopardizes the health and safety of students. At a minimum, the process shall provide for:

(a) Promptly investigating all complaints;

(b) Correcting conditions not in compliance with these rules within an appropriate time frame given the level of risk to health and safety;

(c) Providing notification for imminent health hazards in accordance with WAC 246-366A-020;

(d) Promptly communicating with the complainant regarding the outcome of the investigation, and the actions and time frame proposed to address any verified conditions not in compliance with these rules; and

(e) Communicating with the local health officer about the outcome of complaint investigations referred to school officials by the local health officer.

(2) The local health officer who receives a complaint concerning failure to comply with a provision of these rules that jeopardizes the health and safety of students shall:

(a) Promptly inform school officials that a complaint was filed with the local health officer;

(b) Conduct a preliminary inquiry to determine if an imminent health hazard exists;

(c) Investigate the complaint in consultation with school officials if an imminent health hazard exists;

(d) Either refer the complaint to school officials or investigate the complaint in consultation with school officials if an imminent health hazard does not appear to exist; and

(e) Communicate with the complainant about the outcome of the complaint investigation.

NEW SECTION

WAC 246-366A-200 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

WSR 10-01-176
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION

[Filed December 22, 2009, 1:25 p.m., effective January 22, 2010]

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

Purpose: This change is to align the WAC with an administrative change we are coordinating with the four counties that run county ferry operations, Pierce, Skagit, Whatcom, Whakiakum, and the county road administration board (CRAB).

Citation of Existing Rules Affected by this Order: Amending WAC 468-22-060(3).

Statutory Authority for Adoption: RCW 34.05.353 (1)(a) and (c).

Adopted under notice filed as WSR 09-21-090 on October 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 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: December 22, 2009.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending Order 122, filed 9/19/90, effective 10/20/90)

WAC 468-22-060 Procedures for obtaining financial assistance. To obtain financial assistance for a ferry or ferry system under RCW 47.56.720 or 47.56.725, a county and the department shall comply with the following procedures:

(1) Before receiving financial assistance, a county shall sign an agreement with the department, the form of which shall be agreed upon between the department, and the county.

(2) County requests for reimbursement and department payments to counties shall be made in the manner specified in the agreement for financial assistance.

(3) No later than ((~~September~~)) April 1 of each year, a county shall provide to the department, on a form prescribed by the department, a complete accounting of that county ferry's toll revenues and operation and maintenance expenditures for the previous ((~~state~~)) county fiscal year.

WSR 10-01-188
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 22, 2009, 3:14 p.m., effective January 25, 2010]

Effective Date of Rule: January 25, 2010.

Purpose: As approved by the 2009 legislature, the purpose of this rule making is to adjust the fees set forth in WAC 296-65-025 Fees, for the division of occupational safety and health's asbestos program. This will be the first fee increase since the program began in 1985. This fee increase will ensure the department's ability to continue the asbestos program. The estimated budget and projected revenue show that the program is going to be underfunded by the end of 2009-2011 biennial fiscal years and in great deficit by the end of 2011-2013 fiscal years, provided that no fee increase occurs during these periods. In order for the program to function smoothly and keep providing speedy and quality service for asbestos-related business, this fee increase rule is proposed and considered as a necessary means to help cover the cost of ongoing services of the asbestos program.

The purpose of the asbestos program within the division of occupational safety and health is to oversee the certification of asbestos abatement work. These certification requirements are set forth in chapter 296-65 WAC, Asbestos. This program reviews, approves, and audits asbestos abatement courses and asbestos abatement course providers. Asbestos abatement workers and supervisors are reviewed to ensure they have obtained an adequate level of training from an approved training course provider. Additionally, asbestos abatement supervisors must demonstrate a minimum level of experience to obtain certification. Asbestos abatement contractors are reviewed to ensure they are a registered contractor with the department of labor and industries and they have at least one certified asbestos supervisor on staff.

WAC 296-65-025 Fees.

The proposed language in this section has been amended to increase the fees as follows:

- Increase fees for asbestos worker certificate from $25 to $45;
- Increase fees for asbestos supervisor certificate from $35 to $65;
- Increase fees for asbestos contractor certificate from $1000 to $1050; and
- Increase fees for asbestos training course approval from $1000 to $1250.

Citation of Existing Rules Affected by this Order: Amending WAC 296-65-025 Fees.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: RCW 49.26.130.

Adopted under notice filed as WSR 09-19-120 on September 22, 2009.

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

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

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

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

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

Date Adopted: December 22, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 99-17-026, filed 8/10/99, effective 11/10/99)

WAC 296-65-025 Fees. (1) A nonrefundable administrative fee of ((~~twenty-five~~)) forty-five dollars will be assessed for each initial, replacement, or renewal asbestos worker certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from any approved training course instructor or directly from the department.

(2) A nonrefundable administrative fee of ((~~thirty-five~~)) sixty-five dollars will be assessed for each initial, replacement, or renewal asbestos supervisor certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from any approved training course instructor or directly from the department.

(3) A nonrefundable administrative fee of one thousand fifty dollars will be assessed for each initial or renewal contractor certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from the department.

Note: In circumstances where it is necessary to coordinate an expiration date with the date of expiration of a contractor registration issued under chapter 18.27 RCW, certificates may be valid for less than one year. In such circumstances, the certificate fee prescribed in WAC 296-65-025 will be prorated accordingly for the initial application only.

(4) A nonrefundable administrative fee of one thousand two hundred fifty dollars will be assessed for each initial and renewal application for training course approval. A check or money order must accompany any application made under the provisions of WAC 296-65-015.

WSR 10-01-195

PERMANENT RULES

GRAIN COMMISSION

[Filed December 23, 2009, 7:19 a.m., effective January 23, 2010]

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

Purpose: WAC 16-531-010 implements rules that govern promotional hosting expenditures by the newly-created Washington grain commission. SHB 1254, chapter 33, Laws of 2009 replaced the wheat commission and barley commission with the Washington grain commission (codified in chapter 15.115 RCW). Both the wheat and barley commission had rules regarding promotional hosting (per RCW 15.04.200). Without any material change, these rules adopt for the grain commission the promotional hosting rules that were in effect for the wheat and barley commissions.

Statutory Authority for Adoption: RCW 15.04.200 and 15.115.140.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 09-21-089 on October 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 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 23, 2009.

Thomas Mick
Chief Executive Officer

Chapter 16-531 WAC

WASHINGTON GRAIN COMMISSION

NEW SECTION

WAC 16-531-010 Rules for implementation of promotional hosting by the Washington grain commission. RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. The rules governing promotional hosting expenditures for the Washington grain commission shall be as follows:

(1) Budget approval. Commission expenditures for agricultural development or trade promotion and promotional hosting shall be pursuant to specific budget items as approved by the commission at annual public hearings on the commission budget.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development or trade promotion and promotional hosting in accordance with the provisions of these rules.

(a) Commissioners;

(b) Chief executive officer;

(c) Vice-president;

(d) Program director;

(e) Director of communications.

Individual commissioners shall make promotional hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and shall require the following information:

(a) Name and position (if appropriate) of each person hosted;

(b) General purpose of the hosting;

(c) Date of hosting;

(d) Location of the hosting;

(e) To whom payment was or will be made;

(f) Signature of person seeking payment or reimbursement.

(4) The chair of the commission, chief executive officer, and/or treasurer are authorized to approve direct payment or reimbursements submitted in accordance with these rules: Provided, That the chair, chief executive officer and treasurer are not authorized to approve their own vouchers.

(5) The following persons may be hosted when it is reasonably believed such hosting will cultivate trade relations and promote sales of wheat or barley/malting barley or processed wheat or barley products: Provided, That such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business, associations, commissions, and accompanying interpreter(s);

(b) Foreign government officials and accompanying interpreter(s);

(c) Federal and state officials: Provided, That lodging, meals, and transportation will not be provided when such officials may obtain full reimbursement for these expenses from their government employer;

(d) The general public, at meetings and gatherings open to the general public;

(e) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (d) of this subsection are being hosted, will cultivate trade relations and promote sales of wheat or barley/malting barley or processed wheat or barley products;

(f) Spouses of the persons listed in (a), (b), (c), and (e) of this subsection when attendance of such spouse is customary and expected or will serve to cultivate trade relations, or promote the sale of wheat or barley/malting barley or processed wheat or barley products.

WSR 10-01-199

PERMANENT RULES

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[Filed December 23, 2009, 10:00 a.m., effective January 23, 2010]

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

Purpose: This section was created, as there have been questions from federal employees regarding who can perform engineering and/or land surveying on lands adjoining government property. This rule will help define who can perform work being done on federal owned property or on property adjoining federal land.

Citation of Existing Rules Affected by this Order: Amending chapter 196-29 WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 09-15-094 on July 14, 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 1, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 1, 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: December 23, 2009.

George A. Twiss
Executive Director

NEW SECTION

WAC 196-29-200 Federal employee exemption. (1) Under RCW 18.43.130(6) the provisions of the act shall not be construed to prevent or affect the practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for the government of the United States; provided:

(a) That all work performed is for the exclusive use of the federal government; and

(b) That all work performed is wholly contained within the confines of lands held by the federal government (federal enclave).

(2) Any engineering work that is performed and/or constructed for the benefit of a private citizen or business entity, even if directly adjoining lands held by the federal government, must be performed by or under the direct supervision of an engineer licensed in accordance with the requirements of chapter 18.43 RCW.

(3) Any surveying work that is performed for boundaries between lands held by the federal government and lands held by a private citizen or business entity, must be performed by or under the direct supervision of a land surveyor licensed in accordance with the requirements of chapter 18.43 RCW or under the authority of the Secretary of the Interior through special instructions approved by the Bureau of Land Management.