

**WSR 10-07-117**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
(Special Commitment Center)  
[Filed March 22, 2010, 12:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-102.

Title of Rule and Other Identifying Information: WAC 388-880-005 Special commitment of sexually violent predators—Legal basis, 388-880-007 Purpose, 388-880-010 Definitions, 388-880-030 Sexual predator program initial evaluation, 388-880-031 Sexual predator program annual evaluation, 388-880-033 Evaluator—Qualifications, 388-880-034 Evaluator—Pretrial evaluation responsibilities, 388-880-035 Refusal to participate in pretrial evaluation, 388-880-036 Pretrial evaluation—Reporting, 388-880-040 Individual treatment, 388-880-042 Resident records—Purposes, 388-880-043 Resident clinical records—Location and custody, 388-880-044 Resident records—Access, 388-880-045 Resident records—Retention, 388-880-050 Rights of a person court-detained or court-committed to the special commitment center, 388-880-055 Recommendation for release to a less restrictive alternative (LRA), 388-880-056 How SCC considers a resident for release to an LRA, 388-880-057 How SCC considers a resident's revocation of LRA status, 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge, 388-880-059 Communicating and coordinating resident discharge and conditional release related matters, 388-880-060 Sexual predator program reimbursement, 388-880-070 Escorted leave—Purposes, 388-880-080 Reasons allowed, 388-880-090 Conditions, 388-880-100 Application requests and approval for escorted leave, 388-880-110 Escort procedures, 388-880-120 Expenses, 388-880-130 Expenses—Paid by resident, 388-880-140 Expenses—Paid by department, 388-880-150 Requests for public disclosure, and 388-880-151 Requests for resident medical information.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rule changes is to clarify our business prac-

tices pursuant to civil commitment treatment and proceedings under chapter 71.09 RCW.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 71.09 RCW and RCW 72.01.090.

Statute Being Implemented: Chapter 71.09 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Davis, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 617-6283; Implementation and Enforcement: Kelly Cunningham, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 583-5933.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concluded that they pertain to the practices within the special commitment center and the courts. They do not impact small businesses. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared because these rules are an "interpretive rule" under RCW 34.05.328 for which a violation of which does not subject a person to a penalty or sanction, and serves only to set forth the agency's interpretation of statutory provisions it administers.

March 8, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-005 Special commitment of sexually violent predators—Legal basis.** (1) Chapter 71.09 RCW authorizes the department to develop a sexual predator program (SPP) for a person the court determines to be a sexually violent predator.

(2) The department's SPP shall provide:

(a) Custody, supervision, and evaluation of a person court-detained to the SPP to determine if the person meets the definition of a sexually violent predator under chapter 71.09 RCW; and

(b) Treatment, care, evaluation and control of a person (~~court-committed~~) civilly-committed as a sexually violent predator.

(3) Evaluations and evaluation procedures may be established in coordination with the department, the department of corrections and the end of sentence review committee.

(4) Secure facilities operated by the department for the sexual predator program include the special commitment center (SCC) total confinement facility, ~~(the)~~ a secure community transition facility, and any community-based (~~facilities~~) facility established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

(5) The secretary or designee may execute such agreements as appropriate and necessary to implement this chapter.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-007 Purpose.** These rules carry out the legislative intent of chapter 71.09 RCW, authorizing the department to provide evaluation, care, control, and treatment of persons court-detained or (~~court-committed~~) civ-ily-committed to the sexual predator program.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

**"Appropriate facility"** means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

**"Authorized third party"** means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

**"Care"** means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

**"Control"** means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

**"Department"** means the department of social and health services.

**"Escorted leave"** means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or (~~court-committed~~) civ-ily-committed under chapter 71.09 RCW ((~~under the continuous supervision of an escort~~)).

**"Evaluation"** means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder and/or mental abnormality which renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The three types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

- The **initial evaluation** occurs before the person is detained at the SCC, usually occurring while the person is in prison, juvenile rehabilitation administration (JRA), a state mental hospital, a county jail, or in the community following commission of a recent overt act.

- **Supplemental evaluations**, as required by RCW 71.09.040, are performed for civil commitment trial purposes.

- **Annual review** evaluations occur only after a person has been civilly committed under RCW 71.09.070.

**"Health care facility"** means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

**"Health care practitioner"** means an individual or firm licensed or certified to engage actively in a regulated health profession.

**"Health care services"** means those services provided by health professionals licensed pursuant to RCW 18.120.-020(4).

**"Health profession"** means those licensed or regulated professions set forth in RCW 18.120.020(4).

**"Immediate family"** includes a resident's parents, step-parents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

**"Indigent"** (~~means a resident who has not been credited with twenty five dollars or more total from any source for deposit to the resident's trust fund account during the thirty days preceding the request for an escorted leave and has less than a twenty five dollar balance in his/her trust fund account on the day the escorted leave is requested, and together with his/her requesting immediate family member affirm in writing that they cannot afford to pay the costs of the escorted leave without undue hardship. A declaration of indigency shall be signed by the resident and the resident's requesting immediate family member on forms provided by the department~~) refers to the financial status of a resident who has maintained a total balance of forty dollars or less, combined, in his/her resident trust and resident store accounts for the past thirty days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that he/she has no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

**"Individual treatment plan (ITP)"** means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a (~~court-committed~~) civ-ily-committed person or to a court-detained person.

**"Legal mail"** means a resident's written communications, to or from: courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

**"Less restrictive alternative"** means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.-230.

**"Less restrictive alternative facility"** means a secure community transition facility as defined under RCW 71.09.-020(1).

**"Mental abnormality"** means a congenital or acquired condition(~~(, including a personality disorder,))~~ affecting the person's emotional or volitional capacity(~~(, predisposing))~~ which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

**"Native format"** means the format in which a record subject to public disclosure was originally produced.

**"Oversight"** means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

**"Personality disorder"** (~~carries the same definition as found in the DSM-IV-TR and includes psychopathy as assessed using the Hare PCL-R or similar instrument~~) means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

**"Predatory"** means acts a person directs toward:

- (1) Strangers;
- (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

**"Professionally qualified person"** (~~means~~):

(1) **"Psychiatrist"** means a person licensed as a physician in this state, (~~or licensed or certified in another state,~~) in accordance with chapters 18.71 and 18.57 RCW. In addition, the person shall:

(a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and

(b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a (~~doctor of psychology~~) doctoral level psychologist in this state, (~~or licensed or certified in another state,~~) in accordance with chapter 18.83 RCW(;

(3) ~~**"Clinical practitioner"** means a sex offender treatment provider certified by the department of health under chapter 18.155 RCW).~~

**"Relapse prevention plan (RPP)"** details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

**"Resident"** means a person court-detained or (~~court-committed~~) civily-committed pursuant to chapter 71.09 RCW.

**"Resident trust account"** means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

**"Responsivity"** refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the offender. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and sub-cultural differences to the extent that these differences may interfere with treatment participation.

**"Secretary"** means the secretary of the department of social and health services or the secretary's designee.

**"Secure community transition facility (SCTF)"** means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.201 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

**"SCTF community transition team (CTT-SCTF)"** means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and health services. These three individuals include the DOC community corrections officer, the sex offender treatment provider employed by the department or who has been contracted by SCC, and the SCTF manager, the clinical director or designee may substitute for the SCTF manager. The CTT-SCTF must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, the department through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

**"Secure facility"** means a residential facility for persons court-detained or (~~court-committed~~) civily-committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

**"Senior clinical team"** means a body of clinical professionals as described below which has been designated by the superintendent to meet regularly to:

- Make decisions about the implementation of the sex offender treatment program.

- Review for the purposes of approval or denial, treatment team recommendations for phase promotions or demotions.

- Make clinical recommendations about residents in community less restrictive alternative (LRA) settings.

- Provide general consultation regarding resident treatment and behavioral management issues.

- Conduct outreach to program areas of SCC including staffing and consultation of residents in sex offender treatment.

- As requested, provide guidance and advice to the clinical director, the superintendent and the treatment teams.

Members of the senior clinical team are expected to take into account all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

The senior clinical team shall consist of a team of professionally qualified persons employed by the department which are designated by the superintendent. The team may include a SCC contracted community based psychologist with

advanced forensic assessment and treatment expertise, and/or a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment.

The senior clinical team shall not include the following persons (unless needed at the request of the clinical director for consultation on a specific issue(s):

- The resident's attorney;
- The prosecuting agency;
- Any representative from DOC;
- Potential sex offender treatment providers (SOTPs) or community providers of any type who may treat the resident;  
or
- Any other party who may serve to financially gain from the resident's release.

**"Sexual predator program"** means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a ~~((court-committed))~~ civily-committed person defined as a sexually violent predator under chapter 71.09 RCW.

**"Sexually violent offense"** means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

**"Sexually violent predator"** means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

**"Superintendent"** means the person ~~((delegated))~~ appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC.

**"Total confinement facility"** means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

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

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-030 Sexual predator program ~~((initial))~~ supplemental evaluation.** (1) When a court orders a person transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator, pursuant to RCW 71.09.040(4), the department shall, ~~((prior to))~~ before the scheduled commitment hearing or trial, provide an evaluation to the court ~~((and))~~. The evaluation must make a recommendation as to whether the person ~~((has been convicted of or charged with a crime of sexual violence and))~~ suffers from a mental abnormality or personality disorder ~~((which))~~ that makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.

(2) The evaluation must be conducted in accordance with the criteria set forth in WAC 388-880-033, and must be in the

form required by and filed in accordance with WAC 388-880-034 and 388-880-036.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-031 Sexual predator program annual evaluation.** (1) Annually or as required by court order, the department shall conduct an evaluation and examine the mental condition of each person ~~((court-committed))~~ civily-committed under chapter 71.09 RCW. The evaluation shall be conducted by a professionally qualified person designated by the secretary.

(2) Under RCW 71.09.070, the annual evaluation must include consideration of whether:

(a) The person currently meets the definition of a sexually violent predator; and

(b) Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community.

(3) For the purposes of the annual evaluation, when making a recommendation for unconditional release or placement in a less restrictive alternative, the evaluator shall only recommend unconditional release or release to a less restrictive alternative when there is current evidence of one of the following and the evidence presents a change in condition since the person's last commitment trial or less restrictive alternative (LRA) proceeding, except as provided in RCW 71.09.-090 (2)(d):

(a) An identified physiological change to the person, such as paralysis, stroke, or dementia has occurred that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(b) A change in the person's mental condition brought about through positive response to continuing participation in sex offender treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment; and

(c) For purposes of the evaluation and in order to be in compliance with RCW 71.09.090(4), a change in a single demographic factor, without more, will not be a sufficient basis for an evaluator to opine that the person no longer meets criteria for civil commitment under chapter 71.09 RCW. A single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(d) Nothing in this section about annual evaluations is intended to interfere with a court's ability under RCW 71.09.090(2) to consider if a less restrictive alternative would be in the best interests of the person without considering whether the person's condition has changed providing the court has not previously considered the issue of release to a less restrictive alternative.

(4) The report of the department shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined herein.

~~((4))~~ (5) The department shall file this periodic report with the court that ~~((detained or))~~ civily-committed the person under chapter 71.09 RCW.

~~((5))~~ (6) A copy of this report shall be served on the prosecuting agency involved in the initial hearing or commitment and upon the detained or committed person and his or her counsel.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-033 Evaluator—Qualifications.** Professionally qualified persons employed by the department or under contract to provide evaluative services must:

(1) Have demonstrated expertise in conducting evaluations of sex offenders, including diagnosis and assessment of re-offense risk~~((;))~~;

(2) Have demonstrated expertise in providing expert testimony related to sex offenders ~~((of))~~ or other forensic topics~~((;))~~; and

(3) Provide documentation of such qualification to the department.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-034 Evaluator—~~((Pretrial))~~ Supplemental evaluation responsibilities.** The evaluation done in accordance with WAC 388-880-030(1) in preparation for a trial or hearing must be based on the following:

(1) Examination of the resident, including a forensic interview and a medical examination, if necessary;

(2) Review of the following types of records, tests or reports relating to the person that the evaluator deems necessary, including but not limited to:

(a) All available criminal records, to include arrests and convictions, and records of institutional custody, including city, county, state and federal jails or institutions, with any records and notes of statements made by the person regarding criminal offenses, whether or not the person was charged with or convicted of the offense;

(b) All necessary and relevant court documents;

(c) Sex offender treatment records and, when permitted by law, substance abuse treatment program records, including group notes, autobiographical notes, progress notes, psycho-social reports and other material relating to the person's participation in treatment;

(d) Psychological and psychiatric testing, diagnosis and treatment, and other clinical examinations, including records of custody in a mental health treatment hospital or other facility;

(e) Medical and physiological testing, including plethysmography and polygraphy;

(f) Any end of sentence review report, with information for all prior commitments upon which the report or reports were made;

(g) All other relevant and necessary records, evaluations, reports and other documents from state or local agencies;

(h) Pertinent contacts with collateral informants;

(i) Other relevant and appropriate tests that are industry standard practices;

(j) All evaluations, treatment plans, examinations, forensic measures, charts, files, reports and other information made for or prepared by the SCC which relate to the resident's care, control, observation, and treatment.

(3) The evaluator may request, but not compel, the resident to participate in psychological and physiological testing at the evaluator's discretion in order to reach a forensic opinion.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-035 Refusal to participate in a supplemental pretrial evaluation.** If the person refuses to participate in examinations, forensic interviews, psychological testing or any other interviews necessary to conduct the ~~((initial))~~ supplemental evaluation under WAC 388-880-030(1), the evaluator must notify the SCC forensic services manager. The SCC will notify the prosecuting agency for potential court enforcement.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-036 ~~((Pretrial))~~ Supplemental evaluation—Reporting.** (1) The evaluation must be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and must be prepared by a professionally qualified person.

(2) The report of the evaluation must include:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the person;

(c) A determination of whether the person suffers from a mental abnormality or personality disorder;

(d) An opinion as to whether the person meets the definition of a sexually violent predator to a reasonable degree of psychological or medical certainty.

(3) The department shall file the evaluation with the court that detained or committed the person under chapter 71.09 RCW.

(4) A copy of the evaluation must be served on the prosecuting agency involved in the initial hearing or commitment, the court of record and upon the court-detained or ~~((court-committed))~~ civily-committed person and his or her counsel.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-040 ~~((Individual))~~ Individualized treatment.** (1) When the court detains a person or commits a person to the SCC, SCC staff persons designated by the clinical director shall develop an individual treatment plan (ITP) for the person. The resident shall have an opportunity to participate in the treatment planning process.

(2) The ITP shall be based upon, but not limited to, the following information as may be available:

(a) The person's offense history;

(b) A psycho-social history;

(c) The person's most recent evaluation; and

(d) A statement of high risk factors for potential reoffense, as may be ascertained over time.

(3) The ITP shall include, but not be limited to:

(a) A description of the person's specific treatment needs in:

- (i) Sex offender specific treatment;
- (ii) Substance abuse treatment, as applicable;
- (iii) Supports to promote psychiatric stability, as applicable;

(iv) Supports for medical conditions and disability, as applicable;

(v) Social, family, and life skills.

(b) An outline of intermediate and long-range treatment goals, with cognitive and behavioral ~~((measures))~~ interventions for achieving the goals;

~~((The treatment strategies for achieving the treatment goals;~~

~~((d)))~~ A description of SCC staff persons' responsibilities; and

~~((e)))~~ (d) A general plan and criteria, keyed to the resident's achievement of long-range treatment goals, for recommending to the court whether the person should be released to a less restrictive alternative.

(4) SCC staff persons shall review the person's ITP every six months.

(a) A new treatment plan will be issued every twelve months or more often as needed.

(b) Existing treatment plans will be reviewed at least once every six months by the treatment team, this review shall be documented in a progress note.

(c) The review or reissue of a resident's treatment plan may occur at anytime based on the resident's behavior or treatment status.

(5) A court-detained person's plan may include access to program services and opportunities available to persons who are ~~((court committed))~~ civilly-committed, with the exception that the court-detained person may be restricted in employment and other activities, depending on program resources and incentives reserved for persons who are ~~((court committed))~~ civilly-committed and/or actively involved in treatment.

(6) Nothing in this chapter shall exclude a court-detained person from engaging in the sex offender treatment program and, should the person elect to engage in treatment ~~((prior to))~~ before the person's commitment trial:

(a) The person shall be accorded privileges and access to program services in a like manner as are accorded to a ~~((court committed))~~ civilly-committed person in treatment; and

(b) Shall not, solely by reason of the person's voluntary participation in treatment, be judged nor assumed by staff, administrators or professional persons of the SCC or of the department to meet the definition of a sexually violent predator under chapter 71.09 RCW.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-042 Resident records—Purposes.** (1) The SCC shall maintain two types of records for each person court-detained for evaluation or ~~((court committed))~~ civilly-committed for treatment as a sexually violent predator. Such

records shall be known as the clinical record and the medical record. Such records shall include:

(a) ~~((A))~~ **Clinical records**—a record of mental health related treatment and behavior related matters such as:

(i) Evaluations, records, reports, and other documents obtained from other agencies relating to the person prior to the person's detention and/or commitment to the SCC((;)).

~~((B))~~ (ii) Evaluations, clinical examinations, forensic measures, treatment plans charts, files, reports, responsive documents, grievances and other information made for or prepared by SCC personnel, contracted professionals, or others which relate to the person's care, control, and treatment during the person's detention or commitment to, the SCC.

(iii) Observation reports, memoranda to the resident, progress notes, behavior management reports, violation reports and other correspondence received at SCC or while on a secure community transition facility (SCTF) or other less restrictive alternative (LRA) placement.

(iv) Transitory and nontransitory documents will be retained pursuant to the DSHS approved retention schedule.

~~((2))~~ (b) **Medical records**—a record of medical care received by a resident before placement at SCC and while placed at SCC.

(i) All medical evaluations, records, reports, and other documents obtained from other agencies relating to the person's health status.

(ii) All medical evaluations, records, reports, and other documents created by SCC contracted and state personnel while the resident is placed at SCC.

(iii) Records made by contracted professional persons providing treatment or residential services may be maintained in their professional files, subject to contractual arrangement for SCC ~~((or))~~ and department access to those records.

(iv) The SCC health clinic at the total confinement center on McNeil Island serves as the primary care provider and referring entity for all community based health care and treatment and as such is authorized to receive copies of all medical records pertaining to resident health care paid for by the department.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-880-043 Resident ~~((clinical))~~ records—Location and custody.** (1) ~~((Records pertaining to residents of the SCC shall be kept in a location accessible only to assigned treatment providers and authorized staff persons.~~

(2) During the period of a person's residence at the SCC secure facility or LRA facility)) Based on the resident's physical location of residence, his or her records shall be securely maintained in one of the following four types of locations:

(a) In a designated records storage area within the SCC total confinement facility (TCF);

(b) In a secure filing system at an SCC-operated secure community transition facility (SCTF);

(c) In a secure filing system at a contracted facility such as a group home or nursing home; or

(d) In a secure filing system of the office of a licensed, contracted provider such as a community based sex offender treatment provider or psychiatrist.

(2) The person's current medical and clinical treatment records shall be maintained in the facility wherein the resident is housed and made directly available to medical and emergency providers and authorized staff persons.

~~((b) The person's medical and psychiatric records shall be maintained in the facility wherein the resident is housed and directly available to medical and emergency treatment providers and authorized staff persons.))~~

(3) The designated records storage area within the SCC TCF serves as a centralized repository for resident records regardless of the resident's status or location.

(4) During the period of a person's residence in a ((less restrictive alternative facility)) SCTF operated by the department ((, the person's treatment records shall be maintained in a safe location accessible only by authorized staff)).

(a) A copy of all resident records created at the SCTF will be forwarded to the SCC TCF records center, the original record will remain at the SCTF.

(b) The person's original records pertaining to their treatment, behavior and care while they resided at the SCC TCF will remain in the designated records storage area within the SCC TCF and will not be transferred to the SCTF.

(5) Regardless of location, only assigned treatment providers and authorized staff persons shall have access to resident records.

~~((4))~~ (6) During a period of a ((resident's less restrictive alternative)) person's less restrictive alternative (LRA) placement in a private home or in a facility operated by a contracting agency:

(a) Original behavioral and treatment records and evaluations shall be maintained by the contracted professional ((person)) providing treatment and copies thereof shall be ((made available)) sent to the SCC or the department by contract requirement; and

(b) Copies of documents held by the SCC may be made available as necessary to the contracting agency, the contracted treatment provider, and the assigned community corrections officer.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-044 Resident records—Access.** (1) ~~((Upon request and proper showing, the department shall provide to the following persons access to a court-detained or court-committed person for an evaluation and access to all records and reports related to the person's detention, commitment, control, care, and treatment:~~

- ~~(a) The person's attorney;~~
- ~~(b) The person's professionally qualified person, if any;~~
- ~~(c) The prosecuting attorney, or the attorney general, if requested by the prosecuting attorney;~~
- ~~(d) The professionally qualified person; and~~
- ~~(e) Any entity, person or agency having lawful access to such records.~~

~~(2) Upon documented request by a resident, the SCC shall provide the resident supervised access to all records and~~

~~reports, or to redacted copies thereof, related to the person's commitment, control, care, and treatment. The SCC may reasonably limit conditions, frequency and duration of the person's access to the person's records and reports))~~ **Resident records disclosure requirements and conditions.**

(a) Per RCW 71.09.080, SCC must keep resident records detailing all medical, expert, and professional care and treatment received by an SCC resident, and must keep copies of all reports of periodic examinations made pursuant to the resident's detention and/or civil commitment.

(b) Per RCW 71.09.080(2), access to resident medical and clinical records by persons other than department employees or parties representing the department is limited to the following:

(i) Upon request only to:

(A) The resident;

(B) The resident's attorney;

(C) The resident's legal guardian, guardian ad litem or other personal representative properly authorized, in writing, by the resident;

(D) The prosecuting attorney/attorney general;

(E) The court;

(F) A protection and advocacy agency when authorized by law; or

(G) An expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(ii) Upon documented request by a resident, the SCC shall provide the resident supervised access to all clinical and medical records and reports, or to redacted copies thereof, related to the resident's commitment, control, care and treatment. SCC may reasonably limit conditions, frequency and duration of the resident's access to his or her records and reports.

(A) The resident must review the aforementioned documents in person, at the facility where he or she resides.

(B) The resident may purchase copies of these documents through the SCC public records disclosure process described in WAC 388-880-150.

(iii) All other parties requesting resident records must have the signed authorization of the resident or be the resident's personal representative, or obtain a court order. For these records, SCC will charge copying fees per WAC 388-880-150 and 388-880-151.

**(2) Inventories of resident personal property.**

(a) SCC is required by RCW 71.09.080(3) to make available for inspection, by a "responsible relative" of the resident, a copy of the resident's personal property inventory which has been signed by the staff members who conducted the inventory; unless the resident has specifically imposed a limitation on the release of this information in advance of the request.

(b) SCC will not disclose the contents of the inventory to other persons without authorization of the resident or order of the court.

(c) A copy of the resident's current inventory shall be provided to him or her at no cost whenever a new inventory has been completed.

(3) A policy on access to resident records shall be maintained and published to residents of the SCC.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-045 Resident records—Retention.** (1)

The SCC shall create schedules and requirements, consistent with department policy, for the retention, storage, and disposal of records, documents, evaluations, reports, and other material related to SCC residents, ~~((to include))~~ under the following conditions:

(a) While a person is currently court-detained or ~~((court-committed))~~ civily-committed to the SCC;

(b) Following a court ruling that a person does not meet the definition of a sexually violent predator within chapter 71.09 RCW and upon the person's release from the custody of the department;

(c) Following a resident's unconditional discharge from commitment;

(d) Following a resident's death.

(2) All original records specified herein and held by the SCC shall be retained in the SCC total confinement facility for a period of five years, ~~((and in the records center of the Secretary of State))~~ after which the records will be transferred to a designated location for a period consistent with department administrative policy, after a resident's:

(a) Release following a court ruling that the person does not meet the definition of a sexually violent predator within chapter 71.09 RCW;

(b) Unconditional discharge from commitment; or

(c) Death.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-050 Rights of a person court-detained or ~~((court-committed))~~ civily-committed to the special commitment center.** (1) During a person's period of detention or commitment, the department shall:

(a) Apprise the person of the person's right to an attorney and to retain ~~((a))~~ one professionally qualified person to perform an evaluation on the person's behalf;

(b) Provide access to the person and the person's records in accordance with RCW 71.09.080 and WAC 388-880-044.

(2) A person the court detains for evaluation or commits to the SCC shall:

(a) Receive adequate care and individualized treatment;

(b) Be permitted to wear the person's own clothing except as may be required to wear state issued clothing during an escorted leave from the secure facility, or when the wearing of state issued clothing is required within the facility for health or safety of self or others, or when the wearing of a particular type of clothing or a particular colored clothing or accoutrement is prohibited for the general safety and security within the facility where the person is housed; and to keep and use the person's own possessions, except when deprivation of possessions is necessary for the person's protection ~~((and)),~~ health or safety, the protection ~~((and)),~~ health or safety of others, or to limit the quantity of the person's personal possessions to within facility limitation, or for the protection of property within the SCC or SCTF;

(c) Be permitted to accumulate and spend a reasonable amount of money in the person's SCC resident trust account;

(d) Have access to reasonable personal storage space within SCC limitations, which shall be outlined in an internal policy that is accessible to the person;

(e) Be permitted to have approved visitors within reasonable limitations;

(f) Have reasonable access to a telephone to make and receive confidential calls within SCC limitations; and

(g) Have reasonable access to letter writing material and to:

(i) Receive and send correspondence through the mail within SCC limitations and according to established safeguards against the receipt of contraband material ~~((to include, in the resident's presence, opening and inspecting packages and fanning written material));~~ and

(ii) Send written communication regarding the fact of the person's detention or commitment.

(3) A person the court commits to the SCC shall have the following procedural rights to:

(a) Have reasonable access to an attorney and be informed of the name and address of the person's designated attorney;

(b) Petition the court for release from the SCC; and

(c) Receive annual written notice of the person's right to petition the committing court for release. The department's written notice and waiver shall:

(i) Include the option to voluntarily waive the right to petition the committing court for release; and

(ii) Annually be forwarded to the committing court by the department.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-055 ~~((Recommendation for release to a less restrictive alternative (LRA)))~~ How SCC processes recommendations related to releases, discharges and revocations.** ~~((If the court or jury determines that the person is a sexually violent predator, upon an evaluation which supports a person's unconditional discharge or release to a less restrictive alternative, the secretary or secretary's designee shall authorize the person to petition the court in accordance with RCW 71.09.090))~~ The purpose of WAC 388-880-056 through 388-880-059 is:

(1) To explain how SCC internally considers residents for a release to an LRA;

(2) To explain how SCC internally considers a resident's revocation of LRA status;

(3) To explain how SCC internally considers a recommendation for a resident's unconditional discharge;

(4) To explain how SCC communicates and coordinates resident discharge and conditional release related matters.

NEW SECTION

**WAC 388-880-056 How SCC considers a resident for release to an LRA.** When the department, based on a forensic evaluation or progress in sex offender treatment, considers a SCC resident for a less restrictive alternative placement under RCW 71.09.090(1), or considers a resident currently residing in a secure community transition facility (SCTF) on a conditional release for further transition into a nonSCTF



less restrictive alternative, the clinical director shall schedule the senior clinical team to review the matter and formulate a clinical recommendation to the superintendent.

The meeting will provide an adequate staffing of the case, to include the resident's:

- (1) Participation and progress in sex offender treatment.
- (2) Behavior.
- (3) Latest annual forensic evaluation.
- (4) Relapse prevention plan.
- (5) Any other relevant information such as: medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessments results, etc.

(6) When the resident is being considered for a LRA placement in a nonstate sponsored setting such as a private home or apartment option, the team shall also consider the resident's finances such as savings, benefits, eligibility for social services, housing options, employment or employability, absence or availability of community supports, family supports, etc.

#### NEW SECTION

**WAC 388-880-057 How SCC considers a resident's revocation of LRA status.** (1) When a resident on a conditional release in any less restrictive alternative setting is alleged to have committed a violation of his or her court-ordered conditions and is pending a hearing on revocation or modification, the superintendent may direct a senior clinical team to review the matter and make a clinical recommendation.

(a) In developing its clinical recommendation, the senior clinical team will review:

- (i) The resident's transition activity;
- (ii) The factors surrounding the situations/behavior(s) causing the revocation review;
- (iii) The ability of SCC and DOC to adequately assure for the public's safety and the resident's compliance with less restrictive alternative conditions if the resident remains in the community or is allowed community access;
- (iv) The ability of SCC and department of corrections (DOC) to adequately manage the resident in the community given existing resources; and
- (v) Any other relevant information (e.g., medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessment results, etc.).

(b) The senior clinical team will provide the superintendent with a clinical recommendation regarding the revocation and any modification to the conditions if so recommended.

(2) The superintendent or designee will notify the prosecuting attorney, the resident's community corrections officer (CCO), sex offender treatment provider (SOTP) and local law enforcement of SCC's position pertaining to the revocation or continuation of the resident's less restrictive alternative status.

(3) When a resident is residing in the SCC total confinement facility while he or she is pending a revocation decision on their LRA status:

(a) An SCC associate superintendent will be responsible to determine the resident's living unit placement, behavior level assignment, persons who may be on the resident's personal visiting list, recreation activities and privileges, and personal property privileges.

(b) The resident's community transition team, in consultation with the SCC clinical department, shall determine the resident's treatment activities.

#### NEW SECTION

**WAC 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge.** (1) When the department, based on forensic evaluation that opines that a resident no longer meets the definition of a sexually violent predator, or based on progress in sex offender treatment and a successful transition process into the community, considers a resident for unconditional discharge, the clinical director shall convene a meeting of the senior clinical team within thirty days and provide a clinical recommendation to the superintendent.

(a) In formulating the clinical recommendation, the senior clinical team shall review any and all relevant information about this person, such as: behavior, medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessment results, etc.

(b) The senior clinical team will provide the superintendent with a written statement identifying the clinical concerns of the team, if any.

(2) The superintendent or designee, after review of the forensic opinion and the clinical recommendation, will make a determination regarding the recommendation for the resident's unconditional discharge and will notify the relevant parties of the SCC position on the resident's unconditional discharge.

#### NEW SECTION

**WAC 388-880-059 Communicating and coordinating resident discharge and conditional release related matters.** (1) **Communication with the department.**

(a) The SCC clinical director, or designee serves as the principal party at SCC responsible to communicate discharge and release matters internally within SCC.

(b) When a resident's request for advancement to community transition status is approved by the superintendent, the superintendent shall inform the DSHS secretary.

(c) If the SCC superintendent endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the superintendent (as the secretary's designee) shall formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.

(d) Once the superintendent has made a decision to support a resident's request to petition the court, the superintendent

dent shall notify the clinical director of that decision. At that point the clinical director or designee shall serve as the principal party at SCC to communicate discharge and release matters to the resident, to external stakeholders, and to organize the necessary activities in support of that discharge or conditional release.

**(2) Responsibility to communicate court related activities.**

(a) The resident's attorney is responsible to coordinate the court hearing.

(b) When the court orders a resident to be conditionally released to a less restrictive alternative, the SCC clinical director or designee shall:

(i) Manage the release process, including community notification to the appropriate law enforcement agency at least thirty days prior to the resident's release to the court-approved LRA.

(ii) Keep internal SCC stakeholders apprised of the status of the case.

(iii) Coordinate the transition with the:

(A) DOC end of sentence review committee program manager;

(B) Assigned DOC community corrections officer, if applicable;

(C) Court-approved sex offender treatment provider, if applicable;

(D) Appropriate SCTF manager, if applicable; and

(E) Other court-approved providers or persons for the resident's court-approved living setting.

(iv) The coordination will address civil commitment issues, community safety and the court-ordered conditions of release.

**(3) When the secretary objects to a pending release.**

When the DSHS secretary objects to a pending release under RCW 71.09.090, before the scheduled less restrictive alternative court hearing or following the hearing such as in the case of newly discovered information, that objection shall be presented to the court in writing and shall be signed by the secretary or designee.

**(4) When a less restrictive alternative placement is approved by the court.**

When a resident of SCC is approved to transfer to a less restrictive alternative placement or a resident of a secure community transition facility is approved to transfer to an alternative less restrictive alternative placement, that placement will occur no sooner than thirty days following the day the court approves that placement. This thirty day period will allow SCC to fulfill its law enforcement notification obligations under RCW 9A.44.130 and the affected county sheriff to fulfill their public notification obligations under RCW 4.24.550.

**(5) When a resident is unconditionally released by the court.**

When a resident of the SCC total confinement facility or a secure community transition facility is determined by the court to no longer meet the criteria of a sexually violent predator under chapter 71.09 RCW, and the court orders that the resident shall be unconditionally released, SCC shall release the person within twenty-four hours of the court's decision.

**(6) When a resident or attorney proposes an alternative less restrictive alternative placement.**

(a) When a resident or attorney proposes an alternative less restrictive alternative placement other than what SCC recommends or supports, the resident or the attorney shall bear the responsibility to locate and identify that alternative.

(b) The department shall not reimburse attorneys or other parties for assisting residents in finding an alternative less restrictive alternative placement unless otherwise ordered by the commitment court for good cause.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

**WAC 388-880-060 Sexual predator program reimbursement.** (1) The department shall obtain reimbursement under RCW 43.20B.330, 43.20B.335, 43.20B.340, 43.20B.-345, 43.20B.350, 43.20B.355, 43.20B.360, and 43.20B.370 for the cost of care of a person court-committed to a SPP to the extent of the person's ability to pay.

(2) The department shall calculate ability to pay and assess liability under ~~((chapter 275-16))~~ WAC 388-855-0045 in order to permit the department to initiate cost of care collections.

(3) SCC shall fulfill its obligations under chapter 43.20 RCW by submitting relevant resident information on each resident who has been civilly committed under chapter 71.09 RCW to the DSHS office of financial recovery to determine the resident's ability to contribute to his or her cost of care.

(4) DSHS shall not reimburse attorneys for assisting residents in administrative hearings related to cost of care recovery actions by the department.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-070 Resident escorted leave—Purpose.** The purpose of WAC ~~((275-155-070))~~ 388-880-070 through ~~((275-155-140))~~ 388-880-140 is:

(1) To set forth the conditions under which residents will be granted leaves of absence;

(2) To provide for safeguards to prevent escape, the obtaining of contraband, and the commission of new crimes, while on leaves of absence; and

(3) To outline the process for the reimbursement of the state by the resident and the resident's family for the costs of the leave of absence.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-080 Reasons why escorted leave is allowed.** An escorted leave of absence may be granted by the superintendent, or designee, subject to the approval of the secretary, to residents to:

(1) Go to the bedside of a member of the resident's immediate family as defined in WAC ~~((275-155-010))~~ 388-855-0015, who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family as defined in WAC ((275-155-040)) 388-855-0015; and

(3) Receive necessary medical or dental care which is not available in the institution.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-090 Conditions of a resident's escorted leave.** (1) An escorted leave shall be authorized only for trips within the boundaries of the state of Washington.

(2) The duration of an escorted leave to the bedside of a seriously ill member of the resident's immediate family or attendance at a funeral shall not exceed forty-eight hours unless otherwise approved by the superintendent, or designee.

(3) Other than when housed in a city or county jail or state institution the resident shall be in the visual or auditory contact of an approved escort at all times.

(4) The resident shall be housed in a city or county jail or state institution at all times when not in transit or actually engaged in the activity for which the escorted leave was granted.

(5) Unless indigent, the resident and immediate family member shall, in writing, make arrangements to reimburse the state for the cost of the leave prior to the date of the leave.

(6) The superintendent, or designee, shall notify county and city law enforcement agencies with jurisdiction in the area of the resident's destination before allowing any escorted leave of absence.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-100 Application requests and approval for resident escorted leave.** The superintendent, or designee, shall establish a policy and procedures governing the method of handling the requests by individual residents. The superintendent, or designee, shall evaluate each leave request and, in writing, approve or deny the request within forty-eight hours of receiving the request based on:

(1) The nature and length of the escorted leave;

(2) The community risk associated with granting the request based on the resident's history of security or escape risk;

(3) The resident's overall history of stability, cooperative or disruptive behavior, and violence or other acting out behavior;

(4) The resident's degree of trustworthiness as demonstrated by his/her performance in unit assignments, security level, and general cooperativeness with facility staff;

(5) The resident's family's level of involvement and commitment to the escorted leave planning process;

(6) The rehabilitative or treatment benefits which could be gained by the resident; and

(7) Any other information as may be deemed relevant.

The resident's, and family's, ability to reimburse the state for the cost of the escorted leave shall not be a determining factor in approving or denying a request.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-880-110 ((Escort procedures)) Procedures for resident escorted leave.** (1) Only persons approved by the superintendent, or designee, will be authorized to serve as escorts. All escorts from the total confinement facility must be employees of either the department of social and health services or the department of corrections and must have attained permanent employee status. At least one of the escorts must be experienced in the escort procedures.

(2) The superintendent, or designee, shall determine the use and type of restraints necessary for each escorted leave on an individual basis.

(3) Escorted leaves supervised by department of corrections staff shall require the approval of the SCC superintendent, or designee, and be done in accordance with applicable department of corrections policy and procedures. The department of corrections shall be reimbursed, according to rates and procedures established between the department of social and health services and the department of corrections. Correctional officers may wear civilian clothing when escorting a resident for a bedside visit or a funeral.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-120 Expenses associated with escorted leave.** (1) Staff assigned escort duties shall be authorized per diem reimbursement for meals, lodging, and transportation at the rate established by the state travel policy.

(2) Staff assigned escort duties, in a travel status, shall receive appropriate compensation at regular salary or overtime for all hours spent in actual escort of the resident, but not including hours spent sleeping or not engaged in direct supervision of the resident. The salary shall be paid at the appropriate straight time and overtime rates as provided in the ((merit system)) civil service rules.

((3) Cost of housing the resident in a city or county jail shall be charged to the resident in accordance with WAC 275-155-130.))

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-130 Escorted leave expenses—Paid by resident.** (1) The expenses of the escorted leave as enumerated in WAC ((275-155-120)) 388-880-070 through 120 shall be reimbursed by the resident or his/her immediate family member unless the superintendent, or designee, has authorized payment at state expense in accordance with WAC ((275-155-140)) 388-880-140.

(2) Payments by the resident, or the resident's immediate family member, shall be made to the facility's business office and applied to the appropriate fund as defined by law, applicable provisions of the Washington Administrative Code, or department policy.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**AMENDATORY SECTION** (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

**WAC 388-880-140 Escorted leave expenses—Paid by department.** The expenses of the escorted leave shall be absorbed by the state if:

(1) The resident and his/her immediate family are indigent as defined in WAC ((275-155-010)) 388-855-0045; or

(2) The expenses were incurred to secure necessary medical or dental care.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**NEW SECTION**

**WAC 388-880-150 Requests for public disclosure.** (1) Public disclosure requests for SCC records.

SCC records may be requested under the public records act providing that the request complies with requirements and limitations of chapter 42.56 RCW and the fulfillment of that request will not violate any of the disclosure exemptions and limitations found in state or federal law.

(a) A public records disclosure request should include:

(i) Requester's name;

(ii) Requester's address;

(iii) A clear statement on the first page of the request indicating that the request is asking for public records; and

(iv) Identification and specification of the records(s) wanted.

(b) The address and fax number for requesting SCC records under public disclosure is:

DSHS - Special Commitment Center  
Attn: Public Disclosure Coordinator  
PO Box 88450  
Steilacoom, Washington 98388-0646

Or the request can be faxed to (253) 617-6318.

(2) **Public viewing of SCC records.**

Requesters may review requested SCC records instead of, or before purchasing, by:

(a) Requesting a viewing appointment through SCC public disclosure staff after receiving notice that the records are assembled.

(b) Attending the scheduled viewing appointment at the SCC administrative offices located at 1715 Lafayette Street in Steilacoom, Washington.

(c) Viewing hours are between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on legal holidays.

(d) The requester may purchase copies of public records before or at the time of public viewing.

(e) The requester may designate another person to review the requested records at a viewing appointment as arranged through SCC public disclosure staff.

(f) If the requester or such other person as he designates does not appear to view an installment of records, the SCC no longer needs to complete processing of the request and the request is considered abandoned and complete.

(3) **Cost for making public disclosure copies of SCC records.**

Under the public disclosure act, SCC charges a fee for making copies associated with a public disclosure request.

(a) **Paper copy cost.** The cost charged by SCC for copies of records under public records disclosure is fifteen cents per single-sided page or thirty cents for double-sided pages in the native format, plus the actual cost of the mailing container and postage.

(b) **Electronic copy cost.** PDF or TIFF type copies of SCC records may be provided when appropriate at the cost of fifty dollars per hour or thirteen cents per page, in the native format, plus cost of media, mailing container and postage. When charged an hourly rate, it shall be prorated based on the actual time used to scan the documents and transfer them to electronic media. Due to privacy and security concerns when exemptions apply to any part of the information provided, copies of electronic records must normally be provided in PDF or similar format.

(c) **Other records.** SCC charges fifty dollars per hour, prorated based on the actual time used, to make copies of videotapes and compact disks such as CDR and DVD formatted items, plus the cost of media, mailing container and postage.

(d) No party will be reimbursed for public record request costs made under chapter 388-885 WAC.

**NEW SECTION**

**WAC 388-880-151 Requests for resident medical information.** (1) Requests for SCC resident medical information.

SCC medical records may be requested under chapter 70.02 RCW "health care records access and disclosure" by authorized third parties and will be charged at the rate provided below.

Note - requests for copies of medical records submitted by SCC residents on themselves, as covered under RCW 71.09.080, will be provided at the public disclosure rates provided in WAC 388-880-150.

(a) A health care records disclosure request from an authorized third party shall include:

(i) Requester's name;

(ii) Requester's address;

(iii) A copy of the written and signed authorization from the resident on a DSHS Form 17-063 (Authorization to Disclose Records);

(iv) A clear statement on the first page of the request indicating that the requester is asking for a specific resident's medical information; and

(v) Identification and specification of the medical records(s) wanted.

(b) Requests for resident medical records under chapter 70.02 RCW shall be made to the following address or fax number:

DSHS - Special Commitment Center  
Attn: Public Disclosure Coordinator

PO Box 88450  
Steilacoom, Washington 98388-0646

Or the request can be faxed to (253) 617-6318.

**(2) Cost for making copies of resident medical information.**

Under RCW 70.02.010(15) SCC charges a fee for making copies associated with a medical information request.

(a) Cost - regardless of format:

(i) No more than one dollar and two cents per page for the first thirty pages.

(ii) No more than seventy-eight cents per page for all additional pages.

(iii) A twenty-three dollar clerical fee may be charged for searching and handling records.

(iv) Cost of mailing container and postage.

**WSR 10-08-019**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed March 30, 2010, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-031.

Title of Rule and Other Identifying Information: WAC 308-56A-090, 308-93-087, 308-93-088 and 308-93-089, removing the requirement of having public disclosure requests notarized [notarized].

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: May 11, 2010.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., 98507-2957, e-mail [DBROWN@DOL.WA.GOV](mailto:DBROWN@DOL.WA.GOV), fax (360) 902-0140, by May 10, 2010.

Assistance for Persons with Disabilities: Contact Dale R. Brown by May 10, 2010, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Removes the requirement of have [having] public disclosure requests notarized [notarized].

Reasons Supporting Proposal: Enhanced customer service.

Statutory Authority for Adoption: RCW 46.01.110.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting: Walt Fahrer, 8005 "A" River Drive S.E., Tumwater, WA, (360) 359-4015; Implementation and Enforcement: Hannah Fultz, 8005 "A" River Drive S.E., Tumwater, WA, (360) 359-4013.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not affect small business.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies that must comply with this statute.

March 30, 2010

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-15-059, filed 7/12/06, effective 8/12/06)

**WAC 308-56A-090 Disclosure of individual vehicle owner information. (1) What vehicle record owner information is protected from disclosure?** Vehicle information protected from disclosure is the same as under chapters 42.56 and 46.12 RCW (~~which includes:~~

~~(a) Name and address information;~~

~~(b) Social Security numbers;~~

~~(c) Medical or disability information; and~~

~~(d) Telephone numbers)), and 18 U.S.C. 2721.~~

**(2) Who may receive disclosure of individual vehicle owner names and addresses?**

(a) Government agencies (~~that require use of name and address information in their normal course of business~~);

(b) (~~Any business entity~~) Businesses that require (~~use of name and address~~) the information in their normal course of conducting business (~~in accordance with these rules~~);

(c) Vehicle manufacturers (~~who~~) that require vehicle ownership information for recall of their product;

(d) Individuals (~~that~~) who provide proof of personal identification:

(i) For vehicles currently registered in their name; or

(ii) For vehicles for which they can provide a bill of sale or acceptable documents indicating (~~that~~) they purchased the vehicle.

(e) Please see subsection (3) of this section for additional restrictions.

Business and government (~~entities~~) agencies requesting disclosure of individual vehicle owner names and addresses must enter into a disclosure agreement with the department.

**(3) When both a mailing and residence address are recorded on the vehicle record, which address will be disclosed?** (~~Where~~) When both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government (~~entities~~) agencies with enforcement, investigative, or taxing authority and only for use in the normal course of conducting (~~their~~) business.

**(4) What documentation does the department require to disclose vehicle owner name(s) and address(es)?** The department requires:

(a) A signed (~~and notarized~~) vehicle/vessel record disclosure request (~~application~~) form provided by the department and completed by the (~~applicant~~) requestor indicating the specific purpose for which the information will be used; and

(b) A disclosure agreement with the department as required by RCW 46.12.380.

- (c) Acceptable business ((entity)) verification; or
- (d) A contract with the department.

(5) **What is acceptable business verification?** For purposes of this section, acceptable business verification includes:

- (a) If the requester is a licensed Washington business, a copy of its current master business license;
- (b) If the requester is a business that is not required to be licensed in this state, its federal employer identification number/federal tax number (or Uniform Business Identifier) on official letterhead with a ((notarized)) signature of the owner or an authorized representative;
- (c) If an attorney, a copy of the current bar card; or
- (d) If a private investigator, a copy of the current private investigator's license.

(6) **Does a business need to supply a new form and copy of the business license each time vehicle information is requested?** Yes, each time a request is made for vehicle information a new form and copy of the business license is needed, unless ((a)) an unexpired contract exists between the business and the department.

(7) ~~((If a business entity has entered into a contract or agreement with the department, is a separate request for each inquiry required?))~~ No. If a business entity has entered into a signed contract between the business and the department, a separate request for each inquiry is not required.

(8)) **Are businesses allowed individual owner information on vehicle records?** Yes, if a business requires individual owner information to conduct its ((regular)) normal business and qualifies under RCW 46.12.380 and 18 U.S.C. ((27.21)) 2721 (commonly known as Driver Privacy Protection Act), it may receive individual vehicle owner information.

((9)) **(8) Who may release the vehicle owner name and address information?**

- (a) The public disclosure unit of the driver and vehicle services division of the department of licensing; or
- (b) Agents and subagents, but only when disclosing information for purposes described in subsection (2)(d) of this section.

((10)) **(9) When may the department disclose the individual name(s) and address(es) of vehicle owners?** Notwithstanding the provisions of chapters 42.56 and 46.12 RCW, and 18 U.S.C. 2721 the department may disclose names and addresses of vehicle owners when:

- (a) The requesting party is a business ((entity)) that requests the information for use in their normal course of business;
- (b) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the ((party)) parties:  
 ((i)) Agree((s)) they will use the information only for the purpose stated in the request for the information((=and

((ii)) ~~Will not use, or facilitate the use of the information for the purpose of making any unsolicited business contact with a person named in the disclosed information.~~

~~((11)) **What does the term "unsolicited business contact" mean?** The term "unsolicited business contact" means a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction).~~

~~((12))~~ **(10) Is the department required to notify the vehicle owner when ownership information is disclosed?** When the department grants a request from an attorney or private investigator for information under this section, the department will provide notice to the vehicle owner that the request has been granted. The notice will provide the name and address of the requesting party. Additionally, if a contract holder releases owner information to a private investigator or attorney, they must notify the vehicle owner that a request has been granted, and include the name and address of the requesting party and provide a copy to the department's public disclosure unit.

~~((13)) **How long will the department retain the request for disclosure of vehicle owner information?** The department will retain the request for disclosure for three years.~~

((14)) **(11) Who is responsible for assuring that the information is used appropriately?** Any person, business, ((entity)) agency or association that receives vehicle owner information under this section is responsible for assuring, under penalty of perjury under the laws of the state of Washington, that the information received is not used for a purpose contrary to the agreement between the person, business, ((entity)) agency or association and the department.

AMENDATORY SECTION (Amending WSR 01-16-105, filed 7/30/01, effective 8/30/01)

**WAC 308-93-087 Disclosure of names and addresses of individual vessel owners. (1) What vessel record information is protected from disclosure?**

Vessel information protected from disclosure is the same as under chapters ((42.17)) 42.56 and 46.12 RCW ((which includes:

- (a) ~~Name and address information;~~
- (b) ~~Social Security numbers;~~
- (c) ~~Uniform Business Identifier; and~~
- (d) ~~Telephone numbers).~~

**(2) Who may receive disclosure of individual vessel owner names and addresses?**

- (a) Government agencies;
- (b) Any business entity that uses the name and address information in their normal course of business in accordance with these rules;
- (c) Vessel manufacturers ((who)) that require vessel ownership information for recall of their own products;
- (d) A vessel owner for their own vessel; or
- (e) Individuals who meet the criteria listed in subsection (6) of this section.

**(3) What documentation does the department require to disclose vessel owner names and addresses?**

The department requires:

(a) A ~~((record))~~ disclosure request form provided by the department and completed by the applicant; and

(b) Acceptable business ~~((entity))~~ verification.

**(4) What is acceptable business verification?**

For purposes of this section acceptable business verification includes:

(a) If a licensed Washington business, a copy of its current unexpired master business license;

(b) If a business is not required to be licensed in this state, its federal employer identification number/federal tax number (or Uniform Business Identifier) on its official letterhead with a ~~((notarized))~~ signature of the owner or an authorized representative;

(c) If an attorney, a copy of the current bar card; or

(d) If a private investigator, a copy of the current private investigator's license; or

(e) If an out-of-state business not licensed in Washington:

(i) If the business is required to be licensed, a copy of its current business license issued by the governmental authority with jurisdiction over the license; or

(ii) If the business is not required to be licensed, its federal employer identification number/federal tax number on its official letterhead with a ~~((notarized))~~ signature of the owner or an authorized representative.

**(5) If a business ~~((entity))~~ has entered into an agreement with the department, is a separate request for each inquiry required?**

No. If a business ~~((entity))~~ has entered into a written agreement with the department, a separate request for each inquiry is not required.

**(6) When may an individual be provided vessel owner name and address information?**

(a) When the owner of record is requesting the information; or

(b) When the requester presents a bill of sale or other evidence of ownership and needs the ownership information ~~((of record))~~ to obtain a release of interest.

**(7) Who may release the vessel owner name and address information?**

(a) The department of licensing; or

(b) Agents and subagents, only when disclosing information for purposes described in subsection (6)(b) of this section.

**(8) When may the department disclose the names and addresses of vessel owners?**

Notwithstanding the provisions of chapter ~~((42.17))~~ 42.56 RCW, the department may disclose the names and addresses of vessel owners when:

(a) The requesting party is a business ~~((entity))~~ that requests the information for use in their normal course of business;

(b) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party ~~((and/))~~ or their business, and specifies the purpose for which the information will be used;

(c) The requesting party enters into a disclosure agreement with the department in which the ~~((party))~~ parties:

(i) Agree~~((s))~~ they will use the information only for the purpose stated in the request for the information; and

~~((ii))~~ ~~((Will not use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information; and~~

~~((d))~~ Individuals ~~((who))~~ meet the criteria listed in subsection (6) of this section.

**~~((9))~~ ~~((What does the term "unsolicited business contact" mean?)~~**

~~The term "unsolicited business contact" means a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.~~

**~~((10))~~ Is the department required to notify the vessel owner when ownership information is disclosed?**

When the department grants a request from an attorney or private investigator, for information under this section, the department will provide notice to the vessel owner that the request has been granted. In addition, the notice will contain the name and address of the requesting party.

**~~((11))~~ How long will the department retain the request for disclosure of vessel owner information?**

~~The department will retain the request for disclosure for three years.~~

~~((12))~~ Additionally, if contract holders release owner information to a private investigator or attorney, they must notify the vessel owner that a request has been granted and include the name and address of the requesting party and send a copy to the department public disclosure unit.

**(10) Who is responsible for assuring that the information is used appropriately?**

Any person, business, ~~((entity))~~ agency or association that receives vessel owner information under this section is responsible for assuring under penalty of perjury under the laws of the state of Washington that the information received is not used for a purpose contrary to the agreement between the person, business, ~~((entity))~~ agency or association and the department.

AMENDATORY SECTION (Amending WSR 01-16-105, filed 7/30/01, effective 8/30/01)

**WAC 308-93-088 Disclosure violations, penalties. (1) What are violations of chapters ~~((42.17))~~ 42.56 and 46.12 RCW, this chapter, or a disclosure agreement with the department?**

(a) The unauthorized disclosure of information from a department vessel record;

(b) The use of a false representation to obtain information from the department's vessel records;

(c) The use of information obtained from the department vessel records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vessel owner name or address to another person not disclosed in the request or disclosure agreement.

**(2) What are the penalties associated with these violations?**

The department may suspend or revoke for up to five years the privilege of obtaining vessel record information.

~~((In addition:~~

~~(a) The unauthorized disclosure of information from a department vessel record; or~~

~~(b) The use of a false representation to obtain information from the department's vessel records; or~~

~~(c) The use of information obtained from the department vessel records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or~~

~~(d) The sale or other distribution of any vessel owner name or address to another person not disclosed in the request or disclosure agreement is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail not to exceed one year, or both such fine and imprisonment for each violation.))~~

AMENDATORY SECTION (Amending WSR 06-15-059, filed 7/12/06, effective 8/12/06)

**WAC 308-93-089 Lists of registered and legal owners of vessels—Furnished for certain purposes—Penalty for unauthorized use. (1) What vessel record information is protected?**

Vessel information protected from disclosure is the same as under chapters 42.56 and 46.12 RCW and Executive Order 00-03 for vehicles(~~includes:~~

~~(a) Name and address information;~~

~~(b) Social Security numbers;~~

~~(c) Medical or disability information;~~

~~(d) Telephone numbers; and~~

~~(e) Bank account information)).~~

**(2) Who may receive a list ((disclosure)) of individual vessel owner names and addresses?**

In addition to any other authority that it may have, the department of licensing may furnish lists of registered and legal owners of vessels only for the purposes specified in this section to:

(a) The ~~((manufactures))~~ manufacturers of vessels, or their authorized agents, to be used to enable those ~~((manufactures))~~ manufacturers to carry out the provisions of the Federal Boat Safety Act of 1971 (85 Stat. 213; 46 U.S.C. 1451 et seq.) and the Code of Federal Regulations adopted by the United States Coast Guard;

(b) Any governmental agency of the United States or Canada, or political subdivisions, to be used by them or their authorized commercial agents or contractors only in connection with the enforcement of the laws governing the operation of a vessel or vessel safety programs administered by that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(c) A person, organization or entity for the purposes of compiling statistical data relating to vessel demographics in

this state. The department may provide only a specific part of the list that is required for completion of the work required of the person, organization or entity;

(d) An authorized agent or contractor of the department to be used only in connection with providing vessel excise tax, licensing and registration information to vessel dealers; or

(e) Any business regularly making loans to other persons to finance the purchase of vessels, to be used to assist the person requesting the list to determine ownership of a specific vessel for the purpose of determining whether or not to provide such financing.

**(3) What documentation is needed to receive lists of vessel owner names and addresses?**

Each entity must submit the following to the department:

(a) A record disclosure request form provided by the department and completed by the applicant; and

(b) Verification of the applicant's identity as a business; and

(c) A formal agreement between the requester and the department.

**(4) What is acceptable verification?**

For purposes of this section acceptable business verification includes:

(a) If a licensed Washington business, a copy of its current unexpired master business license;

(b) If a business not required to be licensed in this state, its federal identification number/federal tax number (or Uniform Business Identifier) on its official letterhead with a ~~((notarized))~~ signature of the owner or an authorized representative;

(c) If an attorney, a copy of the current bar card;

(d) If a private investigator, a copy of the current private investigator's license; or

(e) If an out-of-state business not licensed in Washington:

(i) If the business is required to be licensed, a copy of its current business license issued by the governmental authority with jurisdiction over the license; or

(ii) If the business is not required to be licensed, its federal employer identification number/federal tax number on its official letterhead with a ~~((notarized))~~ signature of the owner or an authorized representative.

**(5) If a business ((entity)) or governmental agency has entered into an agreement with the department, is a separate request for each inquiry required?**

No. If a business or governmental agency has entered into an agreement with the department, a separate request for each inquiry is not required if the information will be used as originally stated.

**(6) Who may release a list of vessel owner name and address information?**

The department of licensing, driver and vehicle services division's public disclosure/records~~((contracts))~~ section, is authorized to release lists of names and addresses to qualified applicants.



**(7) When may the department disclose lists of names and addresses of vessel owners?**

Notwithstanding the provisions of chapter 42.56 RCW, the department may disclose the names and addresses of vessel owners when:

(a) The requesting party is a business (~~(entity)~~) that requests the information for use in their normal course of business;

(b) The request is in writing, signed by the person requesting disclosure, (~~(contains)~~) containing the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party:

(i) Agrees they will use the information only for the purpose stated in the request for the information; and

(ii) Will not use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information.

**(8) What does the term "unsolicited business contact" mean?**

The term "unsolicited business contact" means a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information or to use the information for the purposes of facilitating a profit expecting business activity. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

**(9) Is the department required to notify the vessel owner when ownership information is disclosed?**

No, except when the information is granted to an attorney or private investigator. The department will then provide the owner of the vessel with notification; the notice will also contain the name and address of the requesting party.

**(10) ~~(How long will the department retain the request for lists of names and address disclosure?)~~**

~~The department will retain the requests for three years unless a contract for ongoing receipt of information is entered into.)~~ Additionally, if contract holders release owner information to a private investigator or attorney, they must notify the vessel owner that a request has been granted, and include the name and address of the requesting party, and send a copy to the department's public disclosure unit.

**(11) Who is responsible for assuring that the information is used appropriately?**

Any person, business, (~~(entity)~~) agency or association that receives vessel owner information under this section shall be responsible, under penalty of perjury under the laws of the state of Washington, for assuring that the information received is not used for a purpose contrary to the agreement between the person, business, (~~(entity)~~) agency or association and the department or state and federal laws and regulations.

**WSR 10-08-024**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed March 30, 2010, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-039.

Title of Rule and Other Identifying Information: WAC 392-127-085 and 392-127-090, Finance—Certificated instructional staff ratio (46:1000) compliance—School district reporting—Optional report—Staff changes and enrollment changes.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on May 11, 2010, at 10:30 a.m.

Date of Intended Adoption: May 11, 2010.

Submit Written Comments to: Legal Services, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by April 25, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions will provide greater consistency in the optional reporting of staff changes and enrollment changes, for purposes of calculating the state-required certificated instructional staff ratio (46:1000) compliance.

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

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 29, 2010

Randy Dorn  
 State Superintendent

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

**WAC 392-127-085 School district reporting—Optional report—Staff changes.** At any time prior to ~~((September 30 following the end of a school year))~~ completion of audit of data by the state auditor, school districts may report to the superintendent of public instruction supplemental full-

time equivalent staff for the school year pursuant to WAC 392-127-065 and instructions provided by the superintendent.

AMENDATORY SECTION (Amending Order 96-03, filed 2/13/96, effective 3/15/96)

**WAC 392-127-090 School district reporting—Optional report—Enrollment changes.** A school district may request that the superintendent of public instruction use a different full-time equivalent enrollment to compute staffing ratios than that reported for October. The school district shall request the use of a different enrollment period prior to ~~((September 30 of the following school year))~~ completion of audit of data by the state auditor. The school district may select ~~((either one of the following))~~:

(1) ~~Through the 2009-10 school year, the full-time equivalent enrollment for any one month during the current school year~~ ~~((=or))~~.

(2) ~~((The annual average full-time equivalent enrollment for the current school year.))~~ For the 2010-11 school year and thereafter, the full-time equivalent enrollment for any one month during the current school year when all basic education instructional programs are operating.

**WSR 10-08-031**  
**PROPOSED RULES**  
**GRAY'S HARBOR COLLEGE**

[Filed March 31, 2010, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-091.

Title of Rule and Other Identifying Information: Student rights and responsibilities document.

Hearing Location(s): Grays Harbor College President's Board Room, on May 25, 2010, at 2:00 p.m.

Date of Intended Adoption: July 1, 2010.

Submit Written Comments to: Arlene Torgerson, Vice-President for Student Services, Grays Harbor College, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, e-mail atorgers@ghc.edu, fax (360) 538-4293, by May 30, 2010.

Assistance for Persons with Disabilities: Contact Arlene Torgerson by May 15, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes will be revised to be in compliance with changed academic regulations and changes in student and societal changes. It will provide clearer guidance to students concerning their rights and responsibilities.

Reasons Supporting Proposal: The student code of conduct needs to be updated for enforcement purposes.

Statutory Authority for Adoption: RCW 28B.50.140.13 [28B.50.140(13)].

Statute Being Implemented: RCW 28B.50.140.13 [28B.50.140(13)].

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Arlene Torgerson, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Arlene Torgerson, Grays Harbor College, student services, (360) 538-4066.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These are amendments to existing student conduct rules that will have no economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. No [not] relevant to this WAC or these provisions.

March 23, 2010  
Arlene Torgerson  
Vice-President for  
Student Services

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-010 Definitions.** As used in this document the following words and phrases shall mean:

(1) "Board" shall mean the board of trustees of Community College District No. 2, state of Washington.

(2) "College" shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

(3) ~~((("Liquor" shall mean the definition of liquor as contained within RCW 66.04.010 as now law or hereafter amended.~~

(4) ~~((("Controlled substances" shall mean the definition of controlled substances as defined in RCW 69.50.101 as now law or hereafter amended.~~

~~((5)))~~ (5) "College facilities" shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated web sites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

~~((6)))~~ (4) "President" shall mean the chief executive officer of the college appointed by the board of trustees.

~~((7)))~~ (5) "Vice-president" shall mean the vice-president for student services or in his/her absence, the vice-president for instruction.

~~((8)))~~ (6) "Faculty" shall mean any person employed on a full or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty of other colleges (whether or not employed by GHC) that provide instruction to GHC students through distance education.

~~((9)))~~ (7) "Student" shall mean and include any person who is enrolled in courses through the college or is in the process of applying for admission to the college.

~~((10)))~~ (8) "Employee" shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

~~((11)))~~ (9) "College community" shall mean all employees and students of the college.

~~((12)))~~ (10) "College official" shall mean any person employed by the college performing assigned duties.

~~((11))~~ (11) "Disciplinary action" shall mean any of the sanctions listed in WAC 132B-120-130.

~~((13))~~ (12) "Sexual harassment" shall mean unwelcome verbal or physical conduct of a sexual nature, unwelcome or unsolicited sexual advances or requests for sexual favors when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic standing or employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment.

Examples of behaviors that may constitute harassment include but are not limited to: Repeated, offensive and unwelcome insults and/or jokes; pressure for dates or sex, if unwelcome or repeated; repeated, unwelcome comments about an individual's body or clothing; persistent, unwelcome flirtation, advances and/or propositions of a sexual nature; deliberate and unwelcome touching, such as patting, hugging, pinching or repeated brushing against a person's body.

~~((14))~~ (13) "Hazing" shall mean any method of initiation into a student organization or association or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary institution. Hazing does not include customary athletic events or other similar contests or competitions.

~~((15))~~ (14) "Trespass" shall be defined in accordance with chapter 9A.52 RCW.

~~((16))~~ (15) "Assembly" shall mean any activity engaged in by two or more persons the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

~~((17))~~ (16) "RCW" shall mean the Revised Code of Washington.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-030 Jurisdiction.** All rules herein adopted concerning student conduct and discipline shall apply to every student whenever said student is engaged in or present at any college-related activity whether occurring on or off of college facilities. The college may carry out disciplinary proceedings prior to, simultaneous with, or following civil or criminal proceedings in a court. The college cooperates with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators provided the conditions do not conflict with college rules or sanctions. The college is not a policing agent for students when they are not in college facilities but does reserve

the right to take action if a student's behavior is determined to threaten the health, safety, and/or property of the college and the college community. The college has the sole discretion to determine what conduct occurring off campus adversely impacts the college and/or the pursuit of its objectives.

#### NEW SECTION

**WAC 132B-120-035 Interpretations.** The vice-president for student services and the student conduct committee shall have the authority to interpret and apply the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-040 Prohibited conduct.** Disciplinary action may be taken for a violation of any provision of this student code or for a violation of other college rules and regulations which may from time to time be properly enacted or for specific prohibited conduct including but not limited to the following:

(1) Smoking and use of tobacco products anywhere other than designated smoking areas.

(2) Using, possessing, consuming, or being under the influence of, or distributing any liquor as defined in RCW 66.04.010, as now or hereafter amended, when present at or engaged in any college sponsored activity with the exception of sanctioned events approved by the president or designee and in compliance with state law.

(3) Using, possessing, distributing or being under the influence of any narcotic drug or controlled substance as defined in RCW 69.50.101, as now or hereafter amended, in a college facility or while participating in a college-related program.

(4) Engaging in lewd, indecent, or obscene behavior.

(5) Sexual misconduct of any kind including rape, indecent liberties, assault of a sexual nature, voyeurism or unwanted sexual contact;

(6) Where the student presents an imminent danger or causes unreasonable risk of harm to college property or to himself/herself or to others ~~((students or persons in college facilities on or off campus.))~~ or to the education process of the college.

~~((6))~~ (7) Interference by force or violence with, or intimidation by threat of force or violence, of another student, employee or visitor who is in the peaceful discharge or conduct of his/her duties or studies (RCW 28B.10.570 through 28B.10.572).

~~((7))~~ (8) Disorderly or abusive behavior either physical or verbal which interferes with the rights of others or that obstructs or disrupts teaching, learning, research, services, activities or administrative functions.

~~((8))~~ (9) Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may remove a student for the single class session in which disruptive conduct occurs. The instructor will report any such exclusion from the class to the vice-president for student services or designee who may initiate further conduct proceedings as provided in this procedure.

(c) The vice-president for student services or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. The student may appeal the disciplinary sanction according to appeal procedures.

(10) Any person, thing or object brought into college facilities, without prior approval of an appropriate college official, that causes a disruption to the classroom or campus environment or causes a safety hazard.

(11) Conducting or participating in an assembly which violates the guidelines of assembly as defined in Section II E.

((9)) (12) All forms of student academic dishonesty, including cheating, falsification, plagiarism or facilitating, aiding and abetting academic dishonesty or engaging in any conduct specifically prohibited by a faculty member in the course syllabus or class discussion.

(a) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

(b) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

((10)) (13) Forgery of or unauthorized alteration of or access to any college document, record, funds or instrument of identification, including electronic hardware, software and records.

((11)) (14) Providing false information to the college or the intentional making of false statements and/or filing of false charges against the college and/or members of the college community.

((12)) (15) Theft from college premises and/or property; theft of property of a member of the college community on college premises; or possession of property stolen from college premises and/or a member of the college community while on college premises.

((13)) (16) Causing or attempting to cause physical damage to property owned, controlled or operated by the college or to property owned, controlled or operated by another person while said property is located on college facilities.

((14)) (17) Failure to comply with the direction of college employees acting in the legitimate performance of their duties.

((15)) (18) Refusal to provide positive identification and evidence of student enrollment to any college employee in the lawful discharge of said employee's duties.

((16)) (19) Possession, transportation or storage of any firearm(s), explosives, dangerous chemicals or other weapons, devices or substances which can be used to inflict bodily harm or to damage real or personal property. Weapons may include, but are not limited to, all firearms, pellet guns, slingshots, martial arts devices, switchblade knives and clubs.

This does not apply to commissioned police officers as prescribed by law.

((17)) (20) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

((18)) (21) Computer violations which include, but are not limited to:

(a) Gaining access, without authorization, to a computer system or network, or electronic data owned, used by, or affiliated with Grays Harbor College;

(b) Unauthorized use of another individual's account, identification or password;

(c) Use of computer facilities to interfere with the work of another student, faculty member, college employee or computer network operations;

(d) Use of computer facilities and/or resources to send or solicit obscene, abusive, bothersome, threatening or harassing messages;

(e) Use of college e-mail accounts to intentionally disseminate viruses, destructive, malicious or invasive programs;

(f) Use of college computers or systems for other than educational purposes;

(g) Use of college computer equipment to participate in illegal or unauthorized activities;

(h) Use of computing facilities and resources in violation of copyright laws;

(i) Violating any of the computer use policies in effect on campus.

((19)) (22) Sexual harassment as defined in Section IB12 of another student or employee.

((20)) (23) Any repeated intentional conduct directed at another student or employee that has the purpose or effect of creating a hostile, intimidating or disruptive learning or working environment. (This may include intentional, repeated, unwelcome attempts to contact a student or employee.)

((21)) (24) Hazing in any form as described in RCW 28B.10.900.

((22)) (25) The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular trade, skill, craft or profession for which the student is taking courses or is pursuing as their educational goal.

((23) Malicious) (26) Harassment that involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical or sensory disability.

((24)) (27) Harassment, (including physical, verbal, graphic, written or electronic conduct) that is sufficiently severe, persistent or pervasive so as to threaten or limit the ability of a reasonable individual to work, study or participate in the activities of the college.

(28) Entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official.

(29) Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.

~~((25))~~ (30) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory to any act prohibited by this code may be considered to be same as completed violations.

(31) Retaliating against witnesses or accusers of prohibited conduct.

(32) Students who participate in any college sponsored or sanctioned international study program shall observe the following:

(a) The laws of the host country;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program in another county;

(d) The GHC standards of conduct for students.

(33) Violation of federal, state or local law in college facilities or at college-sponsored or supervised activities.

~~((26))~~ (34) Violation of other published college policies, rules or regulations.

AMENDATORY SECTION (Amending WSR 98-09-012, filed 4/6/98, effective 5/7/98)

**WAC 132B-120-055 Trespass.** The president or vice-president of student services or his or her designee(s) shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain on any college property or facility. Such power and authority may be exercised to halt any event or activity which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any person remaining on or reentering college property after receiving notice that his/her license or privilege to be on that property has been revoked shall be subject to arrest for criminal trespass under the provisions of chapter 9A.52 RCW.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-065 Student rights.** The following rights are endorsed by the college for each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed rights of free inquiry, expression and peaceful assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b), available space in the class, and meeting any required prerequisites.

(c) Students have the right to a learning environment which is free from unlawful discrimination and sexual harassment.

(d) Students are protected from academic evaluation which is arbitrary, prejudiced or capricious~~((and))~~. Students are responsible for meeting the standards of academic performance established by each of their instructors.

(2) Nondiscrimination. Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status.

(3) Due process. Students have the right of due process. No disciplinary action may be imposed without notice to the accused of the nature of the charges. A student accused of violating the code of conduct is entitled to procedural due process as set forth in the code.

(4) Campus speakers/invited guests. Recognized student organizations shall have the right to invite outside speakers and guests to ~~((speak on))~~ campus subject to the availability of campus facilities, funding and compliance with college procedures. Student organizations are responsible for the conduct of their invited guests on or in college facilities and at functions sponsored by the college or recognized student organization.

(5) Right to assembly. Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies:

(a) Are conducted in an orderly manner;

(b) Do not unreasonably interfere with vehicular or pedestrian traffic;

(c) Do not unreasonably interfere with classes, scheduled meetings or ceremonies or regular functions of the college;

(d) Do not cause destruction or damage to college property;

(e) Are in compliance with procedures established in Administrative Procedure 516.03.

(6) Distribution of materials. Handbills, leaflets, newspapers and similarly related materials may be distributed free of charge by any student or students, or by members of recognized student organizations, or by college employees on or in college facilities at locations specifically designated by the vice-president for student services; and are in compliance with procedures established in Administrative Procedure 516.03 provided such distribution does not interfere with the ingress or egress of persons or interfere with the free flow of vehicular or pedestrian traffic.

Such handbills, leaflets, newspaper and related matter must bear identification as to the publishing agency and distributing organization or individual.

All nonstudents shall register with the vice-president for student services prior to the distribution of any handbill, leaflet, newspaper or related matter. Such distribution must not interfere with the free flow of vehicular or pedestrian traffic.

Any person or persons who violate any provisions of this rule relating to the distribution of materials will be subject to disciplinary action.

(7) Commercial activities. College facilities ~~((will))~~ may not be used for commercial solicitation, advertising or promotional activities except when such activities clearly serve educational objectives, including but not limited to display of

books of interest to the academic community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives and are conducted under the sponsorship or at the request of the college, or the ~~((office of the associated students of the college))~~ student government (ASGHC); provided that such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic.

(8) Fund-raising. Students and student organizations have the right to engage in fund-raising activities subject to the approval of the vice-president for student services.

(9) Grievances. Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated grievance procedures.

AMENDATORY SECTION (Amending WSR 98-09-012, filed 4/6/98, effective 5/7/98)

**WAC 132B-120-075 Student responsibilities.** Students who choose to attend Grays Harbor College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their educational goals. In return, the college desires that each student assume responsibility to:

- (1) Participate actively in the learning process, both in and out of the classroom;
- (2) Seek timely assistance in meeting educational goals;
- (3) Attend all class sessions;
- (4) Prepare adequately to participate fully in class activities;
- (5) Participate actively in the academic advising system;
- (6) Develop skills required for learning, e.g., basic skills, time management, and study skills;
- (7) Assume final ~~((authority))~~ responsibility for the selection of appropriate educational goals;
- (8) Select courses appropriate and required for meeting chosen educational goals;
- (9) Make appropriate use of services;
- (10) Contribute towards improving the college;
- (11) Become knowledgeable of and adhere to the college's policies, practices and procedures;
- (12) Abide by the standards set forth in the code of conduct.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-130 Sanctions.** Sanctions for violations of college regulations or conduct may be imposed independent of any action taken by civil authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

More than one sanction may be ~~((recommended))~~ imposed for any single violation as appropriate. Sanctions may include, but are not limited to:

(1) Disciplinary warning. Constitutes oral or written notice of violation of college rules and regulations.

~~(2) ((Reprimand. Formal action after censuring a student for violation of college rules or regulations for failure to satisfy the college's expectations regarding conduct. Reprimands are made in writing to the student by the disciplinary official. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one or more serious disciplinary actions described below.~~

~~(3))~~ Disciplinary probation. Formal action placing conditions upon the student's continued attendance. Notice will be made in writing, specifying the period of probation and the conditions of the probation. ~~((Disciplinary probation warns the student that any further misconduct will automatically raise the question of dismissal from the college. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.~~

~~(4))~~ As a condition of probation, the college may specify that it will impose more severe disciplinary sanctions against the student if the student is found to have violated any standards of conduct for students during the probationary period.

(3) Restitution. Compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement.

~~((5))~~ (4) Discretionary sanctions. These may include but are not limited to: Work assignments, service to college or community, class/workshop attendance or other discretionary assignments such as educational interventions intended as learning experiences.

~~((6))~~ (5) Assessment. The student may be required to have an assessment (at the student's expense), such as alcohol/drug or anger management by a certified professional, which includes a recommended treatment and assessment of ability to successfully participate in college.

(6) Education. The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's conduct such as anger management or counseling.

(7) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Support may be withdrawn for use of information technology resources, funding, college facility use and rental and involvement in organizational activities.

(8) Loss of privileges. Loss of specific college privileges for a specified period of time. These may include but are not limited to student activities, athletic events, drama or music performances, or club participation.

~~((7))~~ (9) No contact. Restriction from entering specific college areas and/or all forms of contact with certain person(s).

~~((8))~~ (10) No trespass. A student may be prohibited from entering upon or remaining upon college facilities and premises.

(11) Revocation of admission or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.

(12) Summary suspension:

(a) Temporary dismissal from the college for a period of time during which an investigation and/or formal disciplinary procedures are pending. Summary suspension is predicated upon a reasonable belief that the student presents an imminent danger to college property, to other students, to employees of the college or is of significant disruption to the educational process.

(b) During the period of summary suspension, the student may enter the college premises only to meet with the vice-president for student services or a designee; to deliver a written appeal; to attend a hearing; or otherwise with special permission from the vice-president for student services.

(c) At the end of the summary suspension period, the student shall be reinstated to prior status subject to any other disciplinary sanctions that may have been imposed. (See WAC 132B-120-130.)

~~((9))~~ (13) Suspension. Temporary dismissal from the college and termination of student status. A student suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied access to all or any part of college facilities.

~~((10))~~ Deferred suspension. Notice of suspension from the college contingent on meeting condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

~~((11))~~ (14) Expulsion. Permanent termination of student status from college.

Refund of fees for the quarter in which disciplinary action is taken shall be in accord with the college's refund policy. Fees paid in advance for subsequent quarters will be refunded.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-135 Summary suspension procedures.** (1) Suspension may be imposed, if the vice-president for student services (~~deems summary suspension appropriate, she/he shall give the student~~) or his/her designee(s) has cause to believe that any student:

(a) Has committed a felony or violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the GHC community; or

(c) If the student poses an ongoing threat of disruption of, or interference with, the operations of the college, that student may be summarily suspended.

(2) Notice. Any student who has been summarily suspended shall be served with written notice or verbal notice of the summary suspension. If such notice is made in writing, it shall be provided by certified mail and first class mail delivered to the student's last known address.

(3) The oral or written notice (~~to~~) to the student shall include the reasons for summary suspension, duration of the summary suspension, and (~~any~~) any possible additional disciplinary or corrective action that may be taken. The notification shall indicate that the student must appear before the vice-president of student services for a summary suspension

hearing at a time specified in the notice. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice-president for student services shall set a date for informal hearing of the summary suspension as soon as practicable.

~~((2))~~ The presiding officer for the informal hearing shall be an administrator designated by the president other than the administrator who initially imposed the summary suspension (normally, the vice-president for student services) and will be accompanied by the president of the associated students of Grays Harbor College or designee.) (4) The student shall be given the opportunity to present written and/or oral evidence. The issue before the (~~presiding officer~~) vice-president for student services shall be whether reasonable cause exists to support and to continue the summary suspension.

~~((3))~~ (5) The (~~presiding officer~~) vice-president for student services shall issue a written decision within two days of the informal hearing.

~~((4))~~ (6) If a student who has been summarily suspended fails to appear for a summary suspension hearing, the vice-president for student services may order the suspension to remain in place pending the final disposition of the disciplinary process as provided in this section.

(7) The student may request a de novo review of the informal hearing decision before the student conduct committee. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

~~((5))~~ (8) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed one day per episode. Any such summary action may be appealed to the vice-president for student services for an informal hearing.

NEW SECTION

**WAC 132B-120-155 Appeals of initial disciplinary action.** Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice-president for student services within seven calendar days of the college's giving notice of the disciplinary action.

Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice-president for student services, or in his/her absence, the vice-president for instruction or designee.

Disciplinary action by the vice-president for student services may be appealed to, and shall be reviewed by, the student conduct committee.

Disciplinary action by the student conduct committee may be appealed to and shall be reviewed by the college president or his/her designee.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-170 Student conduct committee.** The student conduct committee, convened for that purpose, will

hear, (de novo means that the matter will be considered anew as if it had not been heard before and as if no decision had been previously rendered), and make recommendations on all disciplinary cases referred to it by the appropriate authority or appealed to it by student(s). The committee will be composed of the following persons:

(1) A member appointed by the president of the college who shall serve as chair;

(2) Two members of the faculty, appointed by the president of the faculty association;

(3) Two representatives from the student ~~((council))~~ body, appointed by the student ~~((body))~~ government (ASGHC) president.

None of the above-named persons shall sit on any case in which he/she has a complaint or witness, in which he/she has a direct or personal interest, or in which he/she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the disciplinary committee as a whole.

In hearings before the committee, an assistant attorney general may be requested to assist the committee.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-180 Student conduct committee procedures.** The student has a right to a fair and impartial hearing before the committee on any charge of misconduct resulting in disciplinary action other than warning or reprimand.

The committee chair shall establish general rules of procedures for conducting hearings. All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as fairness to all parties involved permits.

(1) The committee shall issue written notice of the date, time and place of the hearing, and the charges against the student consistent with RCW 34.05.434. This notice of hearing shall be provided no later than seven days prior to the date of the hearing. The notice may be amended at any time prior to the hearing, but if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date if so requested in writing by the student.

(2) ~~((The student may be represented by counsel and/or accompanied by an advisor of his/her choice, who is not, however, an employee of the college.))~~ The vice-president for student services shall present evidence to the committee supporting the charges against the student. The vice-president for student services and the student (at his/her own expenses) have the right to be assisted by an advisor of their choice. The vice-president for student services and the student are responsible for presenting their own information. Advisors are not permitted to address the board or participate directly in the hearing. An advisor may communicate only with the person he or she is advising. The board chair may call recesses to facilitate this communication. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.

(3) If the student elects to choose and pay a duly licensed attorney admitted to practice in the state of Washington as

~~((counsel))~~ the student's advisor, notice thereof must be tendered by the student to the vice-president for student services at least five calendar days prior to the hearing.

~~((3))~~ (4) The vice-president for student services, the student and the committee chair may arrange for witnesses to present pertinent information to the committee. Witnesses may provide written statements in lieu of their attendance at the hearing. The student is responsible for informing his/her witnesses of the time and place of the hearing. Witnesses provide information to, and answer questions from, the committee. To preserve the educational tone of the hearing and to avoid an adversarial environment, students may be required to direct questions to the chair, rather than to the witness directly. Questions concerning whether potential information may be received are resolved by the chair.

(5) Formal rules of process, procedure and technical rules of evidence, such as are applied in criminal or civil court, are not used in board proceedings. The student or his/her representative shall be entitled to hear and examine the evidence against him/her and be informed of the identity of its sources; the student shall be entitled to present evidence in his/her own behalf and to question witnesses testifying against him/her as to factual matters subject to the conditions outlined above. The committee shall request the administration to provide the student a list of witnesses who will appear, and a description of any documentary or other physical evidence that will be presented at the hearing. The student shall have all authority which is possessed by the college to obtain information subject to FERPA regulations or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing.

~~((4))~~ (6) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining whether the student is guilty of the misconduct charged but the student's past record of conduct may be taken into account in formulating the committee's recommendation.

~~((5) Hearings conducted by the committee will be held in closed session, the only exception being when the student involved invites particular persons or requests an open hearing. If at any time during the conduct of the hearing, invited guests are disruptive of the proceedings, the chair of the committee may exclude such persons from the hearing room.~~

(6) ~~The vice president of student services or designee shall make the first presentation and present witnesses. The student may then make a presentation and present witnesses. Either side may offer a rebuttal.~~

~~The chairperson may receive sworn written statements in lieu of oral testimony at the hearing.))~~ (7) Hearings are conducted in private. Admission of any persons other than the vice-president for student services, the student, and their respective advisors is at the discretion of the committee chair.

(8) Questions related to the order of the proceedings are determined by the committee chair.

(9) The chairperson shall admit matters into evidence that reasonable persons would accept as having value in the conduct of their affairs. Unduly repetitive or irrelevant evidence may be excluded.



~~((8))~~ (10) Failure on the part of the student(s) to appear or cooperate in the proceedings may result in default in accordance with RCW 34.05.440. ((However, it may not preclude the committee from making its findings of fact, reaching conclusions and imposing sanctions.)) The information in support of the complaint is presented and considered in the absence of the accused student. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties.

~~((9))~~ (11) The committee chair may accommodate concerns for the personal safety, well-being, or fears of confrontation during the hearing by providing separate facilities or by permitting participation by telephone, audio tape, written statement or other means.

(12) The committee may decide to uphold or modify sanctions in accordance with WAC 132B-120-130.

~~((10))~~ An adequate summary of the proceedings will be kept. At a minimum, such summary would include a tape recording of testimony. During the hearing, such record will be available to the student conduct committee, the student and student's attorney and any other college official designated by the chairperson for inspection and copying in the office of the chairperson during regular business hours. (13) There shall be a single verbatim record, such as a tape recording or transcript, of the information gathering portion of student conduct board hearings. Committee deliberations are not recorded. The record is the property of the college. Following the conclusion of the conduct proceeding, access to records of the case and hearing file will be kept in the office of the vice-president for student services and limited to those designated by the college president. The accused student may make arrangements with the vice-president to purchase a copy of the record.

~~((11))~~ (14) The burden of proof that guides the committee's decision is the preponderance of evidence, i.e., whether it is more likely than not that the accused student violated the standards of conduct for students.

(15) The student will be provided with a copy of the findings of fact and with the conclusions of the committee within ten calendar days from the final hearing date. If the college is not in session, this period may be extended for a reasonable period of time.

~~((12))~~ Appeal of the committee's decision. The student will also be advised of his/her right to present within seven calendar days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.

~~((13))~~ If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president of the college or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The

president shall then notify the official who initiated the proceedings, the student and the committee chair. The decision of the president is final.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-190 Appeal~~(s)~~ of the committee's decision.** ~~((Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice-president for student services within seven calendar days of the college's giving notice of the disciplinary action.~~

~~Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice-president for student services, or in his/her absence, the vice-president for instruction or designee.~~

~~Disciplinary action may be appealed to, and shall be reviewed by, the student conduct committee.~~

~~Disciplinary action by the student conduct committee may be appealed to and shall be reviewed by the college president or his/her designee.)~~ The student will be advised of his/her right to present within seven calendar days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.

If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president of the college or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the official who initiated the proceedings, the student and the committee chair. The decision of the president is final.

AMENDATORY SECTION (Amending WSR 98-09-012, filed 4/6/98, effective 5/7/98)

**WAC 132B-120-210 Hazing sanctions.** Any student found to have violated RCW 28B.10.900 et seq. related to hazing, by virtue of a criminal conviction or by final decision of the college president or designee, shall, in lieu of or in addition to any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to ~~((student-funded))~~ state-funded grants, scholarships, or awards of a period of time determined by the college.

In addition, any organization or association found to have knowingly permitted hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-220 Student complaint, grievance ((procedure)) and grade appeal processes.** The purpose of these procedures is to provide guidelines which enable a student to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. This grievance procedure emphasizes an informal resolution which promotes constructive dialogue and understanding.

(1) ~~((Student))~~ The complaint((s)) process. A complaint is any expression of dissatisfaction with the performance of a college employee ~~((policy or procedure. Students who have a complaint shall use the following procedure:~~

Step 1. If the complaint is about the action of a college employee, the college employee and student shall make a good faith effort to resolve the grievance on a one-to-one basis. If the complaint is about a policy or procedure, it should be discussed with the employee most closely responsible for the policy or procedure)) or with the implementation of policy and procedure. The goal is to informally resolve the complaint with the employee most closely responsible for the policy, procedure or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis. (If the complaint is about a grade, follow the grade appeal process below.) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution.

~~((Step 2. If the student determines that the complaint cannot be resolved to his/her satisfaction with the employee concerned, he/she should contact one of the following people:~~

- ~~(a) The vice-president for instruction for complaints regarding an instructional employee, policy or procedure; or~~
- ~~(b) The vice-president for student services regarding any other employee, policy or procedure.~~

~~The student may be referred to other appropriate personnel for resolution.~~

Step 3. The vice-president will discuss with the student his/her concerns including options available to resolve the concern. The student may be requested to indicate in writing the nature of the grievance specifying as accurately as possible all details. Following discussion and the gathering of any further information, the vice-president, within twenty working days, will issue a decision to resolve the complaint and report his/her findings to all involved parties. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

Step 4. If the meeting with the vice-president does not resolve the complaint to the student's satisfaction, he/she may appeal to the president of the college. The president may amend, modify, reverse or accept the recommendation of the vice-president. The decision of the president shall be final.

(2) Records. The vice-president shall keep all written statements or transcripts associated with the complaint as part

of the files. The files will be destroyed after six years from the initiation of the complaint.

~~(3) Time limits on filing a complaint. The student must file a complaint within one academic quarter of the event which caused the grievance to be filed. The vice-president may suspend this rule under exceptional circumstances such as extended illness, or leave of a party to the complaint. No complaints will be considered after two academic quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the vice-president will give the absent party reasonable opportunity to reply to the complaint before making a decision.))~~ The college recognizes that in some cases a student will be unwilling or unable to speak directly with the employee. In such cases, the student may proceed to step one of the grievance process.

In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern.

For assistance in identifying the appropriate person a student should contact, the office of the vice-president for student services is available to assist in that determination.

The following are guidelines for determining who a student should contact with a complaint regarding:

Academic/instruction: Faculty/dean/vice-president instruction;

Accommodations: Coordinator of disability support services/vice-president student services;

Bookstore: Bookstore manager/vice-president administrative services;

Problem student conduct: Vice-president for student services;

Discrimination/harassment: Vice-president student services/human resources;

Facilities: Director of campus operations/vice-president for administrative services;

Financial aid: Director of financial aid/vice-president for student services;

Other: Vice-president for student services office for most appropriate contact.

(2) The grievance process. A grievance is a formal procedure instituted when a complaint is not resolved through the informal complaint process. It involves taking the concern to a person other than the employee involved such as a supervisor, dean or vice-president. For assistance in identifying the specific person a student should contact the vice-president for student services office. The following procedures shall be used when a student initiates the grievance process.

(a) A discussion with the dean/vice-president or supervisor who shall attempt to resolve the matter promptly and fairly. The student may be asked to express the grievance in writing. Written grievances should include an explanation of what has happened, the nature of the student's concern, what the student and/or others have done about it to date and what resolution the student seeks.

(b) The supervisor will investigate and may:

(i) Render an immediate decision;

(ii) Ask the staff members for a written response;

(iii) Request a meeting of one or both parties individually or together; and/or

(iv) Request supporting materials prior to rendering a decision. In the case of a written grievance, the supervisor will provide a written decision within fifteen instructional days of receipt of the written grievance. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(c) If the student feels a satisfactory resolution was not achieved in step two, he/she may appeal to the president of the college within five instructional days of receipt of the written decision. The president may amend, modify, reverse or accept the recommendation of the vice-president. The decision of the president shall be final.

In general a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern. In any event, with the exception of discrimination and harassment, informal complaints and formal grievances must be filed within one academic quarter of the inciting event. Timely initiation of a complaint rests with the student.

The appropriate vice-president may suspend this rule under exceptional circumstances such as extended illness or leave of a party to the complaint. When either party to the complaint is no longer present at the college and does not expect to return, the vice-president will give the absent party reasonable opportunity to reply to the complaint before making a decision.

(3) The grade appeal process.

(a) Before a student can file a formal or written grade appeal, he or she should try to resolve the issue directly with the instructor. Grade appeals should occur within one quarter of issuance of the grade. In any event, appeals will not be considered beyond one year of the grade report.

(b) If direct discussion with the faculty does not resolve the grade dispute to the student's satisfaction the student, within ten instructional days after meeting with the faculty, shall take the matter to the vice-president for instruction. The student shall express the appeal in writing. The written appeal should include the course and instructor involved, an explanation of why the student believes the grade received is unfair or unwarranted, what steps the student has taken with the faculty member to resolve the issue, and what resolution the student seeks.

(c) The vice-president for instruction will attempt to investigate the appeal and will:

(i) Review the course syllabus;

(ii) Meet with the course instructor; and

(iii) May request and review other supporting documentation prior to rendering a decision.

Within ten instructional days of receiving the written appeal, the vice-president of instruction will provide a written decision. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(d) If the student feels satisfactory resolution was not achieved in step three, he/she may, within five instructional days of receipt of the written decision, notify the vice-president for instruction to request a hearing before the academic review committee. The committee will be chaired by the vice-president for student services or designee.

(i) If anyone on the academic review committee perceives a conflict of interest, they will recuse themselves from

the committee for the duration of the appeal. Students are to be given an opportunity to talk with the committee chairperson regarding any concerns about committee membership.

(ii) As soon as possible, the academic review committee (with a minimum attendance of six individuals) will meet with the student, instructor, the vice-president of instruction and relevant parties to hear the points at issue in the appeal. The committee will provide its written decision to all parties within five instructional days following the hearing. The decision is final and may not be reviewed further.

(4) Grievances excluded. The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual harassment. The college has separate, specific procedures for such complaints. See the vice-president for student services for information on those specific procedures.

A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Community College District No. 2 shall not be grievable matters.

(5) Records. The appropriate supervisor shall keep all written statements or transcripts as follows:

(a) Complaints for one year from the initial complaint;

(b) Grievances for six years from the initial complaint;

(c) Grade appeals for five years following the last quarter attended by the student. At that time, the files shall be destroyed.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132B-120-080 Classroom conduct.

## WSR 10-08-040

### PROPOSED RULES

### DEPARTMENT OF HEALTH

[Filed April 1, 2010, 3:50 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-282-990(4), geoduck PSP fees.

Hearing Location(s): Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on May 21, 2010, at 1:30 p.m.

Date of Intended Adoption: May 24, 2010.

Submit Written Comments to: Brandy Brush, Department of Health, 111 Israel Road S.E., P.O. Box 47824, Olym-

pia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by May 21, 2010.

Assistance for Persons with Disabilities: Contact Brandy Brush by May 14, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck, and ensure toxic shellfish do not reach consumers.

Reasons Supporting Proposal: The proposal will redistribute geoduck PSP fees based on the 2009 total cost of service for the entities that submitted geoduck tests and the number of tests done for each entity.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 111 Israel Road S.E., Tumwater, WA, (360) 236-3342; Implementation and Enforcement: Maryanne Guichard, 111 Israel Road S.E., Tumwater, WA, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 1, 2010  
Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 09-19-067, filed 9/14/09, effective 10/15/09)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542

Type of Operation	Annual Fee
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
<u>Deep Blue Seafood</u>	<u>\$464</u>
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(10,452))</del> <u>8,507</u>
Jamestown S'Klallam Tribe	<del>\$(2,503))</del> <u>1,237</u>
Lower Elwah Klallam Tribe	<del>\$(2,208))</del> <u>4,485</u>

Harvester	Fee
Lummi Nation	\$((147)) <u>155</u>
Nisqually Indian Tribe	\$((3,091)) <u>2,011</u>
Port Gamble S'Klallam Tribe	\$((4,416)) <u>4,021</u>
Puyallup Tribe of Indians	\$((8,244)) <u>8,971</u>
Skokomish Indian Tribe	\$((1,619)) <u>155</u>
Squaxin Island Tribe	\$((1,767)) <u>618</u>
Suquamish Tribe	\$((21,198)) <u>21,189</u>
Swinomish Tribe	\$((589)) <u>619</u>
Tulalip Tribe	\$((1,619)) <u>5,568</u>
<del>(Washington Shell Fish, Inc.</del>	<del>\$(147))</del>

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 10-08-047**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 2, 2010, 11:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-106.

Title of Rule and Other Identifying Information: WAC 458-20-273 Renewable energy system cost recovery, this rule explains the cost-recovery incentive program for renewable energy systems.

Hearing Location(s): Department of Revenue, Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: May 25, 2010.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by May 11, 2010.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 6170 (chapter 469, Laws of 2009) and ESSB 6658 (chapter 202, Laws of 2010) amended RCW 82.16.110, 82.16.120, and

82.16.130. The legislation: (1) Increases the annual payment limitations to customers, (2) increases the limitations on incentive payments made by participating light and power businesses, (3) changes the formula used to determine payment amounts based on "economic development kilowatt-hours," (4) extends the incentive program to community solar projects, (5) creates three different types of community solar projects, (6) sets limitations on total payments for community solar projects and (7) sets capacity generating restrictions on systems in community solar projects.

The department is proposing to amend WAC 458-20-273 to recognize these statutory changes.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/default.aspx>.

Reasons Supporting Proposal: To recognize statutory changes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 82.16.110, 82.16-120, and 82.16.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

April 2, 2010

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-097, filed 7/31/06, effective 8/31/06)

**WAC 458-20-273 Renewable energy system cost recovery.** ~~((The customer investment cost recovery incentive payment ("incentive payment") covers the purchase and use of renewable energy systems that produce electricity, such as: Solar energy systems, wind generators, and certain types of anaerobic digesters that process manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container. Any individual, business, or local government that purchases and uses such a system may apply for an incentive payment from the light and power business that serves their property. Your light and power business may make payment to you in the form of a credit offsetting the amount you owe on your power bill. The light and power business then gets a credit on its public utility tax for the amount it pays to customers as incentive payments. The~~

department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, the department will only audit light and power businesses to determine whether their claimed credit amount equals the amount of the total of customers' incentive payments, whether they proportionally reduced the payments to each customer by an equal percentage if the limit of total allowed payments is reached, and whether the customer payments are based on measured production of the renewable energy systems. A light and power or gas distribution business will not qualify for an incentive payment. This program applies to measured customers' renewable energy system kilowatt-hours generated between July 1, 2005, and June 30, 2014.

The purpose of the law creating this incentive payment program is to develop a market for renewable energy systems and to promote the manufacture of these systems in Washington state. To facilitate this purpose, these regulations are written to facilitate prospective customers of renewable energy systems in the purchase and use of their systems, in conjunction with the incentive payment program.

**(1) What is my first step as a possible customer of a renewable energy system?** First, contact the light and power business serving your property to confirm it is participating in this incentive payment program. Participation by light and power businesses is discretionary. Further, ask your light and power business for a copy of its procedural requirements and application for participating in this incentive payment program. Only your light and power business has the authority to determine whether your incentive payment will be authorized or denied.

**(2) How do I certify my renewable energy system?** After contacting your light and power business, you must apply for a system certification to the department of revenue. The department of revenue will consult with the climate and rural energy development center at Washington State University's energy extension regarding your certification request. The certification form can be downloaded from the department of revenue's web site located at: [dor.wa.gov](http://dor.wa.gov), or may be obtained by calling the department at: 1-800-647-7706. The certification form requires certain verifiable information, including the following:

(a) Your name, address, and the address of the renewable energy system;

(b) Your department of revenue tax registration number, which will automatically be assigned to individuals when they submit their application and is a business' present UBI number (do not use your Social Security number or your federal employer's identification number);

(c) Your statement that your renewable energy system generating electricity is located on your own real property and that your property is also served by a participating light and power business;

(d) Your statement that the electricity you produce on your own renewable energy system does not include electricity generated by a light and power business or a gas distribution business;

(e) You must also state that your renewable energy electric generation system uses:

• Any solar inverter or modules manufactured in Washington state;

• A wind generator powered by blades manufactured in Washington state;

• A solar inverter manufactured in Washington state;

• A solar module manufactured in Washington state;

• Solar or wind equipment manufactured outside Washington state; or

• An anaerobic digester which processes manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container.

(f) You must also state that your own generated electricity can be transformed or transmitted for entry into or operation in parallel with electric transmission and distribution systems;

(g) The date that your local jurisdiction issued its final electrical permit on your renewable energy system;

(h) Your statement that you understand that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that your statements are true, complete, and correct to the best of your knowledge and belief under penalty of perjury; and

(i) If you have just purchased a property with a certified renewable energy system, you must reapply for certification as the new owner.

**(3) How long will it take before I receive notification of whether the department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, has approved the request for my system's certification?** The department of revenue will notify you in writing within thirty days whether your request for system certification qualifies for the incentive payment program. Certification is merely an administrative and preliminary step, however, and ultimately it is the application procedure with the light and power business that serves your property which will determine whether your incentive payment is authorized or denied.

**(4) After the department of revenue approves my system's certification, how do I apply for my incentive payment?** The next step is to apply for your incentive payment from the light and power business that serves the property you own, on which the renewable energy system is located. You must annually apply by August 1st of each calendar year. The department of revenue will create an application form for use by customers when applying for the incentive payment with their light and power business. However, individual light and power businesses may create their own forms or use the department's form in conjunction with their additional addendums. Further, your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems, then the determination by the light and power business shall be controlling and it has the authority to decertify your system.

~~There is a special transition rule for the first annual period from July 1, 2005, through June 30, 2006. For only the first year of the incentive program, recognizing that each utility will establish its own procedures and requirements for metering the output of customers' renewable energy systems, the department will accept kWh production readings taken from the inverter or from an owner installed production meter. The owner must report the reading of the meter from July 1, 2005 (or make a good-faith estimation if no reading exists) and the reading on June 30, 2006. Your June 30, 2006 reading may be relied upon by your light and power business as the first reading for the subsequent year July 1, 2006, through June 30, 2007. Further, if your light and power business decides to replace your production meter during the subsequent year July 1, 2006, through June 30, 2007, it may rely on the last reading on your prior meter before it's replaced. You must also report the array size in DC watts. This information will be used to validate reported watt hours for the first year. Your participating light and power business is not required to perform independent reading or monitoring of your system's electric generation during the first year. Further, for the first year only, the light and power business serving your property shall have one hundred twenty days to notify you whether your incentive payment is authorized or denied and shall process your annual payment, if any, by January 31, 2007. You must file your request for system certification with the department of revenue no later than September 30, 2006. Each light and power business will decide its own deadline for submission of your annual application for incentive payment during this first year.~~

Some of the verifiable information you must provide includes:

- Your name, address, and the address of the renewable energy system;
- Your department of revenue tax registration number, which will automatically be assigned to individuals when they submit their certification request described above and is a business' present UBI number (do not use your Social Security number or your federal employer's identification number);
- The date of the letter from the department of revenue certifying that your renewable energy system is eligible for incentive payments;
- Your statement that your system has been operable throughout the year and that your light and power business will be allowed reasonable access to read your electric production meter for your system in order to calculate the kilowatt-hours generated by your renewable energy system during the prior fiscal year beginning July 1st and ending on June 30th; and
- Your statement that you understand that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that your statements are true, complete, and correct to the best of your knowledge and belief under penalty of perjury.

The light and power business serving your property has the authority to request other information it believes is neces-

sary in making its determinations under the incentive payment program.

~~(5) What are the possible procedures you and your light and power business may follow in setting up your incentive payments?~~ Recommended procedures you should follow when requesting your light and power businesses to set up your incentive payments and the possible procedures your light and power business may follow are as follows:

- First, since participation under this incentive program is voluntary for light and power businesses, contact the light and power business serving your property and ask whether it is participating and what application procedures you must follow.

- If your light and power business is participating in the incentive program, then you submit an application to your light and power business.

- You submit to your light and power business proof that your renewable energy system is certified by the department of revenue for the incentive payment program.

- You submit to the light and power business a copy of the approved certification and letter from the department of revenue. You should submit this information to the light and power business before August 1st in order to receive payment for any production that occurred prior to July 1st.

- If your light and power business approves your application, then it will require a signed agreement that it will provide to you:

- You or your licensed electrical contractor or certified electrician obtain an electrical permit and install the system. (A licensed electrical contractor or certified electrician must install the system, unless you perform the work yourself on your home with the help of an uncompensated volunteer who assists you. See WAC 296-46B-025(13) for guidance on the proper installation of your system.)

- Once installation is complete your renewable energy system must pass a final electrical inspection from the local code official.

- Your local light and power business will send a utility serviceman to inspect your system and may install an electric production meter if one meeting its qualifications is not already installed.

- Your production meter is read by the light and power business at least annually and it processes your annual incentive payment.

- Your light and power business notifies you within sixty days whether your incentive payment is authorized or denied.

- Your light and power business calculates annual production payments based on the meter reading or readings made prior to the accounting date of July 1st.

- Your incentive payment check (or credit to your account) is sent to you by your light and power business on or before December 15th.

~~(6) What is the formal agreement between me and my light and power business?~~ The formal agreement between you and the light and power business serving your property governs the relationship between you and your light and power business. This document may:

- Contain the necessary safety requirements and interconnection standards;

- Allow the light and power business the contractual right to review your substantiation documents for four years, upon five working days' notice;

- Allow the light and power business the contractual right to assess against you, with interest, for any overpayment of incentive payments made to you;

- Delineate any extra metering costs for an electric production meter to be installed on your property;

- Contain a statement allowing the department of revenue to send proof of your system's certification electronically to your light and power business, which will include your department of revenue taxpayer's identification number; and

- Contain other information required by the light and power business to effectuate and properly process your incentive payment.

**(7) How long will it take before I receive notification as to whether the light and power business that serves my property has approved my incentive payment?** The light and power business that serves your property has sixty days to notify you in writing as to whether your request for an incentive payment is authorized or denied.

**(8) How is my incentive payment calculated?** Your incentive payment is calculated using a formula. First the

incentive payment may be paid at fifteen cents per "economic development kilowatt-hour." An economic development kilowatt-hour is the actual kilowatt-hour measurement of your generated electricity multiplied by the appropriate economic development factor. The economic development factors, which you multiply to the base rate of fifteen cents per actual kilowatt hours that your renewable energy system produces, are:

- Two and four tenths (2.4) if your system generates electricity using only solar modules manufactured in Washington;

- One and two tenths (1.2) if your solar or wind system uses an inverter manufactured in Washington;

- One (1.0) if your wind system uses only blades manufactured in Washington, or if your system is an anaerobic digester, or if your solar system is other than described above; and

- Eight tenths (0.8) if your system is a wind generator with blades not manufactured in Washington.

The following table describes the application of the economic development factors. The actual incentive payment you receive must be computed using your renewable energy system's actual measured electric kilowatt-hours generated.

**Annual Investment Cost Recovery Incentive Payment Calculation Table**

<b>Customer-generated power Applicable rates</b>	<b>Base rate (0.15) multiplied by applicable factor equals incentive payment rate</b>	<b>Kilowatt- hours generated</b>	<b>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</b>
Solar modules manufactured in Washington state <b>Factor: 2.4</b> (two and four-tenths)	\$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state <b>Factor: 1.2</b> (one and two-tenths)	\$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state <b>Factor: 1.0</b> (one)	\$0.15		
All other electricity produced by wind <b>Factor: 0.8</b> (eight-tenths)	\$0.12		

**(9) Are the factors for systems cumulative?** The factors are cumulative. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your economic development hours by using the factor three and six tenths (3.6) (computed 2.4 plus 1.2). Therefore you would multiply the fifteen-cent base rate per actual kilowatt-hour generated by your system by three and six tenths (3.6) to get your incentive payment rate.

**(10) What is the definition of the phrase: Manufactured in Washington state?** The department of revenue defines manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing your request for certification. Further, the climate and rural development center at Washington State University's energy

extension may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

For systems installed after the date these rules are adopted, your manufacturer must supply you with a statement delineating your system's level of manufacture in the state of Washington. This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying factors discussed in subsection (8) of this section. The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program. You must retain this documentation for five years after the receipt of your last incentive payment from your light and power business.



**(11) ~~What are the limitations on the incentive payments?~~** No individual, business, or local governmental entity is eligible for incentive payments in excess of two thousand dollars per year. However, as an example, if a customer installs a system on his or her home and then further installs two other separate systems on two separate business properties with different UBI numbers, then the customer is allowed the full two thousand dollar annual limit of the incentive payments for each property owned by an individual and each of the two separate businesses. In this example there are three qualifying systems on three separate properties owned by three separate entities allowing the full two thousand dollar limit on all three properties. If, however, the two business properties belong to only one business operating under one UBI number, then there are only allowed incentive payments up to the two thousand dollar annual limit for his or her home and for the one business. This is true even if the business operates from more than one location with qualifying renewable energy systems at each location because the two thousand dollar annual limit is allowed once to each individual and each business. Thus, in this case the individual and his or her one business are each only allowed one full two thousand dollar annual limit on their qualifying properties.

The issuing of incentive payments by participating light and power businesses is limited by the greater of:

(a) Twenty-five one hundredths of one percent (0.25%) of the light and power business' prior year's taxable sales under Washington state's law; or

(b) Twenty-five thousand dollars (\$25,000.00).

Based on this public utility tax credit limitation, your and all other qualifying customers' incentive payments may be proportionally reduced.

The light and power business must measure the actual kilowatt-hours of your renewable energy system's generated electricity using an electric production meter. If your renewable energy system is a hybrid system of combined solar and wind, it will be classified as a solely wind system for purposes of the incentive payment program, unless the solar and wind productions are separately metered. Systems that are interconnected to gas, diesel, ethanol, natural gas or other similarly fueled generators do not qualify for the incentive payment program. If a customer has an older system not manufactured in Washington and a separate new system manufactured in Washington on the same property, both systems will be classified as not made in Washington, unless the old and new systems' production are separately metered.

**(12) ~~Does the light and power business serving my property have to participate in the incentive payment program?~~** No, each light and power business will have the discretion to decide whether to be part of the incentive payment program.

**(13) ~~If I install a qualified renewable energy system on the apartment building where I am a tenant, can I submit for incentive payments?~~** No, you must own the property which is served by your renewable energy system. Even if your renewable energy system meets all requirements, except that it is installed on a building where you have a leasehold interest, it will not qualify for incentive payments.

**(14) ~~May an individual, business, or local governmental entity involved in the light and power business or in~~**

**~~the gas distribution business apply for incentive payments?~~** No, the law excludes both light and power businesses and gas distribution businesses from participating in the incentive payment program.

**(15) ~~Must I retain all my records, which substantiate my claim of eligibility for incentive payments?~~** Yes, you and all other customers applying for and receiving incentive payments must retain the records substantiating your right to receive the incentive payments and the correct amount for five years. The light and power business that made the payment or the department of revenue may examine the records upon five working days' notice. If the records show that you received an overpayment, the light and power business may assess you for the amount of the overpayment. Conversely, if an underpayment has occurred, the light and power business may authorize a further payment to cover the prior deficiency. Interest will be added to overpayments of incentive payments to you and other customers. The amount of interest you would owe on an overpayment is calculated in the same manner that the department of revenue assesses interest upon delinquent taxes under RCW 82.32.050.

**(16) ~~Is there also a public utility tax credit associated with the incentive payments?~~** Yes, the tax credit is for the benefit of the participating light and power business. Your light and power company is allowed a credit on its Washington state public utility taxes equal to the actual amount paid out as incentive payments to its customers under this law. The maximum amount of this credit is limited (see subsection (11) of this section).

**(17) ~~Does the department of revenue consider the incentive payment I receive taxable income?~~** No, the department of revenue characterized the payment you receive, paid by your light and power company, as a subsidy or rebate for the purchase or installation of an energy conservation measure. Therefore, the department does not characterize the incentive payment as income under Washington state's law.

**(18) ~~How is my incentive payment from the light and power business handled if the incentive is paid in the form of a credit against my power bill?~~** If your light and power business chooses this method, your incentive payment will be shown on your customer billing statement as a credit offsetting the amount you owe to the light and power business. The incentive payment is not a discount. Thus, the light and power business will only be allowed to claim a public utility tax credit for the incentive payments actually made, and is not also allowed a discount deduction.

**(19) ~~Is the federal government eligible to participate in the incentive payment program?~~** No, only individuals, businesses, and local governments whose properties and renewable energy systems are located in the state of Washington are eligible to participate in the incentive payment program.

**(20) ~~Are individuals, businesses and local governments that are not interconnected to the electric transmission and distribution system and who are not customers of a light and power business eligible for the incentive payment program?~~** No, only qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible for par-

participation in the incentive payment program. The term property means within the established boundaries of the lot served by the light and power business. However, the renewable energy system generating the electricity does not itself have to be interconnected to the electric transmission and distribution system as long as it is located on a property served by a light and power business.

For example, if a customer of a light and power business living in a home connected to the power grid builds a studio addition served by a renewable energy system that is not connected to the power grid, that customer is eligible for the incentive payment program.

Another example, if a customer of a light and power business owning a manufacturing facility connected to the power grid builds an unattached vehicle garage on the same lot that the factory is located and the garage is not interconnected, the renewable energy system supplying electricity to this garage is eligible for the incentive payment program.

If the facts are the same as above, but the manufacturing facility's owner buys a new lot across the street and the only improvement on this separate lot is the unattached vehicle garage that is not connected to the power grid, then the renewable energy system attached to the garage would not be eligible for the incentive payment program.

**(21) Does the law require that light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system and if so, how does that affect me as a customer?** Yes, the law does require that light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system. However, the renewable energy tax credit implementation advisory committee, consisting of the department of revenue, department of community, trade, and economic development, utilities and transportation commission, and the climate and rural energy development center at Washington State University's energy extension, has made a determination that for purposes of this incentive payment program, that the customer load requirement has been met. This decision, once made, is binding for the incentive payment program until its expiration, including any possible extensions. Thus, this requirement has no effect on any customer, when deciding whether to participate in this incentive payment program.) (1) **Introduction.** This section explains the renewable energy system cost recovery program provided in RCW 82.16.110 through 82.16.140. This program authorizes a customer investment cost recovery incentive payment (incentive payment) that covers the purchase and use of renewable energy systems located in Washington state that produce electricity, such as: Solar energy systems; wind generators; and certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container.

(a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves their property.

(b) Participation by a light and power business in this incentive payment program is discretionary.

(c) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

**(2) Definitions.** The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(a) "Administrator" means an owner and assignee of a community solar project defined in (c)(i) and (iii) of this subsection, that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary; such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to other owners.

(b) "Applicant" has the following three meanings in this definition.

(i) For other than community solar projects, applicant means an individual, business, or local government, that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."

(ii) For purposes of a community solar project defined in (c)(i) or (iii) of this subsection, the administrator, defined in (a) of this subsection, is the applicant.

(iii) For purposes of a utility-owned community solar project defined in (c)(ii) of this subsection, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

(c) "Community solar project" means any one of the three definitions, below:

(i) A solar energy system that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.

(ii) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for their share of the value of the electricity generated by the solar energy system.

(iii) A solar energy system, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive payment for the same customer-generated electricity as defined in (e) of this subsection.

(A) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.

(B) A member may hold an interest in the company constituting ownership of either a portion of the solar energy sys-

tem or a portion of the value of the electricity generated by the solar energy system, or both.

(d) For purposes of "community solar project" as defined in (c) of this subsection, the following definitions apply.

(i) "Company" means an entity that is:

(A)(I) A limited liability company created under the laws of Washington state;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW; and

(B) Not a "utility" as defined in (d)(v) of this subsection.

(ii) "Local individuals, households, nonprofit organizations, or nonutility businesses" mean individuals, households, nonprofit organizations, or nonutility businesses that are:

- Located within the service area of the light and power business where the renewable energy system is located; and

- Residents of Washington state.

(iii) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

(iv) "Owned in fee simple" means an interest in land that is the broadest property interest allowed by law.

(v) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(e) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable energy system located in Washington state, that is installed on an individual's, businesses', local government's or utility's real property and the real property involved is served by a light and power business.

(i) Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. For a community solar project, the utility or cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a utility or cooperating local governmental entity will not qualify. However, for community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."

(ii) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(f) "Local governmental entity" means any unit of local government of Washington state including, but not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts, and school districts;

- Public stadium authorities;

- Public universities;

- Public colleges;

- Public community colleges; and

- Public school districts.

Local governmental entity does not include a state governmental entity. Thus, for example, a state park or a state-owned building would not qualify as property owned by a local governmental entity.

(g) "Light and power business" means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(h) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(i) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(j) "Renewable energy system" means:

- A solar energy system used in the generation of electricity;

- An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container; or

- A wind generator used for producing electricity.

(k) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(l) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(m) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

**(3) Who may receive an incentive payment?** Any of the following may receive an incentive payment:

(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or

(b) A participant in a community solar project with an ownership interest in the:

- Solar energy system;

- Company that owns the solar energy system; or

- Value of the electricity produced by the solar energy system.

**(4) Must you be a customer of a light and power business to be a recipient of an incentive payment?** Only owners of qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to receive incentive payments.

(a) **Property served.** The term property means within the established boundaries of the lot served by the light and power business. However, the renewable energy system generating the electricity does not itself have to be interconnected to the electric transmission and distribution system as long as it is located on a property served by a light and power business.

(b) **Examples.** The following examples identify facts and then state a conclusion. These examples are only a gen-

eral guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example 1.** Jane, a customer of Light and Power Business lives, in a home connected to the power grid. Jane builds a studio addition served by a renewable energy system that is not connected to the power grid. Jane is eligible for the incentive payment program because she is a customer of the light and power business within the boundaries of a property served by the same light and power business.

(ii) **Example 2.** Steve, a customer of Light and Power Business, owns a manufacturing facility connected to the power grid. Steve builds an unattached vehicle garage on the same lot that the facility is located. The garage is served by a renewable energy system that is not interconnected. Steve is eligible for the incentive payment program.

(iii) **Example 3.** Assume the facts are the same as in Example 2 above, but Steve buys a new lot across the street and the only improvement on this separate lot is the unattached vehicle garage that is not connected to the power grid. In this case, Steve is not eligible for the incentive payment program because the renewable energy system is not within the boundaries of a property served by his light and power business.

**(5) To whom do I apply?** An applicant must apply to the light and power business serving the real property on which the renewable energy system is located. The applicant applies for an incentive payment based on customer-generated electricity during each fiscal year beginning on July 1st and ending on June 30th.

**(6) Do I need a certification before applying to the light and power business?** Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification request in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification entitled:

- Community Solar Project Renewable Energy System Cost Recovery Certification, which is located at <http://dor.wa.gov/docs/forms/excstx/dffrlfrm/commsolproj.pdf>; and
- Renewable Energy System Cost Recovery Certification, which is located at <http://dor.wa.gov/docs/forms/misc/renewenersystcertinvstrecincprgm.pdf>.

(b) The department of revenue will evaluate these certification requests with assistance from the climate and rural energy development center at the Washington State University.

(c) In the case of community solar projects:

- Only one certification can be obtained for each system;
- Applicants may rely upon a prior issued certification of the system;
- The administrator must apply for the certification if it's a community solar project placed on property owned by a cooperating local government and owned by individuals, households, nonprofit organizations, or nonutility businesses; and
- The company acting as an administrator must apply for the certification if it's a community solar project placed on property owned by a cooperating local government and owned by a company.

**(d) Property purchased with existing system.** Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must reapply for certification as the new owner.

**(e) Requirements of the certification request.** This certification request must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the certification request must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the certification request must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number and those of all current participants in a community solar project;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

(E) Solar or wind equipment manufactured outside of Washington state; or

(F) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

**(f) Response from the department of revenue.** Within thirty days of receipt of the certification the department of revenue will notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered by either mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center to determine eligibility for the incentive.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

**(7) How often do I apply to the light and power business?** You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for

covers the production of electricity by the system between July 1st and June 30th of each year.

**(8) What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications are:

- Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application located at [dor.wa.gov/docs/forms/excstx/dfrrlfrm/appincentpaycommsolproj.pdf](http://dor.wa.gov/docs/forms/excstx/dfrrlfrm/appincentpaycommsolproj.pdf); and

- Renewable Energy System Cost Recovery Annual Incentive Payment Application located at <http://dor.wa.gov/docs/forms/misc/renewenersyscuststrecincpmtappl.pdf>.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

**(a) Information required on the application to the light and power business.** The application must include, but is not limited to, the following information:

**(i) The name and address of the applicant and location of the renewable energy system:**

**(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.**

**(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.**

**(ii) The applicant's tax registration number and those of all current participants in a community solar project;**

**(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;**

**(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year; and**

**(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.**

**(b) Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

**(i) The light and power business may consult with the climate and rural energy development center to determine eligibility for the incentive payment.**

**(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).**

**(c) Light and power business may verify initial certification of system.** Your light and power business has the authority to verify and make separate determinations on the

matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business will be controlling and it has the authority to decertify your system.

**(9) What are the possible procedures an applicant and their light and power business may follow in setting up incentive payments?** This subsection first discusses recommended procedures an applicant should follow when requesting that the light and power businesses set up applicant's incentive payments and second discusses the possible procedures the light and power business may follow.

**(a) Steps an applicant may take include, but are not limited to:**

- Contacting their light and power business to ask whether it is participating and what application procedures apply;

- Submitting an application to the light and power business that serves their property;

- Submitting to the light and power business proof that the applicant's renewable energy system is certified by the department of revenue for the incentive payment program;

- Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

- Signing an agreement that the light and power business will provide to the applicant.

**(b) Steps the applicant's local light and power business may take include, but are not limited to:**

- Sending a utility serviceman to inspect the system;

- Installing an electric production meter if one meeting its specifications is not already installed since a meter is required to properly measure production;

- Reading the applicant's production meter at least annually;

- Processing the annual incentive payment;

- Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

- Calculating annual production payments based on the meter reading or readings made prior to the accounting date of July 1st; and

- Sending the applicant's incentive payment check (or crediting to the applicant's account) on or before December 15th.

**(10) How may the procedures differ with my light and power business when dealing with a utility-owned solar energy system?** A utility-owned solar energy system is voluntarily funded by ratepayers of the specific light and power business offering the program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project. It is important that the applicant realize that as a customer-ratepayer contributing to this program, applicant is in effect investing in the utility to receive a stated "value." This value is defined in the agree-

ment between the applicant and the utility and this agreement is a contract. Applicants need to protect their interest in this investment the same as a person would in any other investment.

**(11) What is the formal agreement between the applicant and the light and power business?** The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

- Contain the necessary safety requirements and inter-connection standards;
- Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;
- Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;
- Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;
- Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;
- Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and
- In the case of a utility-owned solar energy system, contain a detailed description of the "value" the applicant will receive in consideration of the financial support given to the utility.

**(12) Must you keep records regarding your incentive payments?** Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

**(a) Examination of records.** Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

**(b) Overpayment.** If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

**(c) Underpayment.** If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

**(13) How is an incentive payment computed?** The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state. The base rate is then multiplied by the economic development factor to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's kilowatt-hours generated to determine the incentive payment.

**(a) Determining the base rate.** The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

- Fifteen cents per economic development kilowatt-hour;
- or
- Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

**(b) Economic development factors.** For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

- (i) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;
- (ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;
- (iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and
- (iv) For all other customer-generated electricity produced by wind, eight-tenths.

**(c) Tables for use in computation.** The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured electric kilowatt-hours generated.

**Annual Incentive Payment Calculation Table for Noncommunity Projects**

<b>Customer-generated power applicable factors</b>	<b>Base rate (0.15) multiplied by applicable factor equals incentive payment rate</b>	<b>Kilowatt-hours generated</b>	<b>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</b>
Solar modules manufactured in Washington state <b>Factor: 2.4</b> (two and four-tenths)	\$0.36		

<u>Customer-generated power applicable factors</u>	<u>Base rate (0.15) multiplied by applicable factor equals incentive payment rate</u>	<u>Kilowatt-hours generated</u>	<u>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</u>
Solar or wind generating equipment with an inverter manufactured in Washington state <b>Factor: 1.2</b> (one and two-tenths)	\$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state <b>Factor: 1.0</b> (one)	\$0.15		
All other electricity produced by wind <b>Factor: 0.8</b> (eight-tenths)	\$0.12		

**Annual Incentive Payment Calculation Table for Community Solar Projects**

<u>Customer-generated power applicable factors</u>	<u>Base rate (0.30) multiplied by applicable factor equals incentive payment rate</u>	<u>Kilowatt-hours generated</u>	<u>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</u>
Solar modules manufactured in Washington state <b>Factor: 2.4</b> (two and four-tenths)	\$0.72		
Solar equipment with an inverter manufactured in Washington state <b>Factor: 1.2</b> (one and two-tenths)	\$0.36		
Other solar equipment <b>Factor: 1.0</b> (one)	\$0.30		

**(14) What if a system has both a module and inverter manufactured in Washington?** The above-described economic development factors are cumulative. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the kilowatt-hours generated to get the incentive payment amount.

**(15) What constitutes manufactured in Washington?** When determining what constitutes manufacturing in Washington state, the department of revenue defines manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification.

**(16) How can an applicant determine the system's level of manufacture in Washington state?** For systems installed after the date this section is adopted, the manufacturer must supply the applicant with a statement delineating the system's level of manufacture in Washington state.

**(a) Manufacturer's statement.** This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more

of the multiplying economic development factors discussed in subsection (13) of this section.

**(b) Penalty of perjury.** The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

**(c) Document retention.** The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

**(17) What about guidelines and standards for manufactured in Washington?** The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

**(18) Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each applicant. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, only one meter is needed to measure the system's production and then each applicant's share can be calculated by using each applicant's percentage of ownership in the system.

**(19) Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

**(a) Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

**(b) Community solar projects.**

- Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

- Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

**(20) Are the renewable energy system's environmental attributes transferred?** The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment.

**(21) Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

- The credit must be taken in a form and manner as required by the department of revenue.

- The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

- Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of

**Computation examples.** The following table provides:

<u>Taxable Power Sales by the light and power business</u>	<u>Maximum tax credit (greater of .5% of total taxable power sales or \$100,000)</u>	<u>Maximum amount of tax credit available for incentive payments in a utility-owned community solar project</u>	<u>Maximum amount of tax credit available for incentive payments in a company-owned community solar project</u>
<u>\$5,000,000</u>	<u>\$100,000</u>	<u>\$25,000</u>	<u>\$5,000</u>
<u>\$50,000,000</u>	<u>\$250,000</u>	<u>\$62,500</u>	<u>\$12,500</u>
<u>\$500,000,000</u>	<u>\$2,500,000</u>	<u>\$625,000</u>	<u>\$125,000</u>

- The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

- Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

**(22) What if a light and power business claims an incentive payment in excess of the correct amount?** For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

- The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

- Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.-110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

- Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

**(23) Does the department of revenue consider the incentive payment taxable income?** No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.

**(24) What is the relationship between the department of revenue and the light and power business under this program?** The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of the customer investment cost recovery incentive



payment, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

- The claimed credit amount equals the amount of the total of incentive payments;
- Payments to each applicant or participant in a community solar project are proportionally reduced by an equal percentage if the limit of total allowed payments is reached;
- Applicant payments are based on measured production of the renewable energy systems; and
- The credit and incentive payment limitations have not been exceeded.

#### WSR 10-08-054

##### WITHDRAWAL OF PROPOSED RULES OFFICE OF INSURANCE COMMISSIONER

(By the Code Reviser's Office)

[Filed April 6, 2010, 8:28 a.m.]

WAC 284-38-005, 284-38-010, 284-38-015, 284-38-020, 284-38-025 and 284-38-030, proposed by the office of insurance commissioner in WSR 09-19-101 appearing in issue 09-19 of the State Register, which was distributed on October 7, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 10-08-055

##### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF ECOLOGY

(By the Code Reviser's Office)

[Filed April 6, 2010, 8:29 a.m.]

WAC 173-441-010, 173-441-020, 173-441-030, 173-441-040, 173-441-050, 173-441-060, 173-441-065, 173-441-070, 173-441-080, 173-441-090, 173-441-095, 173-441-100, 173-441-110, 173-441-120, 173-441-130, 173-441-140, 173-441-150, 173-441-160, 173-441-170, 173-441-180, 173-441-190, 173-441-200, 173-441-210, 173-441-500, 173-441-510, 173-441-520, 173-441-530, 173-441-540, 173-441-550, 173-441-560, 173-441-700 and 173-441-800, proposed by the department of ecology in WSR 09-19-109 appearing in issue 09-19 of the State Register, which was distributed on October 7, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 10-08-056

##### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FINANCIAL INSTITUTIONS

(By the Code Reviser's Office)

[Filed April 6, 2010, 8:29 a.m.]

WAC 208-620-513, proposed by the department of financial institutions in WSR 09-19-126 appearing in issue 09-19 of the State Register, which was distributed on October 7, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 10-08-066

##### PROPOSED RULES UNIVERSITY OF WASHINGTON

[Filed April 6, 2010, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-017.

Title of Rule and Other Identifying Information: Chapter 478-136 WAC, Use of University of Washington facilities and WAC 478-137-030 Administrative authority.

Hearing Location(s): University of Washington, Room 309, Husky Union Building (HUB), Seattle, Washington 98195, on May 17, 2010, at noon.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Rebecca Goodwin Dear-dorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195-1210, e-mail rules@uw.edu, fax (206) 685-3825, by May 17, 2010.

Assistance for Persons with Disabilities: Contact disability services office by May 3, 2010, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to chapter 478-136 WAC establish a separate use of university facilities committee for each of the University of Washington's three campuses. Amendments also include newly delegated authority from the university president to the chancellors to appoint a chair for the UW Bothell and UW Tacoma committees (amending the previous secretary of the committee role), and add liaison responsibilities between the three committee chairs. In addition the chapter has been reorganized for clarity and updated where necessary to reflect current practice.

The proposed housekeeping amendments to WAC 478-136-030 clarify meaning without changing the rule's effect.

Reasons Supporting Proposal: These proposed rules have been reviewed and approved by the university's chancellors as well as the current secretary of the use of university facilities committee, and the attorney general's office.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Gus Kravas, Secretary of the Use of University Facilities Committee and Special Assistant to the Provost, Room 227, Gerberding Hall, University of Washington, Seattle, Washington, (206) 543-5708; and Implementation: University President, Mark Emmert, Room 301, Gerberding Hall, University of Washington, Seattle, Washington, (206) 543-5010, UW Bothell Chancellor, Kenyon Chan, Room UW1-260G, University of Washington, Bothell, Washington, (425) 352-5221, and UW Tacoma Chancellor, Patricia Spakes, Room GWP 312C, University of Washington, Tacoma, Washington, (253) 692-5646.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 478-136 WAC, Use of University of Washington facilities and WAC 478-137-030 Administrative authority, does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The University of Washington does not consider chapter 478-136 WAC, Use of University of Washington facilities and WAC 478-137-030 Administrative authority, to be significant legislative rules.

April 6, 2010

Rebecca Goodwin Deardorff  
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 97-24-047, filed 11/26/97, effective 12/27/97)

**WAC 478-136-010 Use of university facilities—General policy.** The University of Washington is an educational institution provided and maintained by the people of the state in order to carry out its broad mission of teaching, research and public service. The purpose of this policy is to ensure that all university facilities (~~(operated by the university)~~) are reserved primarily for educational use including, but not limited to, instruction, research, public assembly, student activities, and recreational activities related to educational use. Further, each facility may be used for a variety of activities, ~~((se))~~ as long as the primary function the facility was intended to serve is protected. Reasonable time, place, and manner restrictions may be placed on the use of university facilities.

AMENDATORY SECTION (Amending WSR 07-03-136, filed 1/23/07, effective 2/23/07)

**WAC 478-136-012 Definitions.** (1) "Chair" of the committee on the use of university facilities means the person delegated authority by the president of the University of Washington and the chancellors of the University of Washington to authorize the use of university facilities, as provided for herein, for activities which take place on their respective campuses or at locations governed by their respective campuses; who oversee the committee on the use of university facilities for their respective campuses; and who liaise with

other chairs to promote coordination in the application of this policy across campuses. The University of Washington attorney general's division shall provide legal guidance to the chair as needed.

(2) "Committee on the use of university facilities" means a committee appointed by the chair of the committee on the use of university facilities, which meets on a schedule to be determined by the chair, to provide nonbinding guidance to the chair on the application of these rules. Committee representatives might include representatives for UW police, environmental health and safety, risk management, student affairs, student government, and faculty and staff representatives.

(3) "Facility" or "facilities" includes all structures, grounds, parking lots, waterfront, and airspace owned or operated by the University of Washington, except where a "facility" is excluded from the application of this rule pursuant to a contract (such as a lease or rental agreement). Specific rules also apply to parking lots, bicycle and skateboard use (chapters 478-116, 478-117, and 478-118 WAC), boat moorage facilities (chapter 478-138 WAC and *University Handbook*, Volume 4, Part VII, Chapter 3, Section 2), residence halls (chapter 478-156 WAC), airspace use (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 5), non-university speakers on campus (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 4), and use of facilities by the Associated Students University of Washington (ASUW), Graduate and Professional Student Senate (GPSS), and other affected organizations (*University Handbook*, Volume 3, Part III, Chapter 5).

~~((2))~~ (4) "Use of facilities" includes, but is not limited to ~~((:))~~, the holding of events, the posting and removal of signs, all forms of advertising, commercial activities, and charitable solicitation.

~~((3)) "Approved event" means a use of university facilities which has received preliminary approval from an academic or administrative unit and which has received final approval from the committee on the use of university facilities.~~

AMENDATORY SECTION (Amending WSR 05-21-133, filed 10/19/05, effective 11/19/05)

**WAC 478-136-015 Delegated and administrative responsibilities.** (1) The board of regents has delegated to the president of the university the authority to regulate the use of university facilities.

~~((2))~~ Under this authority, the president has ~~((appointed))~~ acted or will act as follows:

(a) Delegate to the chair for the committee on the use of university facilities (~~(- To provide for proper))~~ with respect to facilities located on or governed by those located on the Seattle campus and for all other university facilities except for those located on the campuses for which there is a chancellor, the authority to review (~~((of))~~) the use of university facilities; to establish within the framework of this policy guidelines and procedures governing such use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate. Inquiries (~~((concerning~~

the use of university facilities may)) to the chair for the Seattle campus should be directed to:

University of Washington Seattle  
 ((Secretary)) Seattle Chair of the Committee  
 on the Use of University Facilities  
 ((239M Gerberding Hall))  
 Box 351241  
 Seattle, WA 98195-1241

(or phone: 206-543-9233, or e-mail sprogram@uw.edu).  
 (((3) Preliminary approval)) (b) Delegate to the chancellors of the University of Washington campuses, with respect to facilities located on or governed by those located on their campus, the authority to review the use of university facilities; to establish within the framework of this policy guidelines and procedures governing such use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate.

(c) Delegate the chancellors the authority to subdelegate the authorities provided for in (b) of this subsection to a chair of the committee on the use of university facilities for facilities located on or governed by those located on their respective campuses. For the current UW campuses, other than the Seattle campus, inquiries concerning the use of university facilities may be directed to:

University of Washington Bothell  
Bothell Chair of the Committee on the  
Use of University Facilities  
Office of the Vice-Chancellor for Administration and  
Planning  
Box 358520  
18115 Campus Way N.E.  
Bothell, WA 98011

or

University of Washington Tacoma  
Tacoma Chair of the Committee on the  
Use of University Facilities  
1900 Commerce Street, GWP 312  
Box 358430  
Tacoma, WA 98402

(or, for the University of Washington Tacoma, phone: 253-692-5645).

(d) Directs the chairs for each committee on the use of university facilities to confer with one another to promote a uniform application of this chapter.

(2) Sponsorship of an event by an academic or administrative unit of the university implies that ((a responsible)) an official with authority to make such decisions for the academic or administrative unit has applied his or her professional judgment to the content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded, on behalf of his or her academic or administrative unit, that the event is consistent with ((the teaching, research, and/or public service mission of the university)) this chapter.

(((4) Final)) (3) Approval of a facilities use request by the ((committee on the use of university facilities implies)) appropriate committee chair means that the committee ((has reviewed)) chair has determined that the proposed event

((with regard to: The general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods and the general public.

(5) The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(6) The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(7) Individuals who violate the university's use of facilities regulations and approved users who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities. Failure to comply with a request to leave university property could subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws)) is consistent with this chapter.

AMENDATORY SECTION (Amending WSR 97-24-047, filed 11/26/97, effective 12/27/97)

**WAC 478-136-025 Users.** (1) Faculty, staff, and registered student organizations or official student ((organizations)) governments may use university facilities to hold events for faculty, staff, and students provided such uses comply with this general policy on use of university facilities and specific facilities use policies of individual university units. These events do not ((, however,)) require either ((preliminary approval)) sponsorship by an academic or administrative unit or ((final)) approval by a chair of the committee on the use of university facilities.

(2) Faculty, staff, and registered student organizations or official student ((organizations)) governments may use university facilities to hold events to which the general public is invited when the event ((has preliminary approval)) is sponsored by an academic or administrative unit and ((final approval of)) approved by the appropriate chair of the committee on the use of university facilities.

(3) Nonuniversity organizations and individuals may use university facilities to hold events which ((have received preliminary approval)) are sponsored by a university academic or administrative unit and ((final approval)) approved by the appropriate chair of the committee on the use of university facilities. The general public may be invited to such events.

AMENDATORY SECTION (Amending WSR 07-03-136, filed 1/23/07, effective 2/23/07)

**WAC 478-136-030 Limitations on use.** (1) First priority for the use of campus facilities shall be given to regularly scheduled university activities. Additionally, use of university facilities may be subject to reasonable time, place, and manner restrictions that take into account, among other considerations, the general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods, and the general public.

(2) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. ~~((Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.))~~ No activity may obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles.

~~((2))~~ (3) University facilities may be used for political activities (including events and forums regarding ballot propositions and/or candidates who have filed for public office (so long as)) only if the event has (received preliminary approval) been sponsored by an administrative or academic unit and ~~((final approval))~~ approved by the ~~((committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.))~~ appropriate committee chair, and subject to the following limitations:

(a) ~~((First priority for the use of campus facilities shall be given to regularly scheduled university activities.~~

(b) ~~University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when))~~ The full rental cost of the facility (is) must be paid (However, use of) and state funds (for payment of facility)) may not be used to pay rental costs (is prohibited) or any other costs associated with the event.

~~((c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or))~~ (b) All candidates who have filed for office for a given position, regardless of party affiliation, (are) must be given equal access to the use of facilities within a reasonable time.

~~((d))~~ (c) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

~~((e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.~~

~~((f))~~ (d) University facilities (or services)) may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

~~((3))~~ (4) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the appropriate chair of the committee on the use of university facilities (see also subsection (7) of this section, concerning residence halls).

~~((4))~~ Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) ~~((In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities.))~~ When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the ~~((committee on the use of university facilities))~~ appropriate committee chair. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/tecast information related to the user's activities offered in university facilities. The committee ~~((will))~~ chair may determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Outdoor electronic amplification (on the grounds of the campus)) is prohibited with the following exceptions:

(a) The lawn area immediately west of the Seattle campus Husky Union Building (HUB) will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee (~~(on the use of university facilities)~~) chair with authority to permit the use of a facility may grant permission (~~(, under special circumstances,)~~) for the use of (~~(other)~~) amplification equipment (~~(on the lawn site west of the Husky Union Building or)~~) in other outdoor locations. Permission should be requested (~~(through:~~

University of Washington  
Secretary to the Committee on the  
Use of University Facilities  
239M Gerberding Hall  
Box 351241  
Seattle, WA 98195-1241

~~(or phone: 206-543-9233,))~~ from the appropriate committee chair sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in (~~(campus))~~ university facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license (~~(obtained under subsection (13) of this section))~~ as provided in WAC 478-136-041. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Except for designated outdoor smoking sites, as provided in WAC 478-136-035, smoking is prohibited in all portions of all athletic stadia, including, but not limited to, the seating areas, public concourses, and enclosed and covered spaces.

(d) All persons entering events in Husky Stadium or other athletic venues or events in other (~~(campus))~~ university auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected.

Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo(~~(s)~~) but (~~(in keeping with university policy))~~) may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

(12) (~~(Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.~~

~~(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.~~

~~(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.~~

~~(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.~~

~~(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.~~

~~(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:~~

~~(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) of this subsection or proof that the seller holds an appropriate license; and~~

~~(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and~~

~~(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and~~

~~(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off premises.~~

~~(f) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.~~

~~(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age)) The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.~~

~~(13) The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.~~

~~(14) Individuals who violate the university's use of facilities rules and approved users who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities. Failure to comply with a request to leave university property could subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.~~

AMENDATORY SECTION (Amending WSR 07-03-136, filed 1/23/07, effective 2/23/07)

**WAC 478-136-035 No smoking policy for university facilities.** (1) The University of Washington is committed to maintaining a safe and healthful work and educational envi-

ronment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following no smoking policy, consistent with chapter 70.160 RCW (I-901), to protect individuals from exposure to second-hand smoke in their university-associated environments and to protect life and property against fire hazards.

(a) Except as provided in subsection (1)(b) and (c) of this section, smoking of all kinds is prohibited in all university facilities, including, but not limited to, vehicles, inside all buildings owned, occupied, or managed by the university and/or used by the university's faculty, staff, students, or visitors, and at any outside areas or locations, including, but not limited to, bus shelters, benches, and walkways.

(b) Smoking, while not permitted in on-campus residence halls, may be permitted in a limited portion of designated university student housing in accordance with smoking regulations established for those facilities by the vice-president and vice-provost for student life, the appropriate chancellor, or their designees.

(c) Smoking may be permitted in specific designated outdoor locations approved by the director of environmental health and safety as smoking areas in accordance with chapter 70.160 RCW and published on the environmental health and safety web site. Signage also identifies the designated locations.

(2) Violations of the university no smoking policy are subject to enforcement by the University of Washington police department or other jurisdictional law enforcement agencies with regulatory responsibility. In addition, any student, staff, or faculty member who violates the university no smoking policy may be subject to disciplinary action.

#### NEW SECTION

**WAC 478-136-041 Alcoholic beverage policy.** Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(1) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(2) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(3) Alcoholic beverages may be possessed, sold, served, and consumed at the University of Washington club, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(4) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(5) Except as provided in subsections (3) and (4) of this section, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(a) Events at which alcohol is to be sold must be approved by the appropriate committee chair for the committee on the use of university facilities and an application to the chair must be accompanied by a request for written authorization under subsection (6) of this section or proof that the seller holds an appropriate license; and

(b) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance; and

(c) A university unit, or an individual or organization applying for a permit/license must have obtained approval under subsection (6) of this section; and

(d) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) identified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(6) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the appropriate committee chair for the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(7) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

**AMENDATORY SECTION** (Amending WSR 03-24-045, filed 11/26/03, effective 12/27/03)

**WAC 478-136-060 Safety and liability.** (1) It is the responsibility of any person or organization requesting the use of university facilities to comply with all applicable university policies, procedures, rules and regulations, and applicable local, state and federal laws, including but not limited to fire, health and safety regulations.

(2) Permission to a nonuniversity organization (~~(or to)~~), a registered student organization, or an official student government for the use of university facilities is granted with the express understanding and condition that such organization assumes full responsibility for any loss, damage or claims arising out of such use.

When the event involves physical activity, the sale of alcohol, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least \$1,000,000 per occurrence must be provided to the university's office of risk management before approval for the requested use will be granted.

**AMENDATORY SECTION** (Amending WSR 06-13-022, filed 6/13/06, effective 8/1/06)

**WAC 478-137-030 Administrative authority.** (1) The board of regents of the University of Washington and the board of trustees for Cascadia Community College have delegated to the chancellor of the university and the president of the college, respectively, the authority to regulate the use of joint facilities on the colocated campus.

(2) Under this authority, the chancellor of the university and the president of the college designate the coordination for use of joint facilities to an appointed joint committee on facility use and designate the use of the wetlands to the wetlands oversight committee. The chancellor of the university and the president of the college shall each appoint representatives to the joint committee on facility use to develop suggested event procedures. Each designee shall review the use of the facilities; establish administrative procedures governing such use that are consistent with these rules; approve or disapprove requested uses and establish policies regarding fees and rental schedules unique to joint facilities as appropriate. Additionally, the joint committee on facility use shall act as an appeals board for decisions of the wetlands oversight committee regarding wetlands use requests. Inquiries concerning the use of joint facilities may be directed to:

University of Washington, Bothell  
Office of Administrative Services  
Joint Facilities Use Coordinator  
Box 358535

18115 Campus Way N.E.  
Bothell, WA 98011

(Phone: 425-352-3556 or e-mail: [facuse@uwb.edu](mailto:facuse@uwb.edu)); and  
Cascadia Community College

Finance and Operations Office  
Director of Auxiliary Services and Capital Projects  
18345 Campus Way N.E.  
Bothell, WA 98011

(Phone: 425-352-8269).

(3) Preliminary approval of an event by an academic or administrative unit of the university or college implies that a responsible official has applied his or her professional judgment to the content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded that the event is consistent with the teaching, research, and/or public service mission of the institutions.

(4) Final approval of a joint facilities use request by the appropriate designee on the use of joint facilities implies that the designee has reviewed the proposed event with regard to: The rules in this chapter; the direct and indirect costs to the institutions; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the institutions, surrounding neighborhoods and the general public.

(5) The institutions will not make their joint facilities or services available to organizations that do not assure the institutions that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses

must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(6) The institutions will not make their joint facilities or services available to organizations which do not assure the institutions that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(7) Individuals who violate the institutions' use of joint facilities regulations and approved users who violate the institutions' contract terms for use of joint facilities may be advised of the specific nature of the violation and individuals may be requested to leave the property or be refused future use of joint facilities. Failure to comply with a request to leave the property may subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.

**WSR 10-08-071**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 6, 2010, 12:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-093.

Title of Rule and Other Identifying Information: WAC 392-140-970 through 392-140-974, Finance—Special allocations—Salary bonus for teachers and other certificated staff who hold current certification by the national board.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Wanamaker Conference Room, on May 11, 2010, at 11:00 a.m.

Date of Intended Adoption: May 11, 2010.

Submit Written Comments to: Ross Bunda, P.O. Box 47200, Olympia, WA 98504-7200, e-mail ross.bunda@k12.wa.us, fax (360) 753-4201, by May 7, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by May 7, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions update reference to the "core student records system" of the office of superintendent of public instruction to the "core student records system or successor data collection and reporting systems, such as the comprehensive education data and research system (CEDARS)," with respect to which schools are designated as challenging, high poverty schools for the 2009–10 school year and thereafter, for purpose of the challenging, high poverty school bonus. Also, a new section is added regarding review and adjustment of data that determines whether a school building is considered to be a challenging, high poverty school. Teachers and other certificated instructional staff are eligible for additional national board

bonuses if they are in an instructional assignment in challenging, high poverty schools.

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

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; Implementation: Cal Brodie, Office of Superintendent of Public Instruction, (360) 725-6301; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

April 2, 2010

Randy Dorn  
Superintendent

AMENDATORY SECTION (Amending WSR 09-07-043, filed 3/11/09, effective 4/11/09)

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

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

(2) Who are:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) Eligibility in the prior year; or~~

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

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

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

~~(C) 50 percent for high schools; as determined by the October 1 count of the core student records system or successor data collection and reporting systems, such as the comprehensive education data and research system (CEDARS), of the office of superintendent of public instruction.~~

~~(b) For purposes of the national board challenging, high poverty schools bonus, a building shall be categorized based upon the highest grades served as follows:~~

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

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

~~(iii) A building whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school; provided, that, a building shall be considered only if it serves~~

thirty or more students, or is the largest building in the district serving its designated category.

(c) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

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

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

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

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

#### NEW SECTION

#### **WAC 392-140-975 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Requests for review and adjustment.**

A school district may request that the superintendent of public instruction review and adjust data and calculations used to determine funding for the salary bonus for teachers and other certificated staff who hold current certification by the national board for professional teaching standards pursuant to this chapter and instructions issued by the superintendent of public instruction. Requests to review and adjust data shall be considered only for those districts wishing to appeal a school's eligibility designation for the challenging, high poverty schools bonus pursuant to WAC 392-140-973(3).

Requests to review and adjust data shall be considered only if the district shows that the data or calculations are in error, or other bona fide adjustments are necessary.

#### **WSR 10-08-072 PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed April 6, 2010, 12:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-006.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of the Superintendent for [of] Public Instruction, Wannamaker [Wanamaker] Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: May 11, 2010.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by May 7, 2010.

Assistance for Persons with Disabilities: Contact Wanda Griffin by May 7, 2010, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The low income choice program is not related to the provisions for school choice under the Elementary and Secondary Education Act (no child left behind).

There is no reference to the low income choice program in the Revised Code of Washington (RCW). Previous reference to the program was contained within the state operating budget.

The low income choice transportation program was not utilized for several years prior to the 2009 legislative session. In the 2009-11 Operating budget, all reference to the program was removed. This CR-102 is to remove the sections of WAC 392-141-205, 392-141-210, 392-141-215, 392-141-220, 392-141-225, and 392-141-230 that refer to the distribution of funding for this program.

Statutory Authority for Adoption: RCW 28A.150.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Cathrine Slagle, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 5, 2010  
Randy Dorn  
State Superintendent

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-141-205	Choice low-income criteria.
WAC 392-141-210	Choice program transportation eligibility for reimbursement.
WAC 392-141-215	Choice calculation of payment.
WAC 392-141-220	Choice reimbursement limitations.
WAC 392-141-225	Choice method of payment.
WAC 392-141-230	Choice appropriation limitation.

#### **WSR 10-08-076**

#### **PROPOSED RULES**

#### **CENTRAL WASHINGTON UNIVERSITY**

[Filed April 6, 2010, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-001.

Title of Rule and Other Identifying Information: Equal opportunity and nondiscrimination, WAC 106-72-004.

Hearing Location(s): Barge 304, on May 11, 2010, at 11:30 a.m.

Date of Intended Adoption: May 12, 2010.

Submit Written Comments to: Kristy Magdlin, President's Office, 400 East University Way, Ellensburg, WA 98926-7501, e-mail magdlink@cwu.edu, fax (509) 963-3206, by May 10, 2010.

Assistance for Persons with Disabilities: Contact disability support services by May 10, 2010, TTY (509) 963-2143.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Modify nondiscrimination statement and redundant sections eliminated.

Reasons Supporting Proposal: Equal opportunity and nondiscrimination rules are necessary to comply with federal and state law.

Statutory Authority for Adoption: Title 28B RCW and RCW 28B.35.120(2).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Central Washington University, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Staci Sleigh-Layman, 400 East University Way, Ellensburg, WA 98926-7497, (509) 963-2206.

April 6, 2010  
James L. Gaudino  
President

#### NEW SECTION

**WAC 106-72-004 Equal opportunity and nondiscrimination.** Central Washington University's policies and practices affirm and actively promote the rights of all individuals to equal opportunity in education and employment. Discrimination on the basis of race, color, creed, religion, national origin, sex, sexual orientation, gender identity and gender expression, age, marital status, disability, or status as a protected veteran is prohibited. The university provides an internal procedure for reporting discrimination and affords protection against retaliation for participating in the complaint process. Central Washington University complies with all applicable federal, state, and local laws, regulations, and executive orders including when soliciting bids and in the fulfillment of all contracts with governmental agencies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 106-72-005	Equal opportunity/affirmative action in employment.
WAC 106-72-015	Annual workforce analysis.
WAC 106-72-025	Equal opportunity for students.
WAC 106-72-130	Procedures, rules, and regulations—Contracts and contractors.
WAC 106-72-250	Procedures, rules, and regulations—Government contracts.
WAC 106-72-400	Equal opportunity grievance procedures.

**WSR 10-08-081**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services)

[Filed April 6, 2010, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-132.

Title of Rule and Other Identifying Information: The department is amending WAC 388-850-045 to revise the county funding formula to comply with state budget appropriations.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule implements changes made to the county funding formula as a result of changes in the state budget appropriation for county pro-

grams. An initial public notice was filed on December 22, 2008, and stakeholder work has just been completed.

Reasons Supporting Proposal: The division was directed to change the county funding formula as a result of changes in the state budget appropriation for county programs.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.14.030.

Statute Being Implemented: RCW 71A.12.030, 71A.12.040, 71A.14.030.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Meredith Kelly, 640 Woodland Square Loop, (360) 725-3524; Implementation: Branda Matson, 640 Woodland Square Loop, (360) 725-3405; and Enforcement: Don Clintzman, 640 Woodland Square Loop, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not require a significant rule analysis under RCW 19.85.061 which states "Unless so requested by a majority vote of the joint administrative rules review committee under RCW 19.85.030, an agency is not required to comply with this chapter when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations." This rule is being proposed as a direct result of changes in the state budget appropriations as directed by the legislature.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(ii) rules with content dictated by statute are not required to submit a cost-benefit analysis. This rule was directed by the legislature in order to meet state budget appropriations.

April 1, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-015, filed 5/9/05, effective 6/9/05)

**WAC 388-850-045 ((Funding formula—Developmental disabilities.)) What is the formula for distribution of funding to the counties?**

(1) For the purposes of this section, "county" shall mean the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties shall be based on the following criteria:

(a) ~~((Each county shall receive a base amount of funds. The amount shall be based on the prior biennial allocation, including any funds from budget provisos from the prior biennium, and subject to the availability of state and federal funds;~~

~~(b))~~ The distribution of ~~((any additional))~~ funds provided by the legislature or other sources shall be based on a distribution formula which best meets the needs of the population to be served ~~((as follows:~~

~~(i) On a basis which))~~.

(b) The distribution formula takes into consideration ~~((minimum grant amounts,))~~ requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX

home and community-based waivers, ~~((and the general population of the county, and))~~ the number of children eligible for birth to three services, special education enrollment, the number of individuals receiving county funded services, the number of individuals enrolled with the division and the general population of the county ~~((as well as the population eligible for county-funded developmental disabilities services;))~~.

~~((ii) On a basis that takes into consideration the population numbers of minority groups residing within the county;~~

~~((iii) A biennial adjustment shall be made after these factors are considered; and~~

~~((iv) Counties not receiving any portion of additional funds pursuant to this formula shall not have their base allocation reduced due to application of this formula.~~

~~((e) Funding appropriated through legislative proviso, including vendor rate increases, shall be distributed to the population directed by the legislature utilizing a formula as directed by the legislature or using a formula specific to that population or distributed to identified people;~~

~~((d))~~ (c) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.

(3) A county may utilize seven or less percent of the county's allocated funds for county administrative expenses. A county may utilize more than seven percent for county administration with approval of the division director. ~~((A county electing to provide all services directly, in addition to county administration, is exempt from this requirement.))~~

~~((4) The department may withhold five or less percent of allocated funds for new programs, for statewide priority programs, and for emergency needs.))~~

## WSR 10-08-082

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

[Filed April 6, 2010, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-062.

Title of Rule and Other Identifying Information: The department is amending WAC 388-831-0240 to maintain consistency with waiver rules in chapter 388-845 WAC regarding criteria for termination from the community protection program.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson). A map is available at <http://www1.dshs.wa.gov/msa/tpau/RPAU-OB-2directions.html> or by calling (360) 664-6094, on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS

RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185 by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed amendments defined the criteria for termination from the community protection program. This is necessary in order to match the rules contained in chapter 388-831 WAC which contain waiver procedures.

Reasons Supporting Proposal: In order for the department to be in compliance with rules approved by the Federal Centers for Medicare and Medicaid Services under Section 1915(C) of the Social Security Act, it is necessary for the department to amend WAC 388-831-0240.

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

Statute Being Implemented: RCW 71A.12.030, 71A.12.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Meredith Kelly, 640 Woodland Square Loop, Olympia, WA 98504, (360) 725-3524; Implementation: Shirley Everard, 640 Woodland Square Loop, Olympia, WA 98504, (360) 725-3444; and Enforcement: Don Clintsman, 640 Woodland Square Loop, Olympia, WA 98504, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025(3) states that a small business economic impact statement is not required for several other types of rules including: (1) Emergency rules; (2) internal governmental rules; (3) rules adopting or incorporating, by references without material change, any of the following: Federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs unless they govern shorelines of state-wide significance or are referenced by state law or national consensus codes that establish generally accepted industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b) states the following types of rules do not require a cost-benefit analysis: (1) Emergency rules; (2) internal governmental rules; (3) rules adopting or incorporating, by references without material change, any of the following: Federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs unless they govern shorelines of state-wide significance or are referenced by state law or national consensus codes that establish generally accepted industry standards.

April 1, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

**WAC 388-831-0240 Can I be terminated from the community protection program?** You may be terminated from the community protection program by the division if:

- (1) You physically assault program participants, staff or others;
- (2) You repeatedly elope from the program or evade supervision;
- (3) You engage in illegal behavior of any kind; or
- (4) You refuse to comply with program and/or treatment guidelines to the extent that your therapist determines you are not amenable to treatment; ~~((☞))~~ and
- (5) The division determines that your health and safety needs cannot be met in the program.

**WSR 10-08-083**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 6, 2010, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-069.

Title of Rule and Other Identifying Information: The department is amending WAC 388-533-0360 Infant case management—Purpose, 388-533-0365 Infant case management—Definitions, 388-533-0370 Infant case management—Eligibility, 388-533-0375 Infant case management—Provider requirements, 388-533-0380 Infant case management—Covered services, 388-533-0385 Infant case management—Noncovered services, and 388-533-0386 Infant case management services—Reimbursement.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections in chapter 388-533 WAC in order to redefine the eligibility criteria for infant case management (ICM) and to reduce the quantity of services clients qualify for. In

addition, the amendments update and clarify other ICM services policy.

Reasons Supporting Proposal: These amendments are necessary for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for maternity support services and ICM for fiscal years 2010-2011, and to further clarify the department's coverage policy.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009, (ESHB 1244), RCW 74.08.090 and 74.09.760 through 74.09.910.

Statute Being Implemented: RCW 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: June Hershey, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1293.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting June Hershey, Program Manager, DHS/FHS, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1293, fax (360) 664-4371, e-mail [junehershey@dshs.wa.gov](mailto:junehershey@dshs.wa.gov).

March 30, 2010

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0360 Infant case management—Purpose.** The purpose of infant case management (ICM) ((~~program serves high-risk infants and their families. The goal of ICM is to improve self-sufficiency of the parent(s) in gaining access to~~) is to improve the welfare of infants by providing their parent(s) with information and assistance in order to access needed medical, social, educational, and other services (SSA 1915(g)).

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0365 Infant case management—Definitions.** The ((following)) definitions ((and those found in WAC 388-500-0005, Medical definitions and)) in WAC 388-533-0315, Maternity support services definitions, also apply to ((this section:

"Infant case management (ICM)"—The program that provides case management services to eligible high-risk infants and their families. Eligibility for ICM may be estab-

lished at the end of the maternity cycle up to the end of the month of the baby's first birthday)) infant case management (ICM).

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0370 Infant case management—Eligibility.** (1) To ~~((be eligible for))~~ receive infant case management (ICM), an infant must:

(a) ~~((The infant must))~~ Be covered under one of the medical assistance programs listed in WAC 388-533-0320 (1)((a) of this chapter));

(b) ~~((The parent(s) must need assistance in accessing or providing care for the infant))~~ Meet the age requirement for ICM which is the day after the maternity cycle (defined in WAC 388-533-0315) ends, through the last day of the month of the infant's first birthday; ((and))

(c) ~~((At least one or more of the following criteria exists:~~

(i) ~~The parent(s) are unable to care for infant specifically due to at least one of the following:~~

(A) ~~Incarceration of the mother within the last year;~~

(B) ~~Low functioning ability (e.g., needs repeated instructions, not attuned to infant cues, leaves infant with inappropriate caregivers, parent has the equivalent of less than an eighth grade education);~~

(C) ~~Unstable mental health issue (regardless of whether the mental health issue is being treated or not);~~

(D) ~~Physical impairment;~~

(E) ~~Infant's mother is experiencing postpregnancy depression or mood disorder or has a history of depression/mood disorder;~~

(F) ~~Infant's parent(s) are unable to access resources due to age (nineteen years of age or younger);~~

(G) ~~Social isolation (e.g., family is new to the community, parent(s) do not have a support system, family moves frequently, lack of supportive living environment);~~

(H) ~~Inability to access resources due to language or cultural barrier.~~

(ii) ~~The infant's safety is a concern specifically due to at least one of the following:~~

(A) ~~Domestic or family violence in present or past relationship that keeps the parent(s) feeling unsafe;~~

(B) ~~Substance abuse by the infant's mother and/or father that is impacting ability to parent;~~

(C) ~~Secondhand smoke exposure to the infant;~~

(D) ~~Child protective service involvement within the last year or mother/father had parental rights terminated in the past;~~

(E) ~~Unstable living situation (e.g., homelessness, couch surfing, unsafe conditions, no cooking facilities, heat, or water);~~

(iii) ~~The infant's health is a concern specifically due to at least one of the following:~~

(A) ~~Low birth weight—less than five and one half pounds;~~

(B) ~~Premature birth—less than thirty-seven weeks gestation;~~

(C) ~~Failure to thrive (e.g., baby is not gaining weight, significant feeding difficulty, no eye contact, or baby is listless);~~

(D) ~~Multiple births (twins, triplets, etc.);~~

(E) ~~Excessive fussiness or infant has irregular sleeping patterns (e.g., parent(s)' sleep deprivation, exhaustion and/or need for respite childcare);~~

(F) ~~Infant has an identified medical problem or disability))~~ Reside with at least one parent (see WAC 388-533-0315 for definition of parent);

(d) Have a parent(s) who needs assistance in accessing medical, social, educational and/or other services to meet the infant's basic health and safety needs; and

(e) Not be receiving any case management services funded through Title XIX medicaid that duplicate ICM services.

(2) Infants who meet the eligibility criteria in subsection (1) of this section, and the infant's parent(s), are eligible to receive:

(a) An in-person screening by a provider who meets the criteria established in WAC 388-533-0375. Infants and their parent(s) are screened for risk factors related to issues that may impact the infant's welfare, health, and/or safety.

(b) Up to the maximum number of ICM units of service allowed per client as determined by the department and published in the department's current billing instructions and/or numbered memoranda. The department may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment in any specific biennium.

(3) Clients meeting the eligibility criteria in ((WAC 388-533-0370(4))) subsection (1) of this section who are enrolled in ((an MAA)) a department-contracted managed care plan are eligible for ICM services outside their plan. ((ICM services delivered outside the managed care plan are reimbursed on a fee-for-service basis and subject to the same program rules as apply to nonmanaged care clients.))

(4) See chapter 388-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

(5) Clients receiving ICM before July 1, 2009, are subject to the transition plan as determined and published by the department in numbered memoranda.

(6) Clients who do not agree with a department decision regarding eligibility for ICM have a right to a fair hearing under chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0375 Infant case management—Provider requirements.** ~~((1))~~ Services under this program are provided only by approved integrated maternity support services (MSS)/infant case management (ICM) providers. Representatives from the department of health (DOH) and the department of social and health services' (DSHS) medical assistance administration (MAA) recruit and approve providers using the following criteria:

(a) Services are to be delivered in area of geographic need as determined by MAA/DOH; and

(b) Provider must:

(i) Deliver both MSS and ICM services;

(ii) Provide services in both office and home visit settings; and

(iii) Assure maintenance of staffing requirements and delivery of service according to program design.

(2) To participate in the ICM program, a provider must:

(a) Comply with the clinical supervision/clinical guidelines as prescribed in the assurances document;

(b) Notify the MAA program manager when there is a staff change in a designated position;

(c) Ensure that all newly hired staff receive an orientation to First Steps services as soon as possible, but not later than sixty days from the hire date; and

(d) Submit billings as instructed in MAA's published MSS/ICM billing instructions.

(3) To be reimbursed by MAA for ICM, a provider must:

(a) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Providers rules;

(b) Have a completed, approved MSS/ICM assurances document, signed by an officer or employee qualified to sign on behalf of the provider, on file with MAA; and

(c) Ensure that staff meet the minimum qualifications for the ICM roles they perform)) Infant case management (ICM) services can be provided only by a qualified person who is employed by an agency or entity that meets the requirements in WAC 388-533-0325. Additionally, to qualify as an ICM provider, the person must meet at least one of the following:

(1) Be a current member of the maternity support services (MSS) interdisciplinary team;

(2) Have a Bachelor of Arts, Bachelor of Science, or higher degree, plus at least one year of full-time experience working in one or more of the following areas:

(a) Community social services;

(b) Public health services;

(c) Crisis intervention;

(d) Outreach and referral programs; or

(e) Other social services-related fields.

(3) Have an Associate of Arts degree, or an associate's degree in a closely allied field, plus at least two years of full-time experience in an area listed in (1) of this section. In addition, at least once per calendar month, the department requires a provider qualifying under this subsection to be under the supervision of a clinical staff person who meets the criteria in (1) of this section.

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0380 Infant case management—Covered services.** (1) ~~((The medical assistance administration (MAA) covers services under the infant case management (ICM) program subject to the restrictions and limitations in this section and other applicable published WAC.~~

(2) The ICM program reimburses approved providers for case management including:)) The department covers infant case management (ICM) services subject to the restrictions and limitations in this section and other applicable WAC.

(2) Covered services include:

(a) ~~((Assessing risk and need)) An initial in-person screening for ICM services which includes an assessment of risk factors, and the development of an individualized care plan;~~

(b) ~~((Reviewing and updating the infant and parent(s) service plan)) Case management services and care coordination;~~

(c) ~~((Referring and)) Linking and referring the ((client) infant and parent(s) to other ((agencies)) services or resources; ((and))~~

(d) ~~Advocating for the ((client with other agencies) infant and parent(s);~~

(e) Follow-up contact(s) with the parent(s) to ensure the care plan continues to meet the needs of the infant and parent(s); and

(f) Additional services as determined and published in the maternity support services/infant case management (MSS/ICM) billing instructions.

(3) ~~((The case management activities listed in WAC 388-533-0380(2) are covered under the ICM program only when:~~

(a) ~~Documented in the client's record;~~

(b) ~~Provided on an individual basis in a face-to-face encounter;~~

(c) ~~Performed by a qualified staff person acting within her/his area of expertise; and~~

(d) ~~Provided according to program design as described in the MSS/ICM assurances document)) The department pays for covered ICM services according to WAC 388-533-0386.~~

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

**WAC 388-533-0385 Infant case management—Non-covered services.** (1) ~~The ((following services are noncovered under the infant case management (ICM) program:~~

(a) ~~Any direct delivery of services other than case management activities listed in WAC 388-533-0380(2); and~~

(b) ~~Any service provided by staff not qualified to deliver the service)) department covers only those services that are listed in WAC 388-533-0380.~~

(2) The department evaluates ((requests)) a request for ((services listed as)) any noncovered service under the provisions of WAC 388-501-0160. When early periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a request for a noncovered service according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see chapter 388-534 WAC for EPSDT rules).

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0386 Infant case management ((services))—((Reimbursement)) Payment.** ~~The ((medical assistance administration (MAA) reimburses)) department pays for the covered infant case management (ICM) services described in WAC 388-533-0380 on a fee-for-service basis subject to the following ((terms and limitations:))~~

(1) ~~((ICM is reimbursed in units of service with one unit being equal to fifteen minutes of service;~~

(2) MAA reimburses:

(a) No more than six ICM units per month, per client, and

(b) No more than forty ICM units total per client through the end of the month of the baby's first birthday; and

(c) Only for services billed using the approved ICM procedure code and modifier identified in MAA's published MSS/ICM billing instructions)) ICM services must be:

(a) Provided to a client who meets the eligibility requirements in WAC 388-533-0370;

(b) Provided by a person who meets the criteria established in WAC 388-533-0375;

(c) Provided according to the department's current published maternity support services/infant case management (MSS/ICM) billing instructions and/or numbered memoranda;

(d) Documented in the infant's and/or infant's parent(s) record or chart; and

(e) Billed using:

(i) The eligible infant's department-assigned client identification number;

(ii) The appropriate procedure codes and modifiers identified in the department's current published MSS/ICM billing instructions and/or numbered memoranda; and

(iii) The department-assigned MSS/ICM provider number.

(2) The department:

(a) Pays ICM services in units of time with one unit being equal to fifteen minutes of one-to-one service delivered face-to-face;

(b) When directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium, may determine the maximum number of units allowed per client; and

(c) Publishes the maximum number of units allowed per client in the MSS/ICM billing instructions and/or numbered memoranda.

(3) For a client enrolled in a managed care plan who is eligible to receive ICM, the department pays ICM services:

(a) Delivered outside the plan on a fee-for-service basis as described in this section; and

(b) Subject to the same program rules that apply to a client who is not enrolled in a managed care plan.

(4) Limitation extension requests to exceed the number of allowed ICM units of service may be authorized according to WAC 388-501-0169.

**WSR 10-08-084**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 6, 2010, 3:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-069.

Title of Rule and Other Identifying Information: The department is amending WAC 388-533-0300 Enhanced benefits for pregnant women, 388-533-0310 Maternity support services—Purpose, 388-533-0315 Maternity support services—Definitions, 388-533-0320 Maternity support services—Client eligibility, 388-533-0325 Maternity support services—Provider requirements, 388-533-0330 Maternity support services—Covered services, 388-533-0340 Maternity support services—Noncovered services, and 388-533-0345 Maternity support services—Reimbursement.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections in chapter 388-533 WAC in order to redefine the eligibility criteria for maternity support services and reduce the maximum amount of services pregnant women and their infants may receive. In addition, the amendments update and clarify other maternity support services policy.

Reasons Supporting Proposal: These amendments are necessary for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for maternity support services (First Steps program) for fiscal years 2010-2011, and to further clarify the department's coverage policy.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), RCW 74.08.090 and 74.09.760 through 74.09.910.

Statute Being Implemented: RCW 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: June Hershey, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1293.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.



A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting June Hershey, Program Manager, DHS/FHS, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1293, fax (360) 664-4371, e-mail [junehershey@dshs.wa.gov](mailto:junehershey@dshs.wa.gov).

March 30, 2010  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0300** (~~Enhanced benefits for pregnant women~~) **Services under First Steps.** ~~((Pursuant to))~~ (1) Under the 1989 Maternity Care Access Act, ((also known as First Steps, the medical assistance administration (MAA) provides enhanced)) and RCW 74.09.760 through 74.09.910, the department established First Steps to provide access to services ((to)) for eligible women ((during and after their pregnancy. The enhanced services include:

~~(1)) and their infants.~~

~~(2) The rules for the:~~

(a) Maternity support services ((see)) (MSS) component of First Steps are found in WAC 388-533-0310 through 388-533-0345((:)).

((2)) (b) Infant case management ((services see)) (ICM) component of First Steps are found in WAC 388-533-0360 through 388-533-0386((:)).

(c) Childbirth education (CBE) component of First Steps are found in WAC 388-533-0390.

~~(3) ((Alcohol and drug assessment and treatment services (see WAC 388-533-0701);~~

~~(4) Childbirth education classes (see WAC 388-533-0390); and~~

~~(5) Childcare services (see WAC 388-533-1000)) Other services under First Steps include:~~

(a) Medical services, including full medical coverage, prenatal care, delivery, post-pregnancy follow-up, dental, vision, and twelve months family planning services post-pregnancy;

(b) Ancillary services, including but not limited to, expedited medical eligibility determination, case finding and outreach; and

(c) Alcohol and drug assessment and treatment services for pregnant women available statewide and administered by the division of behavioral health and recovery (see WAC 388-533-0701).

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0310 Maternity support services—Purpose.** The ~~((integrated))~~ purpose of maternity support services (MSS) ~~((program provides enhanced preventive health and education services to eligible pregnant women and their families during the maternity cycle. The purpose of the enhanced services is to improve birth outcomes and respond to clients' individual risks and needs. MSS is collaboratively managed by the department of health and the medical assis-~~

~~tance administration. This MSS program combines the previous MSS and maternity case management programs)) is to:~~

(1) Improve and promote healthy birth outcomes. Services are delivered by an MSS interdisciplinary team to eligible pregnant and post-pregnant women and their infants.

(2) Help eligible clients to access:

(a) Prenatal care as early in the pregnancy as possible; and

(b) Healthcare for their infants.

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0315 Maternity support services—Definitions.** The following definitions and those found in WAC 388-500-0005 apply to ~~((the))~~ maternity support services (MSS) ((program)) and infant case management (ICM) (see WAC 388-533-0360 through 388-533-0386 for ICM rules).

"(Advocacy)"—For the purposes of the MSS program, means actions taken to support the parent(s) in accessing needed services or goods and helping the parent(s) to develop skills to access services.

"Assurances document"—A signed agreement documenting that the provider understands and agrees to maintain certain required program elements; and to work toward integrating other specifically recommended practices. Also referred to as the MSS/ICM assurances document.)

"Basic health messages"—For the purposes of ((the)) MSS ((program)), means the ((preventative)) preventive health education messages designed to promote healthy pregnancies, healthy newborns and healthy parenting during the first year of life.

"Care coordination"—Professional collaboration and communication between the client's MSS provider and other medical and/or health and social services providers to address the individual client's needs as identified in the care plan.

"Care plan"—A written plan that must be developed and maintained throughout the eligibility period for each client in MSS and ICM.

"Case management"—((For the purposes of the MSS program, means)) Services to assist individuals ((who are eligible under the medicaid state plan,)) to gain access to needed medical, social, educational, and other services.

"Childbirth education ((classes)) (CBE)"—((A series of)) Established as a component of the First Steps program to provide educational sessions offered in a group setting ((and led by an approved instructor to prepare)) that prepares a pregnant woman and her support person(s) for an upcoming childbirth and healthy parenting.

"(Childcare"

"DASA (division of alcohol and substance abuse)"—Childcare for women attending DASA-funded outpatient alcohol or drug treatment services that may be provided through the treatment facility.

"First Steps"—Childcare funded through the First Steps Program for the care of children of pregnant or post-pregnant women who are attending appointments for medicaid-covered services, pregnant women on physician ordered

bed rest, and for visits to the neonatal intensive care unit (NICU) after delivery.

**"Community and family health (CFH)"**—Refers to the division within the state department of health whose mission is to improve the health and well-being of Washington residents with a special focus on infants, children, youth, pregnant woman, and prospective parents.

**"Consultation"**—For the purposes of the MSS program, means the practice of conferring with other professionals to share knowledge and problem solve with the intent of providing the best possible care to clients.

**"Core services"**—For the purposes of the MSS program, means the services that provide the framework for interdisciplinary, client-centered maternity support services and infant case management. These services include: Client screening, basic health messages, basic linkages, and minimum interventions:))

**"Department of health (DOH)"**—The state agency ((whose mission is)) that works to protect and improve the health of people in Washington state.

**"Department of social and health services ((DSHS)) (department)"**—The state agency that administers social and health services programs for ((the state of)) Washington state.

**"First Steps"**—The program created under the 1989 Maternity Care Access Act((, known as First Steps. This program provides enhanced maternity care for pregnant and postpregnant women, and health care for infants. The program is managed collaboratively by DSHS and DOH. First Steps maternity care consists of obstetrical care, maternity support services, childbirth education classes, and infant case management)).

**"First Steps Childcare"**—See childcare.

**"Home visit"**—For the purposes of the MSS program, means services delivered in the client's place of residence or other setting as described in the medical assistance administration's published MSS/ICM billing instructions:))

**"Infant case management (ICM)"**—((A program that provides case management services to eligible high-risk infants and their families. Eligibility for ICM may be established at the end of the maternity cycle and up to the infant's first birthday)) Established as a component of the First Steps program to provide parent(s) with information and assistance in accessing needed medical, social, educational, and other services to improve the welfare of infants.

**"Infant case management (ICM) screening"**—A brief in-person evaluation provided by a qualified person to determine whether an infant and the infant's parent(s) have a specific risk factor(s).

**"Interagency agreement"**—A written letter of agreement between two agencies for the exchange of referrals or service provision (e.g., a written agreement in letter format that agrees to an exchange of referrals or services for MSS/ICM clients).

**"Interdisciplinary team"**—Members from different professions and occupations that work closely together and communicate frequently to optimize care for the client (pregnant woman and infant). Each team member contributes specialized knowledge, skills and experience to support and augment the contributions of the other team members.

**"Linkages"**—Networking and/or collaboration between agencies in order to assure proper referral of clients and avoid duplication of services.

**"Maternal and infant health (MIH)"**—A section within the state department of health. MIH works collaboratively with DSHS to provide clinical consultation, oversight and monitoring of the MSS/ICM programs))

**"Linking"**—Assisting clients to identify and use community resources to address specific medical, social and educational needs.

**"Maternity cycle"**—An eligibility period for maternity support services that begins during pregnancy and continues to the end of the month in which the sixtieth-day post-pregnancy occurs.

**"Maternity support services (MSS)"**—((Preventive health services for pregnant/postpregnant women including: Professional observation, assessment, education, intervention and counseling. MSS services are provided by an interdisciplinary team consisting of at minimum, a community health nurse, a nutritionist, and a behavioral health specialist. Additional MSS services may be provided by community health workers)) Established as a component of the First Steps program to provide screening, assessment, basic health messages, education, counseling, case management, care coordination, and other interventions delivered by an MSS interdisciplinary team during the maternity cycle.

**"Maternity support services (MSS) interdisciplinary team"**—A group of providers consisting of at least a community health nurse, a certified registered dietitian, a behavioral health specialist, and, at the discretion of the First Steps agency, a community health worker, who work together and communicate frequently to share specialized knowledge, skills, and experience in order to address risk factors identified in a client's care plan. Based upon individual client need, each team member must be available to provide maternity support services and consultation.

**"Medical assistance administration (MAA)"**—The administration within DSHS authorized to administer medical assistance programs:))

**"Minimum interventions"**—Defined levels of client assessment, education, intervention and outcome evaluation for specific risk factors found in client screening for MSS/ICM services, or identified during ongoing services:))

**"Parent(s)"**—A person who resides with an infant and provides the infant's day-to-day care, and is:

- The infant's natural or adoptive parent(s);
- A person other than a foster parent who has been granted legal custody of the infant; or
- A person who is legally obligated to support the infant.

**"Performance measure"**—An indicator used to measure the results of a focused intervention or initiative:))

**"Risk factors"**—The biopsychosocial factors that could lead to ((negative pregnancy or parenting)) poor birth outcomes, infant morbidity, and/or infant mortality. ((The MSS/ICM program design identifies specific risk factors and corresponding minimum interventions.

**"Service plan"**—The written plan of care that must be developed and maintained throughout the eligibility period for each client in the MSS/ICM programs.

**"Staff"**—For the purposes of the MSS program, means the personnel employed by providers.

**"Unit of service"**—Fifteen minutes of one-to-one service delivered face-to-face.))

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0320 Maternity support services—Client eligibility.** (1) To ~~((be eligible for))~~ receive maternity support services (MSS), a client must ~~((be))~~:

(a) Be covered under one of the following medical assistance ((administration)) programs:

(i) Categorically needy program (CNP);  
 (ii) ((Categorically needy program)) ~~CNP~~—Children's health insurance program; ((CNP Children's health insurance program); or))

(iii) ((Categorically needy program—Emergency medical only (CNP—Emergency medical only); and)) ~~Medically needy program (MNP); or~~

(iv) A pregnancy medical program as described in WAC 388-462-0015.

(b) ((Pregnant or still within the maternity cycle)) ~~Be within the eligibility period of a maternity cycle as defined in WAC 388-533-0315; and~~

(c) Meet any other eligibility criteria as determined by the department and published in the department's current billing instructions and/or numbered memoranda.

(2) Clients who meet the eligibility criteria in this section may receive:

(a) An in-person screening by a provider who meets the criteria established in WAC 388-533-0325. Clients are screened for risk factors related to issues that may impact their birth outcomes.

(b) Up to the maximum number of MSS units of service allowed per client as determined by the department and published in the department's current billing instructions and/or numbered memoranda. The department may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium.

(3) Clients meeting the eligibility criteria in ((WAC 388-533-0320(1))) ~~this section~~ who are enrolled in ((an MAA)) a department-contracted managed care plan, are eligible for MSS ((services)) outside their plan. ((MSS services delivered outside the managed care plan are reimbursed on a fee-for-service basis and subject to the same program rules as apply to nonmanaged care clients.))

(4) See chapter 388-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

(5) Clients receiving MSS before July 1, 2009, are subject to the transition plan as determined and published by the department in numbered memoranda.

(6) Clients who do not agree with a department decision regarding eligibility for MSS have a right to a fair hearing under chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0325 Maternity support services—Provider requirements.** (1) ~~((Services under this program are provided only by approved maternity support services (MSS)/infant case management (ICM) providers. Representatives from the medical assistance administration (MAA) and the department of health (DOH) recruit and approve providers using the following criteria:~~

(a) ~~Services are to be delivered in area of geographic need as determined by MAA/DOH; and~~

(b) ~~Providers must:~~

(i) ~~Deliver both MSS and ICM services;~~

(ii) ~~Provide services in both office and home visit settings; and~~

(iii) ~~Assure maintenance of staffing requirements and delivery of core services according to program design.~~

(2) ~~To participate in the MSS program, a provider must:~~

(a) ~~Comply with the clinical supervision/clinical consultation guidelines as required in the assurances document;~~

(b) ~~Notify the appropriate state discipline-specific consultant when a staff person joins or leaves a designated position;~~

(c) ~~Ensure that all newly hired staff receive an orientation to First Steps as soon as possible, but no later than sixty days from the hire date;~~

(d) ~~Refer clients who may need chemical dependency assessment and/or treatment to a provider contracted with the division of alcohol and substance abuse (DASA) (see chapter 440-22 WAC);~~

(e) ~~Authorize First Steps childcare for the MSS client as appropriate to facilitate MSS and First Step objectives (see WAC 388-533-1000 for rules governing First Steps childcare);~~

(f) ~~Complete and document case conferencing activities.~~

(3) ~~To be reimbursed by MAA for MSS, providers must:~~

(a) ~~Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Providers rules;~~

(b) ~~Have a completed, approved MSS/ICM assurance document, signed by an officer or employee qualified to sign on behalf of the provider, on file with MAA;~~

(c) ~~Meet the DOH/MAA requirements for a qualified MSS interdisciplinary team as prescribed in the assurances document;~~

(d) ~~Ensure that staff meet the minimum qualifications for the MSS rules they perform; and~~

(e) ~~Submit billings as instructed in MAA's published MSS/ICM billing instructions)) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, an agency or entity must:~~

(a) Be currently approved as an MSS/ICM provider by the department of health (DOH);

(b) Be enrolled as an eligible provider with the department of social and health services' (department's) health and recovery services administration (HRSA)(see WAC 388-502-0010);

(c) Ensure that staff providing services meet the minimum regulatory and educational qualifications for the scope of services provided; and

(d) Meet the requirements in this chapter, chapter 388-502 WAC and the department's current published billing instructions and numbered memoranda.

(2) An individual or service organization that has a written agreement with an agency or entity that meets the requirements in subsection (1) of this section may also provide MSS and ICM services to eligible clients.

(a) The department requires the agency or entity to:

(i) Keep a copy of the written agreement on file;

(ii) Ensure that an individual or service organization staff member providing MSS/ICM services meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

(iii) Assure that the individual or service organization provides MSS/ICM services under the requirements of this chapter; and

(iv) Maintain professional, financial, and administrative responsibility for the individual or service organization.

(b) The agency or entity is responsible to:

(i) Bill for services using the agency's or entity's assigned provider number; and

(ii) Reimburse the individual or service organization for MSS/ICM services provided under the written agreement.

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0330 Maternity support services—Covered services.** (1) ~~The ((medical assistance administration (MAA)))~~ department covers maternity support services ~~((under the maternity support services))~~ (MSS) ~~((program))~~ provided by an MSS interdisciplinary team, subject to the restrictions and limitations in this section and other applicable ~~((published))~~ WAC.

(2) Covered services include:

(a) ~~((Community health nursing visits))~~ In-person screening(s) for risk factors related to pregnancy and birth outcomes;

(b) ~~((Nutrition visits;~~

~~(e) Behavioral health visits))~~ Brief assessment when indicated; ~~((and~~

~~(d) Community health worker visits under the direction of a professional member of the team))~~ (c) Education that relates to improving pregnancy and parenting outcomes;

(d) Interventions for risk factors identified on the care plan;

(e) Basic health messages;

(f) Case management services;

(g) Care coordination;

(h) Family planning screening and referral;

(i) Screening and referral for tobacco usage and/or exposure;

(j) Infant case management (ICM) screening; and

(k) Additional services as determined and published in the maternity support services/infant case management (MSS/ICM) billing instructions.

(3) ~~((The services listed in WAC 388-533-0330(2) are covered under this program only when the services are:~~

~~(a) Documented in the client's record;~~

~~(b) Provided on an individual basis in a face-to-face encounter;~~

~~(e) Delivered by a qualified staff person acting within her/his area of expertise; and~~

~~(d) Used for the purposes of the MSS program to provide:~~

~~(i) Risk screening;~~

~~(ii) Education that relates to improving pregnancy and parenting outcomes;~~

~~(iii) Brief counseling;~~

~~(iv) Interventions for identified risk factors;~~

~~(v) Basic health messages;~~

~~(vi) Referral and linkages to other services; or~~

~~(vii) Family planning screening))~~ The department pays

for covered maternity support services according to WAC 388-533-0345.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

**WAC 388-533-0340 Maternity support services—Noncovered services.** (1) ~~((The following are considered noncovered services under the MSS program. Any service:~~

~~(a) Not within the scope of the program;~~

~~(b) Not))~~ The department covers only those services that are listed in WAC 388-533-0330~~((; or~~

~~(e) Any service provided by staff not qualified to deliver the service)).~~

(2) The department evaluates ~~((requests for services listed as noncovered under the provisions of WAC 388-501-0160))~~ a request for any noncovered service under the provisions of WAC 388-501-0160. When early periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a request for a noncovered service according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see chapter 388-534 WAC for EPSDT rules).

AMENDATORY SECTION (Amending WSR 04-13-049, filed 6/10/04, effective 7/11/04)

**WAC 388-533-0345 Maternity support services—~~((Reimbursement))~~ Payment.** ~~((Services provided under))~~ The department pays for the covered maternity support services (MSS) ~~((program are reimbursed))~~ described in WAC 388-533-0330 on a fee-for-service basis subject to the following ~~((limitations)):~~

(1) ~~((MAA reimburses under this program only for services billed using approved procedure codes and modifiers as identified in MAA's published MSS/ICM billing instructions;))~~ MSS must be:

(a) Provided to a client who meets the eligibility requirements in WAC 388-533-0320;

(b) Provided to a client on an individual basis in a face-to-face encounter;

(c) Provided by an agency or entity that meets the criteria established in WAC 388-533-0325;

(d) Provided according to the department's current published maternity support services/infant case management (MSS/ICM) billing instructions and/or numbered memoranda;

(e) Documented in the client's record or chart; and

(f) Billed using:

(i) The eligible client's department-assigned client identification number;

(ii) The appropriate procedure codes and modifiers identified in the department's current published MSS/ICM billing instructions and/or numbered memoranda; and

(iii) The agency's department-assigned MSS/ICM provider number. The department pays the agency or entity for providing MSS to eligible clients, not the individual or service organization that has a written agreement with the agency to provide MSS.

(2) ((MAA reimburses)) The department:

(a) Pays MSS ((services)) in units of time with one unit being equal to fifteen minutes of one-to-one service delivered face-to-face;

(b) When directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium, may determine the maximum number of units allowed per client; and

(c) Publishes the maximum number of units allowed per client in the MSS/ICM billing instructions and/or numbered memoranda.

(3) ((MAA reimburses a maximum of:

(a) Six units per client, per day for any combination of office or home visits;

(b) Sixty total units per client, from all disciplines, over the maternity cycle;

(c) A one time only fee per client for the family planning performance measure; and

(d) A one time only fee per client per pregnancy for the tobacco cessation performance measure)) For a client enrolled in a managed care plan who is eligible to receive MSS, the department pays for MSS:

(a) Delivered outside the plan on a fee-for-service basis as described in this section; and

(b) Subject to the same program rules that apply to a client who is not enrolled in a managed care plan.

(4) Limitation extension requests to exceed the number of allowed MSS units of service may be authorized according to WAC 388-501-0169.

### WSR 10-08-085

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 6, 2010, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-057.

Title of Rule and Other Identifying Information: The department is amending WAC 388-438-0110 Alien medical programs and new sections WAC 388-438-0115 Alien emergency medical (AEM), 388-438-0120 Alien medical for dialysis and cancer treatment (state-only), and 388-438-0125 Alien nursing facility program (state-only).

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are required to meet the 2009-2011 final legislative budget reductions in sections 201 and 209 of ESHB 1244. Specifically, the department will restrict alien medical services to a federal emergency services component and limit state-only coverage to end-stage renal dialysis, cancer treatment, and nursing facility care.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Statute Being Implemented: Section 1109, chapter 564, Laws of 2009 (ESHB 1244, sections 201 and 209).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Gail Kreiger, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725- 1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vii) exempts client eligibility rules from the cost-benefit analysis requirement.

April 1, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-07-024, filed 3/9/07, effective 4/9/07)

**WAC 388-438-0110 ((The)) Alien ((emergency)) medical ((AEM)) programs.** (1) ~~((The alien emergency medical (AEM) program is a required federally funded program. It is for aliens who are ineligible for other medicare programs, due to the citizenship or alien status requirements described in WAC 388-424-0010.~~

(2) Except for the Social Security number, citizenship, or alien status requirements, an alien must meet categorical medicaid eligibility requirements as described in:

- (a) WAC 388-505-0110, for an SSI-related person;
- (b) WAC 388-505-0220, for family medical programs;
- (c) WAC 388-505-0210, for a child under the age of

nineteen; or

- (d) WAC 388-523-0100, for medical extensions.

(3) When an alien has monthly income that exceeds the CN medical standards, the department will consider AEM medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.

(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have a qualifying emergency medical condition as described in WAC 388-500-0005.

(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.

(6) The department does not deem a sponsor's income and resources as available to the client when determining eligibility for the AEM program. The department counts only the income and resources a sponsor makes available to the client.

(7) Under the AEM program, covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:

- (a) Organ transplants and related services;
- (b) Prenatal care, except labor and delivery;
- (c) School-based services;
- (d) Personal care services;
- (e) Waiver services;
- (f) Nursing facility services, unless they are approved by the department's medical consultant; and

(g) Hospice services, unless they are approved by the department's medical consultant.

(8) The medical service limitations and exclusions described in subsection (7) also apply under the MN program.

(9) A person determined eligible for the AEM program is certified for three months. The number of three month certification periods is not limited, but, the person must continue to meet eligibility criteria in subsection (2) and (4) of this section.

(10) A person is not eligible for the AEM program if that person entered the state specifically to obtain medical care)) To qualify for an alien medical program (AMP) a person must:

(a) Be ineligible for medicaid or other DSHS medical program due to the citizenship/alien status requirements described in WAC 388-424-0010;

(b) Meet the requirements described in WAC 388-438-0115, 388-438-0120, or 388-438-0125; and

(c) Meet categorical eligibility criteria for one of the following programs, except for the social security number or citizenship/alien status requirements:

- (i) WAC 388-475-0050, for an SSI-related person;
- (ii) WAC 388-505-0220, for family medical programs;

(iii) WAC 388-505-0210, for a child under the age of nineteen;

(iv) WAC 388-462-0015, for a pregnant woman;

(v) WAC 388-462-0020, for the breast and cervical cancer treatment program for women; or

(vi) WAC 388-523-0100, for medical extensions.

(2) AMP medically needy (MN) coverage is available for children, adults age sixty-five or over, or persons who meet SSI disability criteria. See WAC 388-519-0100 for MN eligibility and 388-519-0110 for spending down excess income under the MN program.

(3) The department does not consider a person's date of arrival in the United States when determining eligibility for AMP.

(4) The department does not consider a sponsor's income and resources when determining eligibility for AMP, unless the sponsor makes the income or resources available.

(5) A person is not eligible for AMP if that person entered the state specifically to obtain medical care.

(6) A person who the department determines is eligible for AMP may be eligible for retroactive coverage as described in WAC 388-416-0015.

(7) Once the department determines financial and categorical eligibility for AMP, the department then determines whether a person meets the requirements described in WAC 388-438-0115, 388-438-0120, or 388-438-0125.

#### NEW SECTION

**WAC 388-438-0115 Alien emergency medical program (AEM).** (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 388-438-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets (a) and (b) below, or (c) below:

(a) The department's health and recovery services administration determines that the primary condition requiring treatment meets the definition of an emergency medical condition as defined in WAC 388-500-0005, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

- (i) Inpatient;
- (ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are prior authorized by the department's inpatient mental health designee (see subsection (5) of this section).

(2) If a person meets the criteria in subsection (1), the department will cover and pay for all related medically necessary health care services and professional services provided during this specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

- (a) Medications;
- (b) Laboratory, x-ray, and other diagnostics and the professional interpretations;
- (c) Medical equipment and supplies;

- (d) Anesthesia, surgical, and recovery services;
- (e) Physician consultation, treatment, surgery, or evaluation services;
- (f) Therapy services;
- (g) Emergency medical transportation; and
- (h) Non-emergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the department as described in subsection (3) of this section.

(3) The department will cover admissions to an LTAC facility or an inpatient PM&R unit if:

- (a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;
- (b) The person is transferred directly to this facility from the hospital; and
- (c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 388-550-2590 for LTAC and WAC 388-550-2561 for PM&R).

(4) The department does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the department under this program. Exception: Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 388-530-2000, prescribed on the same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be prior authorized by the department's inpatient mental health designee according to the requirements in WAC 388-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program. Eligibility for the AEM program does not have to be established before an individual begins receiving emergency treatment.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the certification is only for the period of time the person is in the hospital, LTAC, or PM&R facility - the admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the certification is only for the date of service. If the person is in the hospital overnight, the certification will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is considered not within the scope of service categories as described in WAC 388-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the

department to be a qualifying emergency medical condition, including but not limited to:

- (i) Laboratory x-ray, or other diagnostic procedures;
- (ii) Physical, occupational, speech therapy, or audiology services;
- (iii) Hospital clinic services; or
- (iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to the treatment of the qualifying emergency medical condition;

(c) Organ transplants, including pre-evaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section, including but not limited to:

- (i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;
- (ii) Prenatal care, except labor and delivery;
- (iii) Laboratory, radiology, and any other diagnostic testing;
- (iv) School-based services;
- (v) Personal care services;
- (vi) Physical, respiratory, occupational, and speech therapy services;
- (vii) Waiver services;
- (viii) Nursing facility services;
- (ix) Home health services;
- (x) Hospice services;
- (xi) Vision services;
- (xii) Hearing services;
- (xiii) Dental services;
- (xiv) Durable and non durable medical supplies;
- (xv) Non-emergency medical transportation;
- (xvi) Interpreter services; and
- (xvii) Pharmacy services, except as described in subsection (4).

(9) The services listed in subsection (8) of this section are not within the scope of service categories for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the department for visits or services that do not meet the qualifying criteria described in this section. The department will identify and recover payment for claims paid in error.

#### NEW SECTION

**WAC 388-438-0120 Alien medical for dialysis and cancer treatment (state-only).** (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 388-438-0110 may be eligible for the scope of service categories under this program if the condition requires:

- (a) Surgery, chemotherapy, and/or radiation therapy to treat cancer;
- (b) Dialysis to treat acute renal failure or end stage renal disease (ESRD); or
- (c) Anti-rejection medication, if the person has had an organ transplant.

(2) When related to treating the qualifying medical condition, covered services include but are not limited to:

- (a) Physician and ARNP services, except when providing a service that is not within the scope of this medical program (as described in subsection (7) of this section);
- (b) Inpatient and outpatient hospital care;
- (c) Dialysis;
- (d) Surgical procedures and care;
- (e) Office or clinic based care;
- (f) Pharmacy services;
- (g) Laboratory, x-ray, or other diagnostic studies;
- (h) Oxygen services;
- (i) Respiratory and intravenous (IV) therapy;
- (j) Anesthesia services;
- (k) Hospice services;
- (l) Home health services, limited to two visits;
- (m) Durable and non durable medical equipment;
- (n) Non-emergency transportation; and
- (o) Interpreter services.

(3) All hospice, home health, durable and non durable medical equipment, oxygen and respiratory, IV therapy, and dialysis for acute renal disease services require prior authorization. Any prior authorization requirements applicable to the other services listed above must also be met according to specific program rules.

(4) To be qualified and eligible for coverage for cancer treatment under this program, the diagnosis must be already established or confirmed. There is no coverage for cancer screening or diagnostics for a workup to establish the presence of cancer.

(5) Coverage for dialysis under this program starts the date the person begins dialysis treatment, which includes fistula placement and other required access. There is no coverage for diagnostics or pre-dialysis intervention, such as surgery for fistula placement anticipating the need for dialysis, or any services related to preparing for dialysis.

(6) Certification for eligibility will range between one to twelve months depending on the qualifying condition, the proposed treatment plan, and whether the client is required to meet a spenddown liability.

(7) The following are not within the scope of service categories for this program:

- (a) Cancer screening or work-ups to detect or diagnose the presence of cancer;
- (b) Fistula placement while the person waits to see if dialysis will be required;
- (c) Services provided by any healthcare professional to treat a condition not related to, or medically necessary to, treat the qualifying condition;
- (d) Organ transplants, including preevaluations and post operative care;
- (e) Health department services;
- (f) School-based services;
- (g) Personal care services;
- (h) Physical, occupational, and speech therapy services;
- (i) Audiology services;
- (j) Neurodevelopmental services;
- (k) Waiver services;
- (l) Nursing facility services;
- (m) Home health services, more than two visits;

- (n) Vision services;
  - (o) Hearing services;
  - (p) Dental services, unless prior authorized and directly related to dialysis or cancer treatment;
  - (q) Mental health services;
  - (r) Podiatry services;
  - (s) Substance abuse services; and
  - (t) Smoking cessation services.
- (8) The services listed in subsection (7) of this section are not within the scope of service categories for this program. The exception to rule process is not available.
- (9) Providers must not bill the department for visits or services that do not meet the qualifying criteria described in this section.

#### NEW SECTION

**WAC 388-438-0125 Alien nursing facility program (state-funded).** (1) The state-funded alien nursing facility program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.

(2) To be eligible for the state-funded alien nursing facility program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

- (a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (b), (e), and (f);
- (b) Reside in a nursing facility as defined in WAC 388-97-0001;
- (c) Attain institutional status as described in WAC 388-513-1320;
- (d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;
- (e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366;
- (f) Not have equity interest in a primary residence of more than five hundred thousand dollars as described in WAC 388-513-1350; and
- (g) Any annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.

(3) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.

(4) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.

(5) An adult who is not eligible for the state-funded alien nursing facility program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

- (a) WAC 388-513-1395 for adults related to SSI; or
- (b) WAC 388-505-0255 for adults related to family institutional medical.



(6) All adults qualifying for the state-funded alien nursing facility program will receive CN scope of medical coverage described in WAC 388-501-0060.

(7) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual, see rules described in WAC 388-513-1380.

(b) For an individual eligible under the family institutional program, see WAC 388-505-0265.

(8) A person is not eligible for state-funded nursing facility care if that person entered the state specifically to obtain medical care.

(9) A person eligible for the state-funded alien nursing facility program is certified for a twelve month period.

### WSR 10-08-086

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 6, 2010, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-109.

Title of Rule and Other Identifying Information: WAC 388-543-1150 Limits and limitation extensions, 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered, 388-543-1600 Items and services which require authorization, 388-543-2800 Reusable and disposable medical supplies, 388-545-300 Occupational therapy, and 388-545-500 Physical therapy.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 25, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 26, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 25, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 11, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is eliminating coverage for electrical neural stimulation devices and supplies (including battery chargers and all other supplies for client-owned devices) for in-home use.

Reasons Supporting Proposal: These amendments are necessary for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter

564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011 and to further clarify the department's coverage policy.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Erin Mayo, P.O. Box 45560, Olympia, WA 98504-5560, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Erin Mayo, DME Program Manager, (360) 725-1729 or Maureen Guzman, PT/OT Program Manager, (360) 725-2033, P.O. Box 45506, Olympia, WA 98504-5506, fax (360) 586-9727, e-mail [mayoe@dshs.wa.gov](mailto:mayoe@dshs.wa.gov) or [guzmam@dshs.wa.gov](mailto:guzmam@dshs.wa.gov).

March 26, 2010

Katherine I. Vasquez

Rules Coordinator

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

### WSR 10-08-087

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 6, 2010, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-24-027.

Title of Rule and Other Identifying Information: The department is amending WAC 388-531-2000 Increased payments for physician-related services for qualified trauma cases, 388-546-3000 Transporting qualified trauma cases, and 388-550-5450 Supplemental distributions to approved trauma service centers.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 12, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule changes will give DSHS greater flexibility in making supplemental trauma payments to providers in order to leverage federal matching funds under the American Recovery and Reinvestment Act (ARRA) and maximize trauma care system reimbursement. It will also clarify existing policy.

Reasons Supporting Proposal: See Purpose statement.

Statutory Authority for Adoption: RCW 70.168.040, 74.08.090, and 74.09.500.

Statute Being Implemented: RCW 70.168.040, 74.08.-090, and 74.09.500.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1835.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ayuni Wimpee, P.O. Box 45510, Olympia, WAC [WA] 98504-5510, phone (360) 725-1835, fax (360) 753-7315, e-mail wimpea@dshs.wa.gov.

March 31, 2010

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-18-029, filed 8/27/08, effective 9/27/08)

**WAC 388-531-2000 Increased payments for physician-related services for qualified trauma cases.** (1) The department's trauma care fund (TCF) is an amount that is legislatively appropriated to DSHS each biennium for the purpose of increasing the department's payment to ((eligible)) physicians and other ((clinical providers for)) clinicians (those who are performing services within their licensed and credentialled scope of practice) providing qualified trauma care services to ((medicaid, general assistance-unemployable (GA-U), and Alcohol and Drug Addiction Treatment and Support Act (ADATSA))) medical assistance clients covered under the department's fee-for-service ((clients. Claims for trauma care provided to clients enrolled in the department's managed care programs are not eligible for increased payments from the TCF)) programs.

~~(2) ((Beginning with services provided after June 30, 2003, the department makes increased payments from the TCF to physicians and other clinical providers who provide trauma services to medicaid, GA-U, and ADATSA clients, subject to the provisions in this section. A provider is eligible to receive increased payments from the TCF for trauma services provided to a GA-U or ADATSA client during the client's certification period only. See WAC 388-416-0010))~~

Trauma care services provided to:

(a) Fee-for-service clients in medicaid, general assistance-unemployable (GAU), alcohol and drug addiction treatment and support act (ADATSA), children's health insurance program (CHIP), and apple health for kids, qualify for enhanced rate payments from the TCF. Trauma care services provided to a GAU or ADATSA client qualify for enhanced rates only during the client's certification period. See WAC 388-416-0010;

(b) Clients in the alien emergency medical and alien medical programs do not qualify for enhanced rate payments from the TCF; and

(c) Clients enrolled in the department's managed care programs do not qualify for enhanced rate payments from the TCF.

~~(3) ((The department makes increased))~~ To receive payments from the TCF ((to physicians and)), a physician or other ((clinical providers who)) clinician must:

(a) ((Are)) Be on the designated trauma services response team of any department of health (DOH)-designated or DOH-recognized trauma service center;

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC; and

(d) Submit all information the department requires to ((ensure)) monitor the trauma ((services are being provided)) program.

~~(4) Except as described in subsection (5) of this section and subject to the limitations listed, the department makes ((increased)) payments from the TCF to physicians and other ((eligible clinical providers))~~ clinicians:

(a) For only those trauma services that are designated by the department as "qualified." ((These qualified services must be provided to eligible fee-for-service medicaid, GA-U, and ADATSA clients.)) Qualified trauma care services include ((eare));

(i) Follow-up surgical services provided within six months of the date of the injury ((for surgical procedures related to the injury if the)). These surgical procedures ((were)) must have been planned during the initial acute episode of injury; and

(ii) Physiatrist services provided during an inpatient stay immediately following, and within six months of, the initial episode of injury.

(b) For hospital-based services only, and for follow-up surgeries performed in a medicare-certified ambulatory surgery center (ASC). The follow-up surgery must have been performed within six months of the initial traumatic injury.

(c) Only for trauma cases that meet the injury severity score (ISS) (a summary rating system for traumatic anatomic injuries) of:

(i) Thirteen or greater for an adult trauma patient (a client age fifteen or older); or

(ii) Nine or greater for a pediatric trauma patient (a client younger than age fifteen).

(d) On a per-client basis in any DOH-designated or DOH-recognized trauma service center.

(e) At a rate of two and one-half times the ~~((current))~~ department's current fee-for-service rate for qualified trauma services, or other payment enhancement percentage the department determines as appropriate.

(i) The department monitors the ~~((increased))~~ payments from the TCF during each state fiscal year (SFY) and makes necessary adjustments to the rate to ensure that total payments from the TCF for the biennium will not exceed the legislative appropriation for that biennium.

(ii) Laboratory and pathology charges are not eligible for ~~((increased))~~ payments from the TCF. (See subsection (6)(b) of this section.)

(5) When a trauma case is transferred from one hospital to another, the department makes ~~((increased))~~ payments from the TCF to physicians and ~~((other eligible clinical providers))~~ clinicians, according to the ISS score as follows:

(a) If the transferred case meets or exceeds the appropriate ISS threshold described in subsection (4)(c) of this section, ~~((eligible))~~ providers who furnish qualified trauma services in ~~((both))~~ either the transferring ~~((and))~~ or receiving ~~((hospitals))~~ facility are eligible for ~~((increased))~~ payments from the TCF.

(b) If the transferred case is below the ISS threshold described in subsection (4)(c) of this section, only ~~((the eligible))~~ providers who furnish qualified trauma services in the receiving hospital are eligible for ~~((increased))~~ payments from the TCF.

(6) The department ~~((distributes increased payments from the TCF only))~~ makes a TCF payment to a physician or clinician:

(a) ~~((When))~~ Only when the provider submits an eligible trauma ~~((claims are submitted))~~ claim with the appropriate trauma indicator within the time frames specified by the department; and

(b) On a per-claim basis. Each qualifying trauma service and/or procedure on the ~~((physician's claim or other clinical))~~ provider's claim is paid at the department's current fee-for-service rate, multiplied by ~~((an increased TCF payment rate that is based on))~~ the appropriate ~~((rate))~~ payment enhancement percentage described in subsection (4)(e) of this section. ~~((Charges for))~~ Laboratory and pathology services and/or procedures are not eligible for ~~((increased))~~ payments from the TCF and are paid at the department's current fee-for-service rate.

(7) For purposes of the ~~((increased))~~ payments from the TCF to physicians and other ~~((eligible clinical providers))~~ clinicians, all of the following apply:

(a) The department ~~((may))~~ considers a request for a claim adjustment submitted by a provider only if the ~~((claim is received by the))~~ department receives the adjustment request within ~~((one year))~~ three-hundred sixty-five days from the date of the initial trauma service. At its discretion, and with sufficient public notice, the department may adjust

the deadline for submission and/or adjustment of trauma claims in response to budgetary or other program needs;

~~((The department does not allow any carryover of liabilities for an increased payment from the TCF beyond three hundred sixty-five days from the date of service.))~~ Except as provided in subsection (7)(a) of this section, the deadline for making adjustments to a trauma claim ~~((for an SFY))~~ is the same as the deadline for submitting the initial claim to the department as specified in WAC 388-502-0150(3). ~~((WAC 388-502-0150(7) does not apply to TCF))~~ See WAC 388-502-0150 (11) and (12) for other time limits applicable to trauma claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total ~~((amount of increased))~~ payments from the TCF disbursed to providers by the department in a biennium cannot exceed the amount appropriated by the legislature for that biennium. The department has the authority to take whatever actions are needed to ensure the department stays within ~~((the current))~~ its TCF appropriation (see subsection (4)(e)(i) of this section).

AMENDATORY SECTION (Amending WSR 04-17-118, filed 8/17/04, effective 9/17/04)

**WAC 388-546-3000 Transporting qualified trauma cases.** ~~((+))~~ The ~~((medical assistance administration (MAA)))~~ department does not pay ambulance providers who meet department of health (DOH) criteria for participation in the statewide trauma network an additional amount for transports involving qualified trauma cases described in WAC 388-550-5450. Subject to the availability of trauma care fund (TCF) monies allocated for such purpose, the department may make supplemental payments to these ambulance providers, also known as verified pre-hospital providers.

~~((2))~~ Ambulance providers may apply to the department of health (DOH) for possible grants related to transports of qualified trauma cases.

AMENDATORY SECTION (Amending WSR 08-08-065, filed 3/31/08, effective 5/1/08)

**WAC 388-550-5450 Supplemental distributions to approved trauma service centers.** (1) The trauma care fund (TCF) is an amount legislatively appropriated to the department each biennium, at the legislature's sole discretion, for the purpose of supplementing the department's payments to eligible trauma service centers for providing qualified trauma services to ~~((eligible))~~ medicaid fee-for-service clients. Claims for trauma care provided to clients enrolled in the department's managed care programs are not eligible for supplemental distributions from the TCF.

(2) ~~((Beginning with trauma services provided after June 30, 2003,))~~ The department makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level ~~((+))~~ I, Level ~~((2))~~ II, or Level ~~((3))~~ III adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC;

(d) Submit all information the department requires to ~~((ensure services are being provided))~~ monitor the program; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) Allocated into five ~~((fixed))~~ payment pools ~~((of equal amounts))~~. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing each eligible hospital's qualifying payments since the beginning of the service year and expressing this amount as a percentage of total payments to all eligible hospitals for qualifying services provided during the service year to date. For TCF purposes, service year is defined as the state fiscal year. Each hospital's qualifying payment percentage for the service year-to-date is multiplied by the available amount for the service year-to-date, and then the department subtracts what has been allocated to each hospital for the service year-to-date to determine the portion of the current ~~((quarterly))~~ payment pool to be paid to each qualifying hospital. This method for determining supplemental distributions to hospitals applies to TCF allotments beginning with state fiscal year (SFY) 2008. ~~((This method supersedes and preempts the method adopted in rule and effective August 1, 2007.))~~ Eligible hospitals and qualifying payments are described in (i) through (iii) of this subsection:

(i) Qualifying payments are the department's payments to Level ~~((+))~~ I, Level ~~((2))~~ II, and Level ~~((3))~~ III trauma service centers for qualified medicaid trauma cases since the beginning of the service year. The department determines the countable payment for trauma care provided to medicaid clients based on date of service, not date of payment;

(ii) The department's payments to Level ~~((+))~~ I, Level ~~((2))~~ II, and Level ~~((3))~~ III hospitals for trauma cases transferred in since the beginning of the service year. A Level ~~((+))~~ I, Level ~~((2))~~ II, or Level ~~((3))~~ III hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's injury severity score (ISS) ~~((An ISS is a summary rating system for traumatic anatomic injuries))~~; and

(iii) The department's payments to Level ~~((2))~~ II and Level ~~((3))~~ III hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in subsection (4)(b) of this section) ~~((that))~~ transferred by these hospitals ((transferred)) since the beginning of the service year to a ((higher level designated)) trauma service center ((since the beginning of the service year)) with a higher designation level.

(b) Paid only for a medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of subsection (4)(c).

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level ~~((+))~~ I, Level ~~((2))~~ II, or Level ~~((3))~~ III adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level ~~((2))~~ II or Level ~~((3))~~ III adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or (b)(ii) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level ~~((4))~~ IV or Level ~~((5))~~ V trauma service center does not qualify for supplemental distributions for trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in subsection (4)(b) of this section.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the department to:

(i) Trauma service centers designated or recognized as Level ~~((4))~~ IV or Level ~~((5))~~ V;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level ~~((3))~~ III trauma service center. Beginning with qualifying trauma services provided in SFY 2007, the department allows a hospital with this dual status to receive distributions from the TCF; or

(iii) Any ~~((hospital))~~ facility for follow-up ~~((surgical))~~ services related to the qualifying trauma incident but provided to the client after the client has been discharged ~~((for))~~ from the initial hospitalization for the qualifying injury.

(5) Distributions for an SFY are ~~((divided into five "quarters" and))~~ paid as follows:

(a) ~~((Each quarterly distribution paid by the department from the TCF totals twenty percent of the amount designated by the department for that SFY;~~

~~((b))~~ The first ~~((quarterly))~~ supplemental distribution from the TCF is made three to six months after the SFY begins;

~~((c))~~ (b) Subsequent ~~((quarterly payments))~~ distributions are made approximately every two to four months after the first ~~((quarterly payment))~~ distribution is made, except as described in subsection ~~((d))~~ (c);

~~((d))~~ (c) The ~~(("fifth quarter"))~~ final distribution from the TCF for the same SFY is:

(i) Made ~~((one year))~~ after the end of the SFY;

(ii) Based on the SFY that the TCF designated amount relates to; and

(iii) Distributed based on each eligible hospital's percentage of the total payments made by the department to all designated trauma service centers for qualified trauma cases during the relevant ~~((fiscal year))~~ SFY.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) The department ~~((may))~~ considers a provider's request for a trauma claim adjustment ~~((submitted by a provider))~~ only if the adjustment request is received by the department within ~~((one year))~~ three hundred sixty-five calendar days from the date of the initial trauma service. At its

discretion, and with sufficient public notice, the department may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary program needs;

~~(b) ((The department does not allow any carryover of liabilities for a supplemental distribution from the TCF beyond three hundred sixty five calendar days from the date of discharge (inpatient) or date of service (outpatient).))~~ Except as provided in subsection (6)(a) of this section, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the department as specified in WAC 388-502-0150(3). ((WAC 388-502-0150 (7) does not apply)) See WAC 388-502-0150 (11) and (12) for other time limits applicable to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the department in any biennium cannot exceed the amount appropriated by the legislature for that biennium. The department has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

**WSR 10-08-088**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed April 6, 2010, 3:44 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Northwest Clean Air Agency regulation.

Hearing Location(s): Washington Department of Ecology, 1440 10th Street, Suite 102, Bellingham, WA 98225, on June 1, 2010, at 9:00 a.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Mark Buford, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by June 10, 2010.

Assistance for Persons with Disabilities: Contact Scott Allison by May 10, 2010, (360) 428-1617 ext. 200.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update agency adoptions by reference, update internal references within the regulation, and to adopt New Section 155 - State Environmental Policy Act (SEPA), clarifying SEPA authority, policy and procedures.

Reasons Supporting Proposal: Authorized by WAC 197-11-904.

Statutory Authority for Adoption: Chapters 70.94 and 43.21C RCW.

Statute Being Implemented: Chapters 70.94 and 43.21C RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

April 6, 2010

Mark Buford

Assistant Director

**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 10-09 issue of the Register.

**WSR 10-08-091**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed April 6, 2010, 5:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-179.

Title of Rule and Other Identifying Information: WAC 246-840-581 Early remediation program purpose, 246-840-582 Early remediation program definitions, and 246-840-583 Early remediation program criteria.

Hearing Location(s): Department of Health, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98502, on May 14, 2010, at 9:30 a.m.

Date of Intended Adoption: May 14, 2010.

Submit Written Comments to: Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by May 7, 2010.

Assistance for Persons with Disabilities: Contact department of health by May 7, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopt early remediation program rules. Rules allow and define the nursing care quality assurance commission's ability to resolve complaints of a less serious nature through the early remediation program. The nurse and employer can agree to an action plan involving training and monitoring. The investigation is abbreviated. The early remediation program is currently in policy.

Reasons Supporting Proposal: The nursing care quality assurance commission currently has a backlog of investigations. The early remediation program allows efficient use of limited resources. The investigation of complaints of a less serious nature is abbreviated. This allows quicker resolution and retraining of nurses. The public, the nurse and the employer are better served by a quicker resolution and retraining. The early remediation program is voluntary and allows for saving time, resources and reduces the potential for future errors.

Statutory Authority for Adoption: RCW 18.79.110 and 18.130.050.

Statute Being Implemented: RCW 18.79.110 and 18.130.050.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry J. West, P.O. Box 47864, Olympia, WA 98504, (360) 236-4712.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose more than minor costs on affected businesses. A copy of the statement may be obtained by contacting Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738, e-mail terry.west@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738, e-mail terry.west@doh.wa.gov. The rules do not impose more than minor costs on affected businesses.

April 6, 2010  
Paula R. Meyer, MSN, RN  
Executive Director

#### NEW SECTION

**WAC 246-840-581 Early remediation program purpose.** The rules in WAC 246-840-582 and 246-840-583 are intended to effectively and efficiently protect patients by resolving allegations of practice deficiencies of a less serious nature through a plan of remedial education, training, and supervision. Such allegations may not include substance abuse or drug diversions. These rules outline the criteria and process of an early remediation program. The nursing care quality assurance commission may resolve complaints of practice deficiencies through early remediation during an investigation.

#### NEW SECTION

**WAC 246-840-582 Early remediation program definitions.** The definitions in this section apply throughout WAC 246-840-581 and 246-840-583 unless the context clearly requires otherwise.

"Action plan" means a documented agreement between the nurse named in the complaint(s) and the commission that outlines remedial steps the nurse will undertake to resolve the identified practice deficiencies. Action plans may include required remedial education or training, as well as follow-up monitoring of clinical practice by the current employer or other practice monitor.

"Commission" means the Washington state nursing care quality assurance commission.

"Complaint" means a documented report of a possible violation of the Uniform Disciplinary Act. The commission assesses the report and may authorize an investigation.

"Early remediation program" means a process in which a complaint alleging practice deficiencies is resolved through an action plan without initiating disciplinary procedures.

"Practice deficiencies" includes, but is not limited to, substandard nursing practice, failure to properly assess patients, document treatment, or administer medications, and failure to adhere to scope of practice or delegation laws and regulations. Practice deficiencies do not include drug diversion, patient abuse, fraud, theft, deceit or other willful misconduct, or conduct that results in more than minor patient harm.

#### NEW SECTION

**WAC 246-840-583 Early remediation program criteria.** (1) In any complaint where the commission identifies practice deficiencies, the commission may resolve the matter through the early remediation program.

(2) The commission uses the following criteria to determine eligibility for early remediation:

(a) The identified practice deficiencies are of the type and degree where remedial education, on-the-job training and practice monitoring could effectively correct the deficiencies within six months or less; and patient protection does not require significant long-term practice limits;

(b) The nurse is willing and able to participate in the early remediation program;

(c) The nurse's current employer agrees to participate in the action plan;

(d) The nurse has no current charges or disciplinary history of professional conduct and has not previously participated in an action plan; and

(e) The degree of patient harm suffered as a result of the nurse's substandard practice is minor, if any.

(3) The commission uses the following process to implement the early remediation program:

(a) After a preliminary investigation identifies and confirms the practice deficiencies, the commission applies the criteria.

(b) If all of the criteria are met and the commission determines the nurse is eligible for participation in the early remediation program the commission will propose an action plan to the nurse and employer.

(c) If the nurse complies with the terms of the agreed action plan, the commission may consider the nurse's timely and successful completion of the action plan as grounds to close the matter without further action.

(d) The commission evaluates whether the practice deficiencies have been corrected and are unlikely to recur.

(e) The commission may decide to complete a full investigation and consider possible disciplinary action if additional facts become known or circumstances change such that the nurse is no longer eligible based on the above criteria.

**WSR 10-08-092**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed April 6, 2010, 5:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-037.

Title of Rule and Other Identifying Information: WAC 246-976-001 through 246-976-400, 246-976-890, 246-976-920, and 246-976-950, EMS and trauma system prehospital rules and standards for training, licensure and verification, and prehospital system administration.

Hearing Location(s): Department of Health, Town Center 2 Building, 1st Floor, Conference Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on May 11, 2010, at 10:30 a.m.

Date of Intended Adoption: May 14, 2010.

Submit Written Comments to: Michael Lopez, Department of Health, Office of Community Health Systems, P.O. Box 47853, Olympia, WA 98504-7853, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2830, by May 11, 2010.

Assistance for Persons with Disabilities: Contact Michael Lopez by May 5, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update EMS and trauma system (EMS & TS) prehospital rules and standards that pertain to licensure of EMS services and certification of individuals to be in alignment with national industry standards, guidelines, and best practice. The anticipated effect will be more lives saved and rehabilitated because of greater efficiencies and best practices incorporated into the delivery of emergency medical and trauma services.

Reasons Supporting Proposal: Regular reviews of EMS rules are needed to keep EMS & TS regulations in alignment with industry standards and guidelines. Existing rules also require biennial review and comment on the EMS & TS prehospital rules. Current rules do not reflect recent changes in EMS industry standards and practice. Proposed rules will reflect these changes and objectives recommended by the governor's steering committee for EMS & TS in its 2006 strategic plan.

Statutory Authority for Adoption: RCW 70.168.050 and 70.168.060.

Statute Being Implemented: Chapters 18.71 and 18.73 RCW, RCW 70.24.260.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, office of community health systems, governmental.

Name of Agency Personnel Responsible for Drafting: Dane Kessler, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2842; Implementation and Enforcement: Michael Lopez, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2841.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michael Lopez, P.O. Box 47853, Olympia, WA 98504-7853, phone (360) 236-2841, fax (360) 236-2830, e-mail [michael.lopez@doh.wa.gov](mailto:michael.lopez@doh.wa.gov).

April 5, 2010

Mary C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-001 Purpose.** The purpose of these rules is to implement RCW 18.71.200 through 18.71.215, and chapters 18.73 and 70.168 RCW; and those sections of chapter 70.24 RCW relating to EMS(~~(/TC)~~) personnel and services.

(1) This chapter establishes criteria for:

(a) Training and certification of (~~(basic, intermediate and advanced life support technicians)~~) EMS providers;

(b) Licensure and inspection of ambulance services and aid services;

(c) Verification of prehospital trauma services;

(d) Development and operation of a statewide trauma registry;

(e) The designation process and operating requirements for designated trauma care services;

(f) A statewide emergency medical communication system;

(g) Administration of the statewide EMS/TC system.

~~((2))~~ (2) This chapter does not contain detailed procedures to implement the state EMS/TC system. Request procedures, guidelines, or any publications referred to in this chapter from the Office of (~~(Emergency Medical and Trauma Prevention)~~) Community Health Systems, Department of Health, Olympia, WA 98504-7853 or on the internet at [www.doh.wa.gov](http://www.doh.wa.gov).

AMENDATORY SECTION (Amending WSR 05-01-221, filed 12/22/04, effective 1/22/05)

**WAC 246-976-010 Definitions.** Definitions in RCW 18.71.200, 18.71.205, 18.73.030, and 70.168.015 apply to this chapter. In addition, unless the context plainly requires a different meaning, the following words and phrases used in this chapter mean:

(~~"ACLS" means advanced cardiac life support, a course developed by the American Heart Association.~~)

"Activation of the trauma system" means mobilizing resources to care for a trauma patient in accordance with regional patient care procedures. (~~(When the prehospital provider identifies a major trauma patient, using approved prehospital trauma triage procedures, he or she notifies both dispatch and medical control from the field.)~~)

"Adolescence" means the period of physical and psychological development from the onset of puberty to maturity, approximately twelve to eighteen years of age.

"Advanced cardiac life support (ACLS)" means a department-approved course in advanced cardiac life support that

includes the education and clinical interventions used to treat cardiac arrest and other acute cardiac related problems.

"Advanced emergency medical technician (AEMT)" means a person who has been examined and certified by the department as an intermediate life support technician as defined in RCW 18.71.200 and 18.71.205.

"Advanced first aid(⸮)" for the purposes of RCW 18.73.120, 18.73.150, and 18.73.170, as of January 1, 2012, means ~~((a course of at least twenty-four hours of instruction, which includes at least:~~

- ~~• CPR;~~
- ~~• Airway management;~~
- ~~• Trauma/wound care;~~
- ~~• Immobilization))~~ a department-certified EMR qualification.

"Advanced life support (ALS)" means invasive emergency medical services requiring the advanced medical treatment skills of a paramedic.

"Agency" means an aid or ambulance service licensed by the department.

"Agency response time" means the interval from ~~((agency notification))~~ dispatch to arrival on the scene. ~~((It is the combination of activation and en route times defined under system response times in this section.))~~

"Aid service" means an agency licensed by the department to operate one or more aid vehicles, consistent with regional and state plans.

~~("Airway technician" means a person who:~~

- ~~• Has been trained in an approved program to perform endotracheal airway management and other authorized aids to ventilation under written or oral authorization of an MPD or approved physician delegate; and~~
- ~~• Has been examined and certified as an airway technician by the department or by the University of Washington's school of medicine.~~

~~"ALS" means advanced life support.))~~

"Ambulance service" means an agency licensed by the department to operate one or more ground or air ambulances. ~~((Ground ambulance service operation must be consistent with regional and state plans. Air ambulance service operation must be consistent with the state plan.))~~

"Approved" means approved by the department of health.

"ATLS" means advanced trauma life support, a course developed by the American College of Surgeons.

"Attending surgeon" means a physician who is board-certified or board-qualified in general surgery, and who has surgical privileges delineated by the facility's medical staff. The attending surgeon is responsible for care of the trauma patient, participates in all major therapeutic decisions, and is present during operative procedures.

"Available" for designated trauma services described in WAC 246-976-485 through 246-976-890 means physically present in the facility and able to deliver care to the patient within the time specified. If no time is specified, the equipment or personnel must be available as reasonable and appropriate for the needs of the patient.

~~("BLS" means basic life support.))~~

"Basic life support (BLS)" means emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

"Board certified" or "board-certified" means that a physician has been certified by the appropriate specialty board recognized by the American Board of Medical Specialties. For the purposes of this chapter, references to "board certified" include physicians who are board-qualified.

"Board-qualified" means physicians who have graduated less than five years previously from a residency program accredited for the appropriate specialty by the accreditation council for graduate medical education.

"BP" means blood pressure.

"Certification" means the department ~~((recognizes))~~ has documentation that an individual has met predetermined qualifications, and authorizes the individual to perform certain procedures.

"Consumer" means an individual who is not associated with the EMS/TC system, either for pay or as a volunteer, except for service on the steering committee, licensing and certification committee, or regional or local EMS/TC councils.

"Continuing medical education ~~((CME))~~ method" or ~~((continuing medical education method" or "CME" or))~~ "CME method" is the completion of prehospital EMS recertification education requirements after initial ~~((prehospital))~~ EMS certification to maintain and enhance skill and knowledge. CME requires the successful completion of ~~((a written))~~ department-approved knowledge and practical skill(s) certification examinations to recertify.

"County operating procedures" or "COPS" means the written operational procedures adopted by the county MPD and the local EMS council specific to county needs. COPS may not conflict with regional patient care procedures.

"CPR" means cardiopulmonary resuscitation.

"Critical care transport" means the interfacility transport of a patient whose condition requires care by a paramedic who has received special training and approval by the MPD.

"Department" means the Washington state department of health.

"Dispatch" means to identify and direct an emergency response unit to an incident location.

"Diversion" ~~((for trauma care))~~ means the EMS transport of a ~~((trauma))~~ patient past the usual receiving ~~((trauma service))~~ facility to another ~~((trauma service))~~ facility due to temporary unavailability of ~~((trauma))~~ care resources at the usual receiving ~~((trauma service))~~ facility.

"E-code" means external cause code, an etiology included in the International Classification of Diseases (ICD).

"ED" means emergency department.

"Emergency medical procedures" means the scope of practice associated with EMS personnel certified by the department in this chapter.

"Emergency medical services and trauma care (EMS/TC) system" means an organized approach to providing personnel, facilities, and equipment for effective and coordinated medical treatment of patients with a medical emergency or injury requiring immediate medical or surgical intervention to prevent death or disability. The emergency



medical service and trauma care system includes prevention activities, prehospital care, hospital care, and rehabilitation.

"Emergency medical responder (EMR)" means a person who has been examined and certified by the department as a first responder to render prehospital EMS care as defined in RCW 18.73.081.

"Emergency medical technician (EMT)" means a person who has been examined and certified by the department to render prehospital EMS care as defined in RCW 18.73.081.

"EMS" means emergency medical services.

"EMS provider" means an individual certified by the department or the University of Washington School of Medicine pursuant to chapters 18.71 and 18.73 RCW to provide prehospital emergency response, patient care, and transport.

"EMS/TC" means emergency medical services and trauma care.

~~("EMT" means emergency medical technician.)~~

"First aid" for the purposes of chapter 18.73 RCW and this chapter means advanced first aid as identified in RCW 18.73.120.

"First responder" means emergency medical responder (EMR).

"General surgeon" means a licensed physician who has completed a residency program in surgery and who has surgical privileges delineated by the facility.

"ICD" means the international classification of diseases, a coding system developed by the World Health Organization.

~~("ILS" means intermediate life support.)~~

"Injury prevention" means any combination of educational, legislative, enforcement, engineering and emergency response initiatives used to reduce the number and severity of injuries.

"Interfacility transport" means medical transport of a patient between recognized medical treatment facilities requested by a licensed health care provider.

"Intermediate life support (ILS)" means invasive emergency medical services requiring the advanced medical treatment skills of an advanced EMT (AEMT).

"Intermediate life support (ILS) technician" means ~~(a person who:~~

- ~~• Has been trained in an approved program to perform specific phases of advanced cardiac and trauma life support as specified in this chapter, under written or oral direction of an MPD or approved physician delegate; and~~

- ~~• Has been examined and certified as an ILS technician by the department or by the University of Washington's school of medicine.~~

"Intravenous therapy technician" means a person who:

- Has been trained in an approved program to initiate IV access and administer intravenous solutions under written or oral authorization of an MPD or approved physician delegate; and

- ~~• Has been examined and certified as an intravenous therapy technician by the department or by the University of Washington's school of medicine.)~~ an advanced emergency medical technician (AEMT) who has been trained in an approved program to perform specific phases of advanced cardiac and trauma life support as specified in this chapter.

"IV" means ~~((intravenous))~~ a fluid or medication administered directly into the venous system.

"Licensing and certification committee (L&C committee)" means the emergency medical services licensing and certification advisory committee created by RCW 18.73.040.

"Local council" means a local EMS/TC council authorized by RCW 70.168.120(1).

"Local medical community" means the organized local medical society existing in a county or counties ~~((or)).~~ In the absence of an organized medical society, ~~((majority physician consensus))~~ it means the group of physicians in the county or counties.

"Medical control" means ~~((MPD authority to direct))~~ direction of the medical care provided by certified EMS personnel in the prehospital EMS system by the MPD or MPD delegate.

"Medical control agreement" means a written agreement between two or more MPDs, using similar protocols that are consistent with regional plans, to assure continuity of patient care between counties, and to facilitate assistance.

"Medical program director (MPD)" means ~~((medical program director.~~

"Must" means ~~shall.)~~ a person who meets the requirements of chapters 18.71 and 18.73 RCW and is certified by the department. The MPD is responsible for both the supervision of training and medical control of EMS providers.

"MPD delegate" means a physician appointed by the MPD and recognized and approved by the department. An MPD delegate may be one or both of the following:

- Prehospital training physician who supervises specified aspects of training EMS personnel;

- Prehospital supervising physician means a physician who provides on-line medical control of EMS personnel.

"Ongoing training and evaluation program (OTEP)" ~~((or "ongoing training and evaluation program (OTEP)" or "OTEP" or "OTEP program" or "OTEP method" is))~~ means a continuing program of prehospital EMS education for EMS personnel ~~((that)).~~ An OTEP is approved by the MPD and the department ~~((to)).~~ An OTEP must meet the EMS education requirements and core topic content required for recertification. The OTEP method includes ~~((cognitive, affective and psychomotor))~~ evaluations of the knowledge and skills covered in the topic content following ~~((completion of))~~ each topic presentation ~~((to determine student competence of topic content)).~~

"PALS" means a department-approved course in pediatric advanced life support ~~((a course developed by the American Heart Association)).~~

"Paramedic" or "physician's trained emergency medical service paramedic" means a person who ~~(:~~

- Has been trained in an approved program to perform all phases of prehospital emergency medical care, including advanced life support, under written or oral authorization of an MPD or approved physician delegate; and

- ~~• Has been examined and certified as a paramedic by the department or by the University of Washington's school of medicine.)~~ has been trained in an approved program to perform all phases of prehospital emergency medical care, including advanced life support, under written or oral authorization of an MPD or approved physician delegate, and

examined and certified by the department as specified in this chapter.

"Pediatric education requirement (PER)" (~~or "PER"~~) means the pediatric education and training standards required for certain specialty physicians and nurses who care for pediatric patients in designated trauma services as identified in WAC 246-976-886 and 246-976-887.

"PEPP" means pediatric education for prehospital professionals.

"PHTLS" means a department-approved prehospital trauma life support course.

"Physician" means an individual licensed under the provisions of chapters 18.71 or 18.57 RCW.

"Physician with specific delineation of surgical privileges" means a physician with surgical privileges delineated for emergency/life-saving surgical intervention and stabilization of a trauma patient prior to transfer to a higher level of care. Surgery privileges are awarded by the facility's credentialing process.

"Postgraduate year" means the classification system for residents who are undergoing postgraduate training. The number indicates the year the resident is in during his/her postmedical school residency program.

"Practical skills examination" means a test conducted in an initial course, or a test (~~or series of evaluations~~) conducted during a recertification period, to determine competence in each of the practical skills or group of skills specified by the department.

"Prehospital (~~agencies~~) agency" means a provider(s) of prehospital care or interfacility ambulance transport licensed by the department.

"Prehospital index (PHI)" means a scoring system used to (~~activate~~) trigger activation of a hospital trauma resuscitation team.

"Prehospital patient care protocols" means the department-approved, written (~~procedures~~) orders adopted by the MPD under RCW 18.73.030(13) and 70.168.015(26) which direct the out-of-hospital (~~emergency~~) care of (~~the emergency~~) patients (~~which includes the trauma care patient~~). These protocols are related only to delivery and documentation of direct patient treatment. The protocols shall meet or exceed statewide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

"Prehospital provider" means EMS provider.

"Prehospital trauma care services" means (~~agencies~~) an agency that (~~are~~) is verified by the department to provide prehospital trauma care.

"Prehospital trauma triage procedure(s)" means the method used by prehospital providers to evaluate injured patients and determine whether to activate the trauma system from the field. It is described in WAC 246-976-930(2).

"Public education" means education of the population at large, targeted groups, or individuals, in preventive measures and efforts to alter specific (~~injury-related~~) injury, trauma, and medical-related behaviors.

"Quality improvement (QI)" or (~~"QI" or~~) "quality assurance (QA)" means a process/program to monitor and evaluate care provided in trauma services and EMS/TC systems.

"Regional council" means the regional EMS/TC council established by RCW 70.168.100.

"Regional patient care procedures (~~(RPCP)~~)" means (~~procedures adopted by a regional council under RCW 18.73.030(14) and 70.168.015(23), and approved by the department. Regional patient care procedures do not relate to direct patient care.~~) department-approved written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with statewide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter 70.170 RCW. Patient care procedures do not relate to direct patient care.

"Regional plan" means the plan defined in WAC 246-976-960 (1)(b) that has been approved by the department.

"Registered nurse" means an individual licensed under the provisions of chapter 18.79 RCW.

(~~"Response area" means a service coverage zone identified in an approved regional plan.~~)

"Rural" means an unincorporated or incorporated area(s) with a total population(s) of less than ten thousand people, or with a population density of less than one thousand people per square mile.

"Senior EMS instructor (SEI)" means an individual approved by the department to be responsible for the administration, quality of instruction and the conduct of (~~basic life support~~) initial emergency medical responder (EMR) and emergency medical technician (EMT) training courses.

"Special competence" means that an individual has been deemed competent and committed to a medical specialty area with documented training, board certification and/or experience, which has been reviewed and accepted as evidence of a practitioner's expertise:

- For physicians, by the facility's medical staff;
- For registered nurses, by the facility's department of nursing;
- For physician assistants and advanced registered nurse practitioners, as defined in the facility's bylaws.

"Specialized training" means MPD and department-approved training of certified EMS personnel to use a special skill, technique, or equipment that is not included in the (~~standard course curriculum~~) instructional standards and guidelines.

"State plan" means the emergency medical services and trauma care system plan described in RCW 70.168.015(7), adopted by the department under RCW 70.168.060(10).

"Steering committee" means the EMS/TC steering committee created by RCW 70.168.020.

"Suburban" means an incorporated or unincorporated area with a population of ten thousand to twenty-nine thousand nine hundred ninety-nine or any area with a population

density of between one thousand ((~~to~~)) and two thousand people per square mile.

"System response time" for trauma means the interval from discovery of an injury until the patient arrives at a designated trauma facility. It includes:

- "Discovery time": The interval from injury to discovery of the injury((~~;~~)).

~~("System access time": The interval from discovery to call received;~~

~~"911 time": The interval from call received to dispatch notified, including the time it takes the call answerer to:~~

- ~~• Process the call, including citizen interview; and~~
- ~~• Give the information to the dispatcher;~~

~~"Dispatch time": The interval from call received by the dispatcher to agency notification;~~

- ~~• "Activation time": The interval from agency notification to start of response;~~

- ~~• "En route time": The interval from the end of activation time to the beginning of on-scene time;~~

- ~~• "Patient access time": The interval from the end of en route time to the beginning of patient care;~~

- ~~• "On scene time": The interval from arrival at the scene to departure from the scene. This includes extrication, resuscitation, treatment, and loading;~~

- ~~• "Transport time": The interval from leaving the scene to arrival at a health care facility;)) • "System access time": The interval from discovery of the injury to call received by 9-1-1 public safety answering point (PSAP).~~

- "Call processing time": The interval from the time the PSAP answers the call and the time it takes the PSAP to:

- ~~– Process the call, including caller interrogation; and~~
- ~~– Provide the call interrogation information to the EMS dispatcher.~~

- "Dispatch time": The total time interval, including the call processing time, from when the call is received by the PSAP until the EMS agency is notified.

- "En route time": The time interval from the time the agency is notified until the EMS vehicle is en route to the call.

- "Arrival time": The time interval from when the EMS vehicle is en route until arrival at the incident scene.

- "On scene time": The time interval from arrival at the scene until the EMS transport vehicle departs the incident scene.

- "Transport time": The time interval from when the EMS transport vehicle leaves the incident scene until arriving at the health care facility.

"Training ((~~agency~~)) program" means an organization ((~~or individual~~)) that is approved by the department to be responsible for specified aspects of training of EMS personnel.

~~("Training physician" means a physician delegated by the MPD and approved by the department to be responsible for specified aspects of training of EMS personnel.)~~

"Trauma rehabilitation coordinator" means a person designated to facilitate early rehabilitation interventions and the trauma patient's access to a designated rehabilitation center.

"Trauma response area" means a service coverage zone identified in an approved regional plan.

"Trauma service" means the clinical service within a hospital or clinic that is designated by the department to provide care to trauma patients.

"Urban" means:

- An incorporated area over thirty thousand; or
- An incorporated or unincorporated area of at least ten thousand people and a population density over two thousand people per square mile.

"Verification" means the credentialing of a prehospital agency capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

"Wilderness" means any rural area not readily accessible by public or private maintained road.

#### NEW SECTION

**WAC 246-976-022 EMS training program requirements, approval, reapproval, discipline.** (1) The department will: Provide the DOH EMS training program application and make it available on-line and by mail upon request.

(2) EMS training program requirements, responsibilities:

(a) Training program requirements: To apply for initial department approval as an EMS training program, applicants must:

(i) Be one of the following:

(A) A local EMS and trauma care council or a county office responsible for EMS training for the county;

(B) A regional EMS and trauma care council providing EMS training throughout the region;

(C) An accredited institution of higher education; or

(D) A private educational business, licensed as a private vocational school.

In the absence of entities in (a)(i)(A) through (D) of this subsection, or their inability to provide an EMS training program, the local EMS and trauma care council may recommend another entity that is able to provide training. In the absence of a local EMS council, the regional EMS and trauma care council may provide such recommendation.

(E) Initial training courses may be conducted for licensed EMS agencies when under the oversight of a department-approved EMS training program.

(ii) Complete a DOH EMS training program application in which the applicant will provide:

(A) A description of classroom and laboratory facilities;

(B) A list of equipment and supplies on hand (or accessible) for use in the training program;

(C) A description of course entry prerequisites, selection criteria, and the process used to screen applicants for each EMS level of training being conducted;

(D) A student handbook for each level of training to be conducted that provides:

(I) Training program policies, including minimum standards to enter training consistent with this chapter;

(II) Course requirements and minimum standards required for successful completion of examinations, clinical/field internship rotations, and the EMS course;

(III) Initial certification requirements the student must meet to become certified as identified in WAC 246-976-141; and

(IV) A listing of clinical and field internship sites available to students.

(iii) Demonstrate need for new or additional EMS training programs.

(b) Local government agencies: The department recognizes county agencies established by ordinance and approved by the MPD to coordinate and conduct EMS programs. These agencies must comply with the requirements of this section.

(c) Training program approval is for a period of five years.

(d) Training program responsibilities. An approved training program must:

(i) Conduct courses following department requirements;

(ii) In conjunction with the course instructor, screen course applicants and approve or deny applicants consistent with WAC 246-976-041;

(iii) Maintain clinical and field internship sites to meet course requirements, including the requirement that internship rotations on EMS vehicles must be performed as a third person, not replacing required staff on the vehicle;

(iv) For the purposes of program and course evaluation, provide access to all course related materials to the department, county MPD, or MPD delegate;

(v) Conduct examinations over course lessons and other Washington state required topics;

(vi) Coordinate activities with the department-approved certification examination provider, including:

(A) Register the training;

(B) Assisting students in registering with the examination provider;

(C) Providing verification of cognitive knowledge and psychomotor skills for students successfully completing the EMS course; and

(D) Assisting students in scheduling the examination.

(vii) Maintain student records for a minimum of four years;

(viii) Monitor and evaluate the quality of instruction for the purposes of quality improvement, including course examination scores for each level taught;

(ix) Submit an annual report to the department which includes:

(A) Annual, overall certification examination results;

(B) A summary of complaints against the training program and what was done to resolve the issues;

(C) Quality improvement activities including a summary of issues and actions to improve training results; and

(x) Participate in local/regional EMS and trauma care council educational planning.

(3) Training program reapproval: To obtain reapproval from the department, an EMS training program must:

(a) Be in good standing with the department and:

(i) Have no violations of the statute and rules;

(ii) Have no pending disciplinary actions;

(iii) Maintain an overall pass rate of eighty percent on department-approved state certification examinations;

(b) Complete the requirements in subsection (2) of this section; and

(c) Complete and submit an updated EMS training program application to the department at least six months prior to the program expiration date.

(4) Discipline of EMS training programs.

(a) The department may deny, suspend, modify, or revoke the approval of a training program when it finds:

(i) Violations of chapter 246-976 WAC;

(ii) Pending disciplinary actions;

(iii) Failure to maintain an overall pass rate of eighty percent on department-approved state certification examinations;

(iv) Falsification of EMS course documents; or

(v) Failure to update training program information with the department as changes occur.

(b) The training program may request a hearing to contest department decisions in regard to denial, suspension, modification, or revocation of training program approval in accordance with the Administrative Procedure Act (APA) (chapter 34.05 RCW) and associated administrative codes.

#### NEW SECTION

**WAC 246-976-023 EMS training course requirements, course approval, specialized training.** (1) A department-approved EMS training program must complete the DOH EMS training course application. The department will make the DOH EMS training course application available online and by mail upon request. Applications must be post-marked or delivered to the department at least three weeks prior to the beginning of the course.

(2) Training course requirements.

(a) General requirements:

(i) A course instructor responsible for the quality of instruction and the conduct of the course as identified in subsection (3) of this section;

(ii) Instruction in multicultural health appropriate to the level of training;

(iii) Written course approval from the department;

(iv) Students must meet the minimum standards identified in WAC 246-976-041 as a prerequisite to enter training;

(v) Each student must receive a student handbook;

(vi) Prior to beginning their field internship rotations, students must receive current, county specific, county medical program director field protocols and any specific information they will need while completing the internship; and

(vii) Field internship preceptors are used to monitor and evaluate students in a standard and consistent manner.

(b) Course curriculum or instructor guidelines:

(i) The emergency medical responder (EMR) instructional materials include:

(A) *The National Emergency Medical Services Training Standards - Emergency Medical Responder Instructor Guidelines* published January 2009;

(B) A department-approved, four hour infectious disease training that meets the requirements of chapter 70.24 RCW; and

(C) Other Washington state required content.

(ii) The emergency medical technician (EMT) instructional materials include:

(A) *The National Emergency Medical Services Training Standards - Emergency Medical Technician Instructor Guidelines* published January 2009;

(B) A department-approved, four hour infectious disease training program that meets the requirements of chapter 70.24 RCW; and

(C) Other Washington state required content.

(iii) The advanced EMT (AEMT) instructional materials include:

(A) *The National Emergency Medical Services Training Standards - Advance EMT Instructor Guidelines* published January 2009; and

(B) Other Washington state required content.

(iv) Paramedic - EMS training programs training paramedics must be accredited by a national accrediting organization approved by the department. Instructional materials include:

(A) *The National Emergency Medical Services Training Standards - Paramedic Instructor Guidelines* published January 2009; and

(B) Other Washington state required content.

(3) EMS course instructional personnel requirements.

(a) For emergency medical responder (EMR) and EMT courses:

(i) The training program and the senior EMS instructor are required to screen EMS course applicants and allow entrance only to those meeting the requirements in WAC 246-976-041.

(ii) A department-approved senior EMS instructor (SEI) is required to supervise and instruct emergency medical responders (EMR) and EMT courses with the following substitutions:

(A) Senior EMS instructor candidates for the purpose of demonstrating instructional proficiency to the SEI;

(B) The MPD, MPD delegate or other physicians approved by the MPD;

(C) Guest instructors when knowledgeable and skilled in the topic and approved by the MPD;

(D) Department-approved EMS evaluators, if knowledgeable and skilled in the topic and approved by the MPD, may instruct individual lessons to assist the SEI in the instruction of the course.

(iii) The SEI identified as the course instructor must be available on-site during each class to provide instruction or to supervise any other course instruction, unless arrangements have been made for another SEI to fulfill this responsibility. For substitutes listed in (a)(ii)(B) through (D) of this subsection, the supervisor need not be physically present but must be immediately available for consultation by the substitute course instructor.

(iv) Department-approved SEIs or EMS evaluators to conduct psychomotor evaluations and provide corrective instruction for students. For EMR and EMT courses, evaluators must be certified as an EMT or higher level.

(b) Advanced EMT (AEMT) (ILS) courses:

(i) The training program and the course instructor are required to screen EMS course applicants and allow entrance only to those meeting the requirements in WAC 246-976-041.

(ii) The course instructor for advanced EMT courses must be:

(A) An AEMT that is recognized by the department as an SEI; or

(B) A paramedic; or

(C) Program instructional staff when training is provided by an accredited paramedic training program; or

(D) An RN with prehospital EMS knowledge, skills, and experience; or

(E) The MPD, MPD delegate or other licensed physician; or

(F) Guest instructors may instruct individual lessons if knowledgeable and skilled in the topic; and

(G) Approved by the county medical program director.

(iii) Department-approved evaluators for advanced EMT courses must be certified at the AEMT or paramedic level.

(c) Paramedic/EMT-paramedic courses:

(i) The training program and the course instructor are required to screen EMS course applicants and allow entrance only to those meeting the requirements in WAC 246-976-041.

(ii) The course instructor for paramedic courses:

(A) Must have clinical experience at the paramedic level or above;

(B) May also hold a current credential as paramedic, RN, MD, DO or PA; and

(C) Must have the approval of the training program's medical director and the county medical program director.

(d) The EMS course instructors identified in this section, under the general supervision of the county medical program director (MPD) are responsible:

(i) For the overall conduct of the course, quality of instruction, and administrative paperwork;

(ii) For following the course curricula or instructional guidelines identified in this section;

(iii) For evaluating the students' knowledge and practical skills throughout the course.

(4) Specialized training. The department may approve pilot training programs to determine the need for additional training. This approval would allow MPDs to research field use of skills, techniques, or equipment that is not included in standard course curricula/instructional guidelines.

(a) To obtain approval of a pilot training program, the following documents must be provided to the licensing and certification (L&C) advisory committee for review:

(i) Course curriculum/lesson plans;

(ii) Type of instructional personnel required to conduct the pilot training;

(iii) Course prerequisites;

(iv) Criteria for successful course completion, including student evaluations and/or examinations; and

(v) Prehospital patient care protocols for use in the pilot program.

(A) The L&C committee may consult with other groups, in its review before making its recommendation to the department.

(B) The department will approve or deny pilot training programs.

(b) Pilot training programs must report the results of the pilot training to the L&C committee and the department.

(c) The L&C committee will recommend to the department to approve or deny the pilot training program for state-wide use.

(d) If approved, the department will adopt it as specialized training and notify the county MPDs to advise if the skill is required or not.

AMENDATORY SECTION (Amending WSR 02-14-053, filed 6/27/02, effective 7/28/02)

**WAC 246-976-031 Senior EMS instructor (SEI). (1) Responsibilities.**

(a) The SEI is responsible for the overall instructional quality ~~((of))~~ and the administrative paperwork associated with initial ~~((first responder))~~ emergency medical responders (EMR) or EMT~~((-basic))~~ courses, under the general supervision of the medical program director (MPD).

~~((b))~~ The SEI must ~~((conduct courses following))~~:

~~((i))~~ Follow department-approved curricula/instructional guidelines identified in WAC ~~((246-976-021. The SEI candidate shall))~~ 246-976-023;

~~((ii))~~ Approve or deny applicants for training consistent with requirements in WAC 246-976-041 and 246-976-141; and

~~((iii))~~ Document the completion of requirements for initial and renewal recognition as a senior EMS instructor on forms provided by the department.

(2) **Initial recognition as a senior EMS instructor.** ~~((The department will publish *Initial Recognition Application Procedures for Senior EMS Instructors* (IRAP), which include the *Initial Senior EMS Instructor Application and Agreement*, instructor objectives, instructions and forms necessary for initial recognition.))~~

(a) **Prerequisites.** Candidates for initial recognition must document proof of the following:

(i) Current Washington state certification ~~((as an))~~ at the EMT or higher EMS certification level;

(ii) At least three years prehospital EMS experience ~~((as an))~~ at the EMT or higher EMS certification level, with at least one recertification;

~~((iii))~~ ~~((Successful completion of an approved ongoing training and evaluation program (OTEP)/basic life support (BLS) evaluator workshop;))~~ Approval as an EMS evaluator as identified in WAC 246-976-161 (4)(e)(i);

(iv) Current recognition as a CPR instructor for health care providers by the American Heart Association, the American Red Cross, ~~((the National Safety Council;))~~ or other nationally recognized organization with substantially equivalent standards approved by the department;

(v) Successful completion of an instructor training course by the U.S. Department of Transportation, National Highway Traffic Safety Administration, ~~((or))~~ an instructor training course from an accredited institution of higher education, or equivalent instructor course approved by the department;

(vi) Successful completion of an examination developed and administered by the department on current EMS training and certification statutes, Washington Administrative Code (WAC) ~~((and))~~ the Uniform Disciplinary Act (UDA) and course administration.

(b) **Submission of prerequisites.** Candidates must submit proof of successful completion of the prerequisites to the department.

~~((((h))~~ Candidates meeting the prerequisites will be issued the ~~((IRAP by the department))~~ Initial Recognition Application Procedures (IRAP) for Senior EMS Instructors, which include the Initial Senior EMS Instructor Application and Agreement, instructor objectives, instructions and forms necessary for initial recognition.

~~((((i))~~ The department will provide instruction to each candidate prior to beginning the initial recognition process.))

(c) **Candidate objectives.** Candidates ~~((who have been issued the IRAP and received instructions on the recognition process))~~ must successfully complete the IRAP~~((;))~~ under the supervision of a currently recognized~~((; EMT basic course lead))~~ SEI~~((;))~~.

As part of an initial EMT~~((-basic))~~ course, the candidate must demonstrate to the course lead SEI~~((;))~~ the knowledge and skills necessary to complete the following instructor objectives~~((;))~~:

(i) Accurately complete the course application process and meet application timelines;

(ii) Notify potential EMT~~((-basic))~~ course ~~((students))~~ applicants of course entry prerequisites;

(iii) Assure ~~((students))~~ that applicants selected for admittance to the course meet ~~((DOH))~~ department training and certification prerequisites ~~((and notify training agency selection board of discrepancies))~~;

(iv) Maintain course records ~~((adequately))~~;

(v) Track student attendance, scores, quizzes, and performance, and counsel/remediate students as necessary;

(vi) Assist in the coordination and instruction of one entire EMT~~((-basic))~~ course, including practical skills, under the supervision of the course lead SEI~~((;))~~ utilizing the EMT~~((-basic))~~ training course ~~((curriculum))~~ instructor guidelines identified in WAC ~~((246-976-024))~~ 246-976-023, and be evaluated on the instruction of each of the following sections/lessons:

(A) ~~((Lesson 1-2—Well Being of the EMT-Basic))~~ Preparatory section, including Infectious Disease Prevention for EMS Providers, Revised ~~((10/1997))~~ 01/2009 (available from the department of health, office of ~~((emergency medical and trauma prevention))~~ community health systems);

(B) ~~((Lesson 2-1—))~~ Airway section;

(C) ~~((Lesson 3-2—Initial))~~ Assessment section;

(D) ~~((Lesson 3-3—Focused History and Physical Exam: Trauma))~~ Pharmacology section;

(E) ~~((Lesson 3-4—Focused History and Physical Exam:))~~ Medical section, Cardiovascular and Respiratory lessons;

(F) ~~((Lesson 3-5—Detailed Physical Exam))~~ Special Patient Populations section, Obstetrics, Neonatal Care, and Pediatrics lessons;

(G) ~~((Lesson 3-6—Ongoing Assessment))~~ Trauma section, Head, Facial, Neck and Spine Trauma and Chest Trauma lessons;

(H) ~~((Lesson 3-9—Practical Lab: Patient Assessment))~~ EMS Operations section, Vehicle Extrication, Incident Management, and Multiple Casualty Incidents lessons; and

(I) ~~((Lesson 4-1—General Pharmacology;~~

~~(J) Lesson 4-2—Respiratory Emergencies;  
(K) Lesson 4-3—Cardiovascular Emergencies;  
(L) Lesson 4-9—Obstetrics/Gynecology;  
(M) Lesson 5-4—Injuries to the Head and Spine, Chest and Abdomen;~~

~~(N) Lesson 5-5—Practical Lab: Trauma;~~

~~(O) Lesson 6-1—Infants and Children;~~

~~(P) Lesson 7-2—Gaining Access (including patient removal, treatment and transport-)) Multicultural Awareness lesson; and~~

(vii) Coordinate and conduct an EMT-basic final end of course comprehensive practical skills evaluation.

(d) **Candidate evaluation.** Performance evaluations will be conducted by an SEI for each instructor objective performed by the candidate on documents identified in the IRAP. These documents consist of:

(i) An evaluation form, to evaluate lesson instruction objectives performed by the candidate;

(ii) A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate; and

(iii) An objective completion record, to document successful completion of each instructor objective performed by the candidate.

(e) **Application and approval.**

(i) Candidates must submit the completed IRAP, including the application/agreement and all documents completed during the initial recognition process, to the county MPD to obtain a recommendation of approval to the department.

(ii) Upon recommendation of approval by the county MPD, the SEI candidate will submit the following documents to the department:

(A) Current proof of completion of prerequisites listed in subsection (2)(a)(i), (iv) and (vi) of this section;

(B) The original initial SEI application/agreement, signed by the candidate and the MPD; and

(C) The original completed IRAP document and all forms used for evaluation, quality improvement purposes, and verification of successful completion as identified in the IRAP.

(3) **Renewal of recognition.** The department will publish *Renewal Application Procedures (RAP) for Senior EMS Instructors ((RAP))*, which include the *Senior EMS Instructor Renewal Application and Agreement*, instructor objectives, instructions and forms necessary for renewal.

(a) ~~(The)~~ A RAP will be provided by the department to individuals upon recognition as a SEI, to be completed during the recognition period.

(b) **Candidate objectives.** Candidates ~~((who have been issued the RAP))~~ must successfully complete the ~~((RAP during each approval period, which includes the))~~ following ~~((instructor))~~ objectives for each recognition period:

(i) Coordinate and perform as the lead SEI for one initial ~~((first responder))~~ emergency medical responder or ~~((EMT-basic))~~ EMT course including the supervision of all practical skills evaluations;

(ii) Receive performance evaluations from a currently recognized SEI, on two candidate instructed EMR (first responder) or EMT~~((basic))~~ course lessons;

(ii) Perform two performance evaluations on the instruction of first responder or EMT~~((basic))~~ course lessons for SEI initial or renewal recognition candidates; and

(iv) Attend one ~~((DOH))~~ department-approved SEI or instructor improvement workshop.

(c) **Candidate evaluation.** Evaluations of the performance of instructor objectives will be conducted by an SEI and completed on documents identified in the RAP. These documents consist of:

(i) An evaluation form, to evaluate lesson instruction objectives performed by the candidate~~((-))~~;

(ii) A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate~~((-))~~; and

(iii) An objective completion record, to document successful completion of each instructor objective performed by the candidate.

(d) **Prerequisites.** Candidates for renewal of recognition must document proof of the following:

(i) Current or previous recognition as a Washington state SEI;

(ii) Current Washington state certification as an EMT or higher EMS certification;

(iii) Current recognition as a CPR instructor for health care providers by the American Heart Association, the American Red Cross, ~~((the National Safety Council,))~~ or other nationally recognized organization with substantially equivalent standards~~((-))~~; and

(iv) Successful completion of an examination developed and administered by the department on current EMS training and certification statutes, WAC ~~((and))~~, the UDA, and course administration.

(e) **Application and approval.**

(i) Candidates must submit the completed RAP, including the application/agreement and all documents completed during the renewal of recognition process, to the county MPD to obtain a recommendation of approval to the department.

(ii) Upon recommendation of approval by the county MPD, the renewal candidate must submit the following documents to the department:

(A) Current proof of successful completion of the prerequisites listed in subsection (3)(d)(ii), (iii), and (iv) of this section;

(B) The original SEI renewal application/agreement that has been signed by the candidate and the MPD; and

(C) The original completed RAP document and all forms used for evaluation, quality improvement purposes and verification of successful completion as identified in the RAP.

(4) **Length of recognition period.** The recognition period as ~~((a))~~ an SEI is ~~((for))~~ three years.

(5) **Denial, suspension, modification or revocation of SEI recognition.**

(a) The department may deny, suspend, modify or revoke an SEI's recognition when it finds the SEI has:

(i) ~~((Violations of))~~ Violated chapter 18.130 RCW, the Uniform Disciplinary Act;

(ii) ~~((A failure))~~ Failed to:

(A) Maintain EMS certification;

(B) Update the following personal information with ~~((DOH))~~ the department as changes occur:

(I) Name;

(II) Address;

(III) Home and work phone numbers;

(C) Maintain knowledge of current EMS training and certification statutes, WAC ~~((and))~~, the UDA, and course administration;

(D) Comply with requirements in WAC 246-976-031(1);

(E) Participate in the instructor candidate evaluation process in an objective and professional manner without cost to the individual being reviewed or evaluated;

(F) ~~((Adequately))~~ Complete all forms and ~~((adequately))~~ maintain records in accordance with this chapter;

(G) Demonstrate all skills and procedures based on current standards;

(H) Follow the requirements of the Americans with Disabilities Act; or

(I) Maintain security on all department-approved examination materials.

(b) The candidate or SEI may request a hearing to contest department decisions in regard to denial, suspension, modification or revocation of SEI recognition in accordance with the Administrative Procedure Act (APA) (chapter 34.05 RCW) and associated administrative codes.

(6) Reactivation. Any SEI recognition expired for longer than twelve months must complete the initial recognition process.

(7) Reciprocity. An EMS instructor approved in another state, country, or U.S. military branch may obtain reciprocal certification. To become an SEI, the applicant must:

(a) Meet the initial recognition prerequisites as defined in this section; and

(b) Provide proof of at least three years of instructional experience as a state approved EMS instructor. If the applicant cannot provide proof of instructional experience, the initial recognition application process must be completed; and

(c) Instruct two initial EMT course topics, be evaluated on the instruction by a current Washington SEI, and receive a positive recommendation for approval by the SEI; and

(d) Complete the renewal application and submit it to the department.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-041 To apply for training.** (1) ~~((You))~~ An applicant for EMS training must be at least ~~((eighteen))~~ seventeen years old at the beginning of the course. Variances will not be allowed for the age requirement.

(2) An applicant for training at the intermediate ~~((IV, airway and ILS technicians))~~ AEMT ~~((and advanced life support (paramedic) levels, you))~~ level, must ~~((have completed))~~ be currently certified as an EMT with at least one year ~~((as a certified EMT or above))~~ of experience.

(3) An applicant for training at the advanced life support (paramedic) level, must have at least one year of experience as a certified EMT, or equivalent prehospital experience and meet all entry requirements of the state approved paramedic training program.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-141 To apply for certification.** (1) ~~The department will publish procedures for initial certification which include:~~

~~(a) ((Examinations. An applicant may have up to three attempts within six months after course completion to successfully complete the examinations;))~~ Identify department-approved certification examinations including the process for registration and administration;

~~(b) ((The process for administration of examinations; and~~

~~(c) Administrative requirements and the necessary forms;))~~ Provide the requirements, instructions and forms necessary to apply for certification.

(2) Applicant responsibilities. To apply for ~~((initial))~~ certification, submit to the department:

~~(a) ((An))~~ Proof of qualifying education:

(i) For an applicant completing an initial Washington state approved EMS course: Successful course completion of a Washington state approved initial EMS course for the level of certification sought, which:

(A) Includes additional training as required in chapter 70.24 RCW and WAC 246-976-023; and

(B) May include Washington state approved EMT special skills training as identified in WAC 246-976-023;

(ii) For an (out-of-state) applicant seeking certification under reciprocity:

(A) Current certification from another state or national certifying agency approved by the department;

(B) For paramedic applicants whose training started after June 30, 1996: Proof of successful course completion from a paramedic training program accredited by a national organization approved by the department; and

(C) A four-hour infectious disease course or a seven-hour HIV/AIDS course approved by the department as required by chapter 70.24 RCW;

(iii) An applicant who holds an active, valid health care credential may apply for certification and challenge the department's education requirements. The applicant must document equivalent EMS training including:

(A) Course completion documents showing education equivalent to the knowledge and skills at the EMR, EMT, or AEMT level;

(B) Paramedic applicants must complete a course from a paramedic training program accredited by a national organization approved by the department;

(C) A four-hour infectious disease course or a seven-hour HIV/AIDS course approved by the department as required by chapter 70.24 RCW; and

(D) Acceptance of the documentation for the purposes of issuing a certification is at the discretion of the department.

(b) Proof of successful completion of a department-approved certification examination:

(i) A candidate is allowed three attempts to successfully complete the examination within twelve months of course completion.

(ii) After three unsuccessful attempts to pass the certification examination, the candidate must repeat a training



course meeting the requirements of this section in order to be certified.

(ii) Results of department-approved examination:

(A) For an applicant completing initial Washington EMS course, the results are valid for twelve months from the date of course completion.

(B) For reciprocal and challenge certification applicants, the results are valid for twelve months from the date of examination.

(c) A completed application for certification on forms provided by the department;

((b)) (i) Within the application period:

(A) For applicants completing an initial Washington EMS course, within twelve months from the date of course completion.

(B) For reciprocal and challenge applicants, within twelve months from the date of examination; and

(ii) Provide the following information:

(A) Proof of identity: An official photo identification ((which may be)) state, federal or military identification, drivers' license, or passport;

((e)) (B) Proof of age: You must be at least eighteen years of age to apply. Variances to this age requirement will not be granted;

((d) Proof of completion of an approved course or courses for the level of certification sought;

(e) Proof of completion of approved infectious disease training to meet the requirements of chapter 70.24 RCW;

(f) Proof of successful completion of an approved examination within eighteen months prior to application;

((g)) (C) For EMTs, proof of high school graduation, GED, or equivalent;

(D) Proof of active membership, paid or volunteer, in one of the following ((EMS/TC)) organizations:

((h)) (I) Licensed ((provider of aid or)) ambulance service or aid service(s); or

((i)) (II) Law enforcement agency; or

((j)) Other affiliated EMS/TC service;)) (III) Businesses with organized safety response teams, who perform exclusively on company property. These organizations must integrate into all aspects of the local EMS system;

((k)) (E) The MPD's recommendation for certification and specialized training; and

((l) For EMTs, proof of high school graduation, GED, or equivalent;

((m) Other information required by this chapter)) (F) Information as required by the department related to information discovered while conducting required background checks.

(3) Certification is effective on the date the department issues the certificate((- and will be)). The certification is valid for three years ((except as extended by)). The department ((for)) may extend this time period to accommodate the efficient processing of ((license renewals)) recertification applications. The expiration date will be indicated on the certification card.

((4)) (a) Certification of ((intermediate level technicians)) advanced EMTs and paramedics is valid only:

((a)) (i) In the county or counties where recommended by the MPD and approved by the department;

((b)) (ii) In other counties where formal EMS((TC)) medical control agreements are in place; or

((e)) (iii) In other counties when accompanying a patient in transit ((from a county meeting the criteria in (a) or (b) of this subsection-

With approval of the MPD;)),

(b) A certified ((intermediate level technician)) advanced EMT or paramedic may function ((as an EMT)) at a lower certification level in counties other than those described in (a)(i) through ((e)) (iii) of this subsection, with approval of that county's MPD.

(4) When EMS personnel change or add membership with an EMS agency, or their contact information changes, they must notify the department within thirty days. Changes will be made on forms provided by the department.

AMENDATORY SECTION (Amending WSR 04-08-103, filed 4/6/04, effective 5/7/04)

**WAC 246-976-161 Education requirements for ((certification)) recertification.** ((H)) Education is required for the recertification of all certified EMS personnel. This education may be obtained by completing the continuing medical education and examination (CME) method, **or** through the ongoing training and evaluation program (OTEP) method, identified below.

((a)) (1) CME topic content:

((b)) (a) Must meet annual and certification period educational requirements identified in Table A of this section, utilizing:

((A) Cognitive, affective and psychomotor objectives))

(i) Knowledge and skills found in ((curricula)) instructor guidelines identified in WAC ((246-976-024)) 246-976-023, for the level of certification being taught((-);

((B)) (ii) Current national standards at the health care provider level published for CPR, foreign body airway obstruction (FBAO), and automatic defibrillation((-);

((C)) (iii) County medical program director (MPD) protocols, regional patient care procedures, ((and)) county operating procedures((-) and state triage destination procedures; and

((D)) (iv) Training updates in standards as identified by the department((-);

((i)) (b) Must be approved by the MPD((-); and

((iii)) (c) May incorporate nationally recognized training programs as part of CME for content identified in (a)(i)((A)) of this subsection.

((b)) (2) **To complete the CME method you must:**

((i)) (a) Complete and document the ((educational)) requirements, indicated in Table A of this section, ((appropriate to)) for your level of certification.

((ii)) (b) Complete and document the skills maintenance requirements, indicated in Table B of this section, ((appropriate to)) for your level of certification.

((A)) (i) IV starts for ((IV technicians, combined IV/airway technicians, ILS technicians, combined ILS/airway technicians)) EMTs with IV therapy skill, AEMTs, or paramedics:

((H) During your first certification period, you must perform a minimum of) (A) Perform at least one hundred eight

successful IV starts the first certification period or three years.

- ~~((During))~~ The first year, you must perform a minimum of thirty-six successful IV starts.

- ~~((During))~~ The second and third year, you must perform a minimum of ~~((thirty-six))~~ seventy-two successful IV starts ~~((per year, which may be averaged))~~ over the ~~((second and third years of the certification))~~ two-year period.

~~((H))~~ (B) If you have completed a certification period, you must demonstrate proficiency in starting IVs to the satisfaction of the MPD (see later certification periods in Table B of this section).

~~((B))~~ (ii) Endotracheal intubations for ~~((airway technicians, combined IV/airway technicians, combined ILS/airway technicians or))~~ paramedics:

~~((I) During your first certification period, you must perform a minimum of)~~ (A) Perform at least thirty-six successful endotracheal intubations the first certification period or three years.

- ~~((During))~~ The first year, you must perform a minimum of twelve successful endotracheal intubations ~~((of which))~~. Four of ~~((the))~~ these endotracheal intubations must be performed on humans.

- During the second and third year, you must perform a minimum of ~~((twelve))~~ twenty-four endotracheal intubations ~~((per year, which may be averaged))~~ over the ~~((second and third years of the certification))~~ two-year period. Four of these endotracheal intubations per year must be performed on humans.

~~((H))~~ (B) If you have completed a certification period, you must perform a minimum of ~~((four))~~ twelve successful human endotracheal intubations ~~((per year, which may be averaged))~~ over the three-year certification period (see later certification periods in Table B of this section). Two of these endotracheal intubations per year must be performed on humans.

~~((H))~~ (C) Upon approval of the MPD, individuals unable to complete the required endotracheal intubations during the certification period, may meet the endotracheal intubation requirements by completing ~~((a))~~ an MPD and department-approved intensive airway management training program, ~~((utilizing cognitive, affective and psychomotor objectives))~~ covering all knowledge and skill aspects of emergency airway management.

~~((iii))~~ (c) Successfully complete ~~((the Washington state written examination))~~ department-approved knowledge and practical skill(s) examinations as identified in WAC 246-976-171.

~~((e))~~ (3) Any applicant changing from the CME method to the OTEP method must meet all requirements of the OTEP method.

~~((d))~~ (4) Ongoing training and evaluation programs:

~~((i))~~ (a) Must meet annual and certification period educational requirements identified in Table A, utilizing:

~~((A) Cognitive, affective and psychomotor objectives))~~ (i) Knowledge and skills found in ~~((curricula))~~ instructor guidelines identified in WAC ~~((246-976-024))~~ 246-976-023, for the level of certification being taught, in the following core content areas:

~~((H))~~ (A) Airway/ventilation (including intensive airway management training for personnel with advanced airway qualifications to determine competency).

~~((H))~~ (B) Cardiovascular.

~~((H))~~ (C) Medical emergencies/behavioral.

~~((IV))~~ (D) Trauma (including intensive IV therapy training for personnel with qualifications to determine competency).

~~((V))~~ (E) Obstetrics ~~((and pediatrics)).~~

~~((V))~~ (F) Geriatrics.

(G) Pediatrics.

(H) Operations.

~~((B))~~ (ii) The current national standards at the health care provider level published for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification.

~~((C))~~ (iii) County medical program director (MPD) protocols, regional patient care procedures, ~~((and))~~ county operating procedures and state triage destination procedures.

~~((D))~~ (iv) Training updates in standards as identified by the department~~((:))~~;

~~((i))~~ (b) Must provide ~~((cognitive, affective and psychomotor))~~ knowledge and skill evaluations following completion of each topic presentation to determine student competence of topic content.

~~((Psychomotor))~~ (i) Practical skill evaluations must be recorded on skill evaluation forms from nationally recognized training programs, or on department-approved practical skill evaluation forms ~~((provided in approved curricula identified in WAC 246-976-021)),~~ for the level of certification being taught.

(ii) If an evaluation form is not provided, a skill evaluation form must be developed and approved by the MPD and the department to evaluate the skill~~((:))~~;

~~((iii))~~ (c) Must be conducted at least on a quarterly basis:

(d) Must be approved by the MPD and the department; any additions or major changes to an approved OTEP requires documented approval from the county MPD and the department~~((:))~~;

~~((iv))~~ (e) Must be presented and evaluated by course personnel meeting the following qualifications:

~~((A))~~ (i) Evaluators must:

~~((H))~~ (A) Be a currently certified ~~((BLS or ALS))~~ Washington EMS provider who has completed at least one certification cycle. Certification must be at or above the level of certification being evaluated~~((:))~~;

~~((H))~~ (B) Complete an MPD approved evaluator's workshop, specific to the level of certification being evaluated, ~~((and teach))~~ which teaches participants to properly evaluate practical skills using the skill evaluation forms identified in (b) of this subsection. Participants must demonstrate proficiency ~~((in utilizing skill evaluation forms identified in (d) (ii) of this subsection:))~~ to successfully complete the workshop:

~~((H))~~ (C) Complete the evaluator application, DOH Form 530-012;

~~((IV))~~ (D) Be approved by the county MPD and the department~~((:))~~;

(E) Meet education and participation requirements as identified by the county medical program director;

(F) Be recommended for reapproval by the county medical program director upon EMS credential recertification.

~~((B))~~ (ii) Instructors must:

~~((H))~~ (A) Be a currently certified ((BLS or ALS)) Washington EMS provider who has completed at least one certification cycle at or above the level of certification being taught(-);

~~((H))~~ (B) Be a currently approved evaluator certified at or above the level of certification being taught(-);

~~((H))~~ (C) Be approved by the county MPD to instruct and evaluate EMS topics.

~~((C))~~ (iii) Guest lecturers, when utilized, must have specific knowledge and experience in the skills of the prehospital emergency care field for the topic being presented and be approved by the county MPD to instruct EMS topics(-);

~~((+))~~ (f) May incorporate nationally recognized training programs within an OTEP for the core content areas identified in ((d)(i)(A)) (a)(i) of this subsection.

(g) May use on-line training to provide all or a portion of an OTEP when:

(i) On-line training provides sufficient topics to meet all annual and certification period requirements;

(ii) Each didactic training topic requires an on-line cognitive evaluation after the training. Successful completion of the topic evaluation is required to receive credit for the topic;

(iii) Instruction and demonstration of all practical skills are provided in person by an SEI or qualified EMS evaluator approved by the MPD to instruct the practical skills;

(iv) Each practical evaluation is completed and scored in the presence of a state approved EMS evaluator or SEI. Each evaluation must be successfully completed to receive credit for the practical skill.

~~((+))~~ (5) To complete the OTEP method you must:

~~((+))~~ (a) Complete a ((department and MPD approved)) county MPD and department-approved OTEP that includes requirements indicated in Table A of this section, appropriate to your level of certification(-);

~~((+))~~ (b) Complete and document the skills maintenance requirements, indicated in Table ((B)) C of this section, appropriate to your level of certification.

~~((A))~~ (i) IV starts for EMTs with IV ((technicians, combined IV/airway technicians)) therapy skill, ((HLS techni-

cians, combined HLS/airway technicians)) advanced EMTs, or paramedics:

~~((F) During your)~~ (A) Perform at least thirty-six successful IV starts the first certification period((, you must perform a minimum of thirty-six successful IV starts)) or three years.

- ~~((During))~~ The first year, you must perform a minimum of twelve successful IV starts.

- During the second and third year, you must perform a minimum of ((twelve)) twenty-four successful IV starts ((per year, which may be averaged)) over the ((second and third years of the certification)) two-year period.

~~((H))~~ (B) If you have completed a certification period, you must demonstrate proficiency in starting IVs to the satisfaction of the MPD (see later certification periods in Table ((B)) C of this section).

~~((B))~~ (ii) Endotracheal intubations for ((airway technicians, combined IV/airway technicians, combined HLS/airway technicians or)) paramedics:

~~((H) During your first certification period, you must)~~ (A) Perform ((a minimum of)) at least twelve successful endotracheal intubations the first certification period or three years.

- ~~((During))~~ The first year, you must perform a minimum of four successful human endotracheal intubations.

- During the second and third year, you must perform a minimum of ((four)) eight human endotracheal intubations ((per year, which may be averaged)) over the ((second and third years of the certification)) two-year period.

~~((H))~~ (B) If you have completed a certification period, you must perform a minimum of ((two)) six successful human endotracheal intubations ((per year, which may be averaged)) over the three-year certification period (see later certification periods in Table ((B)) C of this section).

~~((C))~~ (iii) Skills maintenance requirements may be obtained as part of the OTEP.

~~((D))~~ (iv) Individuals ((participating in an)) using the OTEP method meet skill maintenance requirements by demonstrating proficiency in the application of those skills to the county MPD during the OTEP.

~~((F))~~ (6) Any applicant changing from the OTEP method to the CME method must meet all requirements of the CME method.

~~((g))~~ (7) Education requirements for recertification - Table A:

((TABLE A: EDUCATION REQUIREMENTS FOR RECERTIFICATION	Basic Life Support		Intermediate Life Support (EMT Intermediate Levels)					Paramedic (ALS)
	FR	EMT	IV	Air	IV/A if	HLS	HLS/A if	Paramedic
<b>Annual Requirements</b>								
CPR & Airway	X	X	X	X	X	X	X	
Spinal Immobilization	X	X	X	X	X	X	X	
Patient Assessment	X	X	X	X	X	X	X	
<b>Certification Period Requirements</b>								
Infectious Disease	X	X	X	X	X	X	X	X
Trauma		X	X	X	X	X	X	X

((TABLE A: EDUCATION REQUIREMENTS FOR RE-CERTIFICATION	Basic Life Support		Intermediate Life Support (EMT-Intermediate Levels)					Paramedic (ALS)
Pharmacology		X	X	X	X	X	X	
Other Pediatric Topics	X	X	X	X	X	X	X	X
*Additional education course hours totaling:	15 hrs	30 hrs	45- hrs	45- hrs	60- hrs	60- hrs	75 hrs	150 hrs))

**Table A: Education Requirements for Recertification**

	<u>EMR</u>	<u>EMT</u>	<u>AEMT</u>	<u>Paramedic</u>
<b>Annual Requirements</b>				
<u>Cardiovascular</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Spinal immobilization</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Patient assessment</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<b>Certification Period Requirements</b>				
<u>Infectious disease</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Trauma</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Pharmacology</u>		<u>X</u>	<u>X</u>	<u>X</u>
<u>Other pediatric topics</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
* Total minimum education hours per certifi- cation period:	15 hrs	30 hrs	60 hrs	150 hrs

"X" indicates an individual must demonstrate knowledge and competency in the topic or skill.

\*Individuals obtaining education through the CME method must complete the total number of educational course hours indicated above. However, due to the competency-based nature of OTEP, fewer class hours may be needed to complete these requirements than the total course hours indicated above.

((H)) (8) Skill maintenance requirements for the CME method - Table B:

((TABLE B: SKILLS MAINTENANCE REQUIREMENTS	Intermediate Life Support (EMT-Intermediate Levels)					Paramedic (ALS)
	IV	Air	IV/Air	IIS	IIS/Air	Paramedic
<b>First Certification Period</b>						
<b>• First Year of Certification</b>						
IV Starts						
<b>Continuing Education Method</b> may not be averaged	36		36	36	36	36
<b>OTEP Method</b>	12		12	12	12	12
Endotracheal intubations (4 must be performed on humans for each method)						
<b>Continuing Education Method</b> may not be averaged		12	12		12	12
<b>OTEP Method</b>		4	4		4	4
Intraosseous infusion placement	X		X	X	X	X
<b>• Second and Third Years of Certifica- tion</b>						
<b>• Annual Requirements</b>						
IV Starts*						
<b>Continuing Education Method</b>	36		36	36	36	36
<b>OTEP Method</b>	12		12	12	12	12

<b>((TABLE B: SKILLS MAINTENANCE REQUIREMENTS</b>	<b>Intermediate Life Support (EMT-Intermediate Levels)</b>					<b>Paramedic (ALS)</b>
Endotracheal intubations* (4 per year must be performed on humans for each method)						
<b>Continuing Education Method</b>		12	12		12	12
<b>OTEP Method</b>		4	4		4	4
Intraosseous infusion placement	X		X	X	X	X
<b>• During the Certification Period</b>						
Pediatric airway management		X	X		X	X
Multi-lumen airway placement				X	X	
Defibrillation				X	X	
<b>Later Certification Periods</b>						
<b>• Annual Requirements</b>						
IV Starts	X		X	X	X	X
Endotracheal intubations (2 per year must be performed on humans for each method)						
<b>Continuing Education Method</b>		4	4		4	4
<b>OTEP Method</b>		2	2		2	2
Intraosseous infusion placement	X		X	X	X	X
<b>• During the Certification Period</b>						
Pediatric airway management		X	X		X	X
Multi-lumen airway placement				X	X	
Defibrillation				X	X	

"X" indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

\*(The second and third year requirements may be averaged over the two years.)

**Table B: Skills Maintenance Requirements for the CME Method**

	<u>EMR</u>	<u>EMT</u>	<u>Advanced EMT</u>	<u>Paramedic</u>
<b>First certification period or three years</b>				
<b>• First year</b>				
<u>IV starts</u>		<u>EMT w/IV therapy skill 36</u>	36	36
<u>Endotracheal intubations (4 must be performed on humans)</u>				12
<u>Intraosseous infusion placement</u>		<u>EMT w/IV therapy skill X</u>	X	X
<b>• Second &amp; third years</b>				
<u>IV starts over the two-year period</u>		<u>EMT w/IV therapy skill 72</u>	72	72
<u>Endotracheal intubations over the two-year period (4 per year must be performed on humans)</u>				24
<u>Intraosseous infusion placement</u>		<u>EMT w/IV therapy skill X</u>	X	X
<b>During the certification period</b>				
<u>Pediatric airway management</u>				X

	<b><u>EMR</u></b>	<b><u>EMT</u></b>	<b><u>Advanced EMT</u></b>	<b><u>Paramedic</u></b>
<u>Supraglottic airway placement</u>		<u>EMT w/supraglottic airway skill X</u>	<u>X</u>	<u>X</u>
<u>Defibrillation</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<b><u>Later certification periods</u></b>				
<b><u>: Annual requirements</u></b>				
<u>IV starts</u>		<u>EMT w/IV therapy skill X</u>	<u>X</u>	<u>X</u>
<u>Endotracheal intubations (2 per year must be performed on humans)</u>				<u>4</u>
<u>Intraosseous infusion placement</u>		<u>EMT w/IV therapy skill X</u>	<u>X</u>	<u>X</u>
<b><u>: During the certification period</u></b>				
<u>Pediatric airway management</u>				<u>X</u>
<u>Supraglottic airway placement</u>		<u>EMT w/supraglottic airway skill X</u>	<u>X</u>	<u>X</u>
<u>Defibrillation</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

"X" indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

(9) Skills maintenance requirements for the OTEP method - Table C:

**Table C: Skills Maintenance Requirements for the OTEP Method**

	<b><u>EMR</u></b>	<b><u>EMT</u></b>	<b><u>Advanced EMT</u></b>	<b><u>Paramedic</u></b>
<b><u>First certification period or three years</u></b>				
<b><u>: First year</u></b>				
<u>IV starts</u>		<u>EMT w/IV therapy skill 12</u>	<u>12</u>	<u>12</u>
<u>Human endotracheal intubations</u>				<u>4</u>
<u>Intraosseous infusion placement</u>		<u>EMT w/IV therapy skill X</u>	<u>X</u>	<u>X</u>
<b><u>: Second &amp; third years</u></b>				
<u>IV starts over the two-year period</u>		<u>EMT w/IV therapy skill 12</u>	<u>24</u>	<u>24</u>
<u>Human endotracheal intubations over the two-year period</u>				<u>8</u>
<u>Intraosseous infusion placement</u>		<u>EMT w/IV therapy skill X</u>	<u>X</u>	<u>X</u>
<b><u>During the certification period</u></b>				
<u>Pediatric airway management</u>		<u>EMR &amp; EMT X</u>	<u>X</u>	<u>X</u>
<u>Supraglottic airway placement</u>		<u>EMT w/supraglottic airway skill X</u>	<u>X</u>	<u>X</u>
<u>Defibrillation</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<b><u>Later certification periods</u></b>				
<b><u>: Annual requirements</u></b>				
<u>IV starts</u>		<u>EMT w/IV therapy skill X</u>	<u>X</u>	<u>X</u>
<u>Human endotracheal intubations</u>				<u>2</u>

	<b>EMR</b>	<b>EMT</b>	<b>Advanced EMT</b>	<b>Paramedic</b>
<u>Intraosseous infusion placement</u>		<u>EMT w/IV therapy skill X</u>	<u>X</u>	<u>X</u>
<b><u>During the certification period</u></b>				
<u>Pediatric airway management</u>		<u>EMR &amp; EMT X</u>	<u>X</u>	<u>X</u>
<u>Supraglottic airway placement</u>		<u>EMT w/supraglottic airway skill X</u>	<u>X</u>	<u>X</u>
<u>Defibrillation</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

"X" indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

~~((i))~~ ~~(10)~~ Skill maintenance requirements for individuals requesting reciprocal certification:

~~((i))~~ ~~(a)~~ Reciprocity candidates credentialed less than three years must meet Washington state's skill maintenance requirements for the initial certification period identified above.

~~((ii))~~ ~~(b)~~ Reciprocity candidates credentialed three years or more must meet Washington state's skill maintenance requirements for second and subsequent certification periods.

~~((iii))~~ ~~(c)~~ The county MPD may evaluate an individual's skills to determine if the individual is proficient in the application of those skills prior to recommending certification. The MPD may recommend an individual obtain specific training to become proficient in any skills deemed insufficient by the MPD or delegate.

~~((j))~~ ~~(11)~~ Description of selected terms used in Tables A, B and ~~(B)~~ C:

~~((i))~~ ~~Class hours:~~ Actual hours spent to become knowledgeable in a topic(s) or proficient in a skill(s).

~~(ii)~~ ~~Course hours:~~ The predetermined time scheduled to conduct a course or topic.

~~((iii))~~ ~~CPR and airway management)~~ ~~(a)~~ Cardiovascular includes health care provider level CPR, foreign body obstruction (FBAO), and the use of airway adjuncts appropriate to the level of certification, for adults, children and infants following national standards, ~~((assuring the following pediatric objectives are covered:~~

Pediatric objectives – The EMS provider must be able to:

~~(A)~~ Identify and demonstrate airway management techniques for infants and children.

~~(B)~~ Demonstrate infant and child CPR.

~~(C)~~ Demonstrate FBAO technique for infants and children) and training in the care of cardiac and stroke patients.

~~((iv))~~ ~~(b)~~ Endotracheal intubation: Proficiency includes the verification of proper tube placement and continued placement of the endotracheal tube in the trachea through procedures identified in county MPD protocols.

~~((v))~~ ~~(c)~~ Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.

~~((vi))~~ ~~(d)~~ Intraosseous infusion: Proficiency in intraosseous line placement ~~((in pediatric patients)).~~

~~((vii))~~ ~~(e)~~ IV starts: Proficiency in intravenous catheterization performed on sick, injured, or preoperative adult and pediatric patients. With written authorization of the MPD, IV starts may be performed on artificial training aids.

~~((viii))~~ ~~Multi-lumen)~~ ~~(f)~~ Supraglottic airway placement: Proficiency includes the verification of tube placement and

continued placement of the ~~((multi-lumen))~~ supraglottic airway through procedures identified in county MPD protocols.

~~((ix))~~ ~~(g)~~ Other pediatric topics: This includes anatomy and physiology and medical problems including special needs patients appropriate to the level of certification ~~((; assuring the following pediatric objectives are covered:~~

~~(A)~~ Anatomy and physiology – The EMS provider must be able to:

~~(I)~~ Identify the anatomy and physiology and define the differences in children of all ages.

~~(II)~~ Identify developmental differences between infants, toddlers, preschool, school age and adolescents, including special needs children.

~~(B)~~ Medical problems including special needs patients – The EMS provider must be able to:

~~(I)~~ Identify the differentiation between respiratory distress and respiratory failure.

~~(II)~~ Identify the importance of early recognition and treatment of shock in the infant and child patient.

~~(III)~~ Identify causes and treatments for seizures.

~~(IV)~~ Identify life-threatening complications of meningitis and sepsis.

~~(V)~~ Identify signs and symptoms of dehydration.

~~(VI)~~ Identify signs and symptoms of hypoglycemia.

~~(VII)~~ Identify how hypoglycemia may mimic hypoxemia.

~~(VIII)~~ Identify special needs pediatric patients that are technologically dependant (tracheotomy tube, central line, GI or feeding tubes, ventilators, community specific needs).

~~(IX)~~ Identify the signs and symptoms of suspected child abuse.

~~(X)~~ Identify the signs and symptoms of anaphylaxis and treatment priorities.

~~(XI)~~ Identify the importance of rapid transport of the sick infant and child patient).

~~((x))~~ ~~(h)~~ Patient assessment: This includes adult, pediatric and geriatric patients appropriate to the level of certification ~~((; assuring the following pediatric objectives are covered:~~

Pediatric objectives – The EMS provider must be able to:

~~(A)~~ Identify and demonstrate basic assessment skills according to the child's age and development.

~~(B)~~ Demonstrate the initial assessment skills needed to rapidly differentiate between the critically ill or injured and the stable infant and child patient.

~~(C)~~ Identify and demonstrate the correct sequence of priorities to be used in managing the infant and child patient with life-threatening injury or illness.

(D) Identify that the priorities for a severely injured and critically ill infant and child are:

- Airway management;
- Oxygenation;
- Early recognition and treatment of shock;
- Spinal immobilization;
- Psychological support.

(E) Demonstrate a complete focused assessment of an infant and a child.

(F) Demonstrate ongoing assessment of an infant and a child.

(G) Identify the differences between the injury patterns of an infant and a child compared to that of an adult.

(H) Identify the psychological dynamics between an infant and a child, parent or caregiver and EMS provider).

((xi)) (i) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for ((first responders)) EMRs).

((xii)) (j) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.

((xiii)) (k) Spinal immobilization and packaging: This includes adult, pediatric and geriatric patients appropriate to the level of certification(, assuring the following pediatric objectives are covered:

Pediatric objectives – The EMS provider must be able to:

(A) Demonstrate the correct techniques for immobilizing the infant and child patient.

(B) Identify the importance of using the correct size of equipment for the infant and child patient.

(C) Demonstrate techniques for adapting adult equipment to effectively immobilize the infant and child patient)).

((xiv)) (l) Trauma: For adult, pediatric and geriatric patients appropriate to the level of certification(, assuring the following pediatric objectives are covered:

Pediatric objectives – The EMS provider must be able to:

(A) Identify the importance of early recognition and treatment of shock in the infant and child patient.

(B) Identify the importance of early recognition and treatment of the multiple trauma infant and child patient.

(C) Identify the importance of rapid transport of the injured infant and child patient)).

AMENDATORY SECTION (Amending WSR 04-08-103, filed 4/6/04, effective 5/7/04)

**WAC 246-976-171 ((To apply for)) Recertification((renewal), reversion, reactivation and reinstatement of certification.** ((1) To apply for recertification, the applicant must provide information that meets the requirements identified in WAC 246-976-141(2); EXCEPT current Washington state certification is considered proof of course completion, age, and initial infectious disease training.

(2) Proof of successful completion of education and skills maintenance, required for the level of certification, as defined in this chapter and identified in Tables A and B of WAC 246-976-161.

(3) Demonstrate knowledge and practical skills competency:

(a) For individuals participating in the OTEP method of education at the level of certification, successful completion of the OTEP fulfills the requirement of the DOH written and practical skills examinations.

(b) Individuals completing the CME method of education must provide proof of successful completion of the DOH written examination and practical skills examination for the level of certification.

(i) Basic life support (BLS) and intermediate life support (ILS) personnel must successfully complete the DOH approved practical skills examination for the level of certification.

(ii) Paramedics must successfully complete practical skills evaluations required by the MPD to determine ongoing competence.)) (1) Recertification:

(a) Complete the education requirements for recertification identified in WAC 246-96-161, Tables A, B, and C.

(i) Individuals participating in the CME method of education must provide the following to the MPD or delegate:

(A) Proof of successfully obtaining the educational requirements at the level of certification being sought;

(B) Proof of successful completion of department-approved knowledge and practical skill certification examinations for the level of certification being sought, within twelve months prior to application.

(ii) Individuals participating in the OTEP method of education must provide the following to the MPD or delegate:

(A) Documentation of successfully completing the OTEP educational requirements at the level of certification being sought;

(B) Documentation of successful completion of the OTEP knowledge and skill evaluations at the level of certification being sought. These evaluations fulfill the requirement of department-approved knowledge and practical skill certification examinations.

(iii) Provide the county medical program director documentation of successful completion of skills maintenance, required for the level of certification, as specified in this chapter and identified in WAC 246-96-161, Tables A, B, and C.

(iv) The county MPD may require additional knowledge and/or skill examinations to determine competency on department-approved MPD protocols prior to recommendation of recertification.

(b) Complete the recertification application; obtain the MPD recommendation for recertification and endorsement of EMT specialized training, then submit the recertification application to the department.

(2) Voluntary reversion to a lower level of certification. Meet the current educational requirements for recertification:

(a) CME.

(i) Document education;

(ii) Complete recertification application;

(iii) Provide proof of successful completion of department-approved knowledge and practical skill examinations for the level of certification desired in the recertification application; and

(iv) Submit the application to the department.

(b) OTEP.



(i) Document completion of OTEP, including knowledge and skill evaluations;

(ii) Complete recertification application; and

(iii) Submit the application to the department.

(3) Reactivation of an expired Washington state EMS certification:

(a) The EMS provider must not provide EMS care until the certification is returned to active status;

(b) A certification is returned to active status by complying with the following:

(i) Expired for one year or less:

(A) Comply with educational requirements for the previous certification period;

(B) Complete one year of annual recertification education requirements;

(C) Successfully complete the department-approved knowledge and practical skill certification examinations; and

(D) Complete the recertification application, obtain the MPD recommendation for recertification and submit the recertification application to the department;

(ii) Expired for greater than one and less than two years:

(A) Comply with educational requirements for the previous certification period;

(B) Complete one year of annual recertification education requirements;

(C) Complete twenty-four hours of educational topics and hours specified by the department and the county MPD;

(D) Successfully complete the department-approved knowledge and practical skill certification examinations; and

(E) Complete the recertification application, obtain the MPD recommendation for recertification and submit the application to the department;

(iii) Expired for more than two years:

(A) Nonparamedic EMS personnel must:

(I) Complete a department-approved initial training program, and successfully complete department-approved knowledge and practical skill certification examinations;

(II) Complete the initial certification application process as identified in WAC 246-976-141;

(B) Paramedics whose certification has been expired between two and six years must:

(I) Document current status as a provider or instructor in the following: ACLS, PHTLS or BTLS, PALS or PEPPS, or state approved equivalent;

(II) Document current status in health care provider level CPR;

(III) Document completion of a state approved forty-eight hour EMT-paramedic refresher training program or completes forty-eight hours of ALS training that consists of the following core content:

• Airway, breathing and cardiology - sixteen hours.

• Medical emergencies - eight hours.

• Trauma - six hours.

• Obstetrics and pediatrics - sixteen hours.

• Operations - two hours.

(IV) Document completion of any additional required MPD and department-approved program of refresher training;

(V) Document MPD required clinical and field evaluation;

(VI) Document successful completion of department-approved knowledge and practical skill certification examinations;

(VII) Complete the recertification application process as identified in WAC 246-976-141;

(c) A request for reactivation of a paramedic certification that has been expired greater than six years will be reviewed by the department to determine the disposition.

(4) Reinstatement of a suspended or revoked Washington state EMS certification.

(a) A person whose EMS certification is suspended or revoked may petition for reinstatement as provided in RCW 18.130.150.

(b) The EMS provider must not provide EMS care until the certification is returned to active status.

(c) If reinstatement is granted, prior to reinstatement of the certification, the petitioner must:

(i) Provide proof of completion of all requirements identified by the departmental disciplinary authority; and

(ii) Meet the reactivation requirements in this section.

(5) When EMS personnel change or add membership with an EMS agency, or their contact information changes, they must notify the department within thirty days. Changes will be made on forms provided by the department.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-182 Authorized care—Scope of practice.** (1) Certified EMS(~~(+E)~~) personnel are only authorized to provide patient care;

(a) When performing in a prehospital emergency setting or during interfacility ambulance transport; and

(b) When performing for a licensed EMS agency or an organization recognized by the department; and

(c) Within the scope of care that is:

~~((+))~~ (i) Included in the approved curriculum for the individual's level of certification; or

~~((+))~~ (ii) Included in approved specialized training; and

~~((+))~~ (iii) Included in state approved county MPD protocols.

~~((When a patient is identified as needing care which is not authorized for the providers, the certified person in charge of that patient must consult with medical control as soon as possible,))~~ If protocols and regional patient care procedures do not provide ((adequate)) off-line direction for the situation, the certified person in charge of the patient must consult with their on-line medical control as soon as possible. Medical control can only authorize a certified person to perform within their scope of practice.

~~((For trauma patients,))~~ All prehospital providers must follow ((the)) state approved ((trauma)) triage procedures, regional patient care procedures and county MPD patient care protocols.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-191 Disciplinary actions.** (1) The department ~~((will publish procedures for))~~ is the disciplining authority under RCW 18.130.040 (2)(a).

(2) Modification, suspension, revocation, or denial of certification~~((The procedures))~~ will be consistent with the requirements of the Administrative Procedure Act (chapter 34.05 RCW), the Uniform Disciplinary Act (chapter 18.130 RCW), and ~~((practice and procedure))~~ chapter 246-10 WAC~~((9))~~.

~~((2))~~ The department will publish procedures:

~~((a))~~ To investigate complaints and allegations against certified personnel;

~~((b))~~ For (3) MPDs ~~((to recommend corrective action))~~ may perform counseling regarding certified individuals.

~~((3))~~ (4) Before recommending ~~((revocation, suspension, modification, or denial of a certificate))~~ disciplinary action, the MPD must initiate ~~((corrective action))~~ counseling with the certified individual, consistent with department ~~((procedures))~~ guidelines.

~~((4))~~ (5) The MPD may request the department to summarily suspend certification of an individual if the MPD believes that continued certification ~~((will be detrimental to patient care))~~ is an immediate and critical threat to public health and safety.

~~((5))~~ In cases where the MPD recommends denial of recertification, the department will investigate the individual, and may revoke his or her certification.)

~~((6))~~ The MPD may recommend denial or renewal of an individual's certification.

(7) As required by RCW 18.130.080 an employing or sponsoring agency ~~((disciplines a certified individual for conduct or circumstances as described in RCW 18.130.070, the Uniform Disciplinary Act, the agency must report the cause and the action taken to the department))~~ is subject to the reporting requirements identified in chapter 246-16 WAC. An employing or sponsoring agency must report to the department the following:

(a) When the certified individual's services have been terminated or restricted based upon a final determination that the individual has either committed an act or acts that may constitute unprofessional conduct; or

(b) That the certified individual may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition; or

(c) When a certified individual is disciplined by an employing or sponsoring agency for conduct or circumstances that would be unprofessional conduct under RCW 18.130.180 of the Uniform Disciplinary Act.

**AMENDATORY SECTION** (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-260 Licenses required.** (1) The department ~~((will publish procedures to))~~ licenses ambulance and aid services and vehicles~~((;))~~ to provide service that is consistent with the state plan and approved regional plans.

(2) To become licensed as an ambulance or aid service, an applicant must submit ~~((application forms to the department, including))~~:

~~((a))~~ ~~((A declaration that the service is able to comply with standards, rules, and regulations of this chapter;~~

~~((b))~~ A declaration that staffing will meet the personnel requirements of RCW 18.73.150 and 18.73.170;

~~((c))~~ A declaration that operation will be consistent with the statewide and regional EMS/TC plans and approved patient care procedures;

~~((d))~~ Evidence) A completed application for licensure on forms provided by the department;

~~((b))~~ Proof of ~~((liability))~~ the following insurance coverage:

(i) Motor vehicle liability coverage required in RCW 46.30.020 (ambulance and aid services only);

(ii) Professional and general liability coverage;

~~((c))~~ A description of the general area to be served and the number of vehicles to be used. The description includes:

~~((i))~~ The services to be offered (e.g., emergency response and/or interfacility transports);

~~((ii))~~ The dispatch process, including a backup plan if the primary unit is unavailable;

~~((iii))~~ A plan for tiered response that is consistent with approved regional patient care procedures;

~~((iv))~~ A plan for rendezvous with other services that is consistent with approved regional patient care procedures;

~~((v))~~ (c) A map of the proposed response area;

~~((vi))~~ (d) The level of service to be provided: Basic life support (BLS), intermediate life support (ILS), or advanced life support (ALS) (paramedic); and the scheduled hours of operation~~((; and~~

~~((vii))~~ Minimum staffing required for each level is as follows:

(i) For aid service response:

(A) A BLS level service will provide care with at least one person qualified in advanced first aid (after January 1, 2012, at least one emergency medical responder);

(B) An ILS level service will provide care with at least one ILS technician (AEMT);

(C) An ALS level service will provide care with at least one paramedic.

(ii) For ambulance services:

(A) A BLS level service will provide care and transport with at least one emergency medical technician (EMT) and one person trained in advanced first aid. Beginning January 1, 2012, emergency medical responder (EMR) will replace the advanced first aid requirement;

(B) An ILS service will provide care and transport with at least one ILS technician and one EMT;

(C) An ALS service will provide care and transport with at least one paramedic and one EMT or higher level of EMS certification;

(D) For critical care interfacility ambulance transports, have sufficient medical personnel on each response to provide patient care specific to the transport;

(e) For licensed ambulance services, a written plan to continue patient transport if a vehicle becomes disabled, consistent with regional patient care procedures.

(3) To renew a license, submit application forms to the department at least thirty days before the expiration of the current license.

(4) Licensed ambulance and aid services must comply with ~~((the))~~ department-approved prehospital ~~((trauma))~~ triage procedures ~~((defined in WAC 246-976-010)).~~

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-270 Denial, suspension, revocation ~~((of license))~~.** (1) The department may suspend, modify, or revoke ~~((any ambulance or aid service))~~ an agency's license or verification issued under this chapter ~~((-or))~~. The department may deny licensure or verification to an applicant when it finds:

(a) Failure to comply with the requirements of chapters 18.71, 18.73, 18.130, or 70.168 RCW, or other applicable laws or rules, or with this chapter;

(b) Failure to comply or ensure compliance with prehospital patient care protocols or regional patient care procedures;

(c) Failure to cooperate with the department in inspections or investigations;

(d) Failure to supply data as required in chapter 70.168 RCW and this chapter; or

(e) Failure to consistently meet trauma response times identified by the regional plan and approved by the department for trauma verified services.

(2) Under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, and the Uniform Disciplinary Act, chapter 18.130 RCW, the department may impose sanctions against a licensed service as provided in chapter 18.130 RCW. The department will not take action against a licensed, nonverified service under this section for providing emergency trauma care consistent with regional patient care procedures when the wait for the arrival of a verified service would place the life of the patient in jeopardy or seriously compromise patient outcome.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-290 Ground ambulance vehicle standards.** (1) Essential equipment for patient and provider safety and comfort must be in good working order.

(2) All ambulance vehicles must be clearly identified as an EMS vehicle and display the agency identification by ~~((appropriate))~~ emblems and markings on the front, side, and rear of the vehicle. A current state ambulance credential must be prominently displayed in a clear plastic cover positioned high on the partition behind the driver's seat.

(3) Tires must be in good condition ~~((with not less than two thirty seconds inch useable tread, appropriately sized to support the weight of the vehicle when loaded))~~.

(4) The electrical system must meet the following requirements:

(a) Interior lighting in the driver compartment must be designed and located so that no glare is reflected from surrounding areas to the driver's eyes or line of vision from the instrument panel, switch panel, or other areas which may require illumination while the vehicle is in motion; and

(b) Interior lighting in the patient compartment must be ~~((adequate))~~ provided throughout the compartment, and provide an intensity of twenty foot-candles at the level of the patient; and

(c) Exterior lights must ~~((comply with the appropriate sections of Federal Motor Vehicle Safety Standards))~~ be fully

operational, and include body-mounted flood lights over the ~~((rear))~~ patient loading doors ~~((which))~~ to provide ~~((adequate))~~ loading visibility; and

(d) Emergency warning lights must be provided in accordance with RCW 46.37.380, as administered by the state commission on equipment.

(5) Windshield wipers and washers must be dual, electric, multispeed, and ~~((maintained in good condition))~~ functional at all times.

(6) Battery and generator system:

(a) The battery ~~((with a minimum seventy ampere hour rating))~~ must be capable of sustaining all systems. It must be located in a ventilated area sealed off from the vehicle interior, and completely accessible for checking and removal;

(b) The generating system must be capable of supplying the maximum built-in DC electrical current requirements of the ambulance. If the electrical system uses fuses instead of circuit breakers, extra fuses must be provided.

(7) The ambulance must be equipped with:

(a) Seat belts that comply with Federal Motor Vehicle Safety Standards 207, 208, 209, and 210. Restraints must be provided in all seat positions in the vehicle, including the attendant station ~~((-)); and~~

~~((8))~~ (b) Mirrors on the left side and right side of the vehicle. The location of mounting must provide maximum rear vision from the driver's seated position ~~((-)); and~~

~~((9))~~ (c) One ABC two and one-half pound fire extinguisher.

~~((10))~~ (8) Ambulance body requirements:

(a) The length of the patient compartment must be at least one hundred twelve inches in length, measured from the partition to the inside edge of the rear loading doors; and

(b) The width of the patient compartment, after cabinet and cot installation, must provide at least nine inches of clear walkway between cots or the squad bench; and

(c) The height of the patient compartment must be at least fifty-three inches at the center of the patient area, measured from floor to ceiling, exclusive of cabinets or equipment; and

(d) There must be secondary egress from the ~~((eurb side of the patient compartment))~~ vehicle; and

(e) Back doors must open in a manner to increase the width for loading patients without blocking existing working lights of the vehicle; and

(f) The floor at the lowest level permitted by clearances. It must be flat and unencumbered in the access and work area, with no voids or pockets in the floor to side wall areas where water or moisture can become trapped to cause rusting ~~((and/))~~ or unsanitary conditions; and

(g) Floor covering applied to the top side of the floor surface. It must withstand washing with soap and water or disinfectant without damage to the surface. All joints in the floor covering must have minimal void between matching edges, cemented with a suitable water-proof and chemical-proof cement to eliminate the possibility of joints loosening or lifting; and

(h) The finish of the entire patient compartment must be impervious to soap and water and disinfectants to permit washing and sanitizing; and

(i) Exterior surfaces must be smooth, with appurtenances kept to a minimum; and

(j) Restraints must be provided for all litters. If the litter is floor supported on its own support wheels, a means must be provided to secure it in position. These restraints must permit quick attachment and detachment for quick transfer of patient.

~~((H))~~ (9) Vehicle brakes, ~~((tires,))~~ regular and special electrical equipment, ~~((windshield wipers,))~~ heating and

Note: "asst" means assortment

cooling units, safety belts, and window glass, must be ~~((in good working order))~~ functional at all times.

AMENDATORY SECTION (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-300 Ground ambulance and aid ~~((vehicles))~~ service—Equipment.** Ground ambulance and aid services must provide equipment listed in Table ~~((C))~~ D on each licensed vehicle, when available for service.

TABLE <del>((C))</del> <u>D</u> : EQUIPMENT	AMBULANCE	AID VEHICLE
<b>AIRWAY MANAGEMENT</b>		
Airway Adjuncts		
Oral airway <del>((adult—sm, med, lg))</del> <u>adult and pediatric</u> <del>((Oral airway (pediatric: 00, 0, 1, 2, 3, 4)</del>	<del>((1ea))</del> <u>asst</u> <del>1ea</del>	<del>((1ea))</del> <u>asst</u> <del>1ea</del>
Suction		
Portable <del>((—manual))</del>	1	1
Vehicle mounted and powered, providing: Minimum of 30 L/min. & vacuum > 300 mm Hg	1	0
Tubing, suction		
Bulb syringe, pediatric	1	1
Rigid suction tips	2	1
Catheters as required by local protocol		
Water-soluble lubricant	<u>1</u>	<u>1</u>
Oxygen delivery system built in	1	0
3000 L Oxygen <del>((cylinder))</del> <u>supply, with regulator, 500 ((Lbs)) PSI minimum, or equivalent liquid oxygen system</u>	1	0
300 L Oxygen <del>((cylinder))</del> <u>supply, with regulator, 500 ((Lbs)) PSI minimum, or equivalent liquid oxygen system</u> <del>((Regulator, oxygen (0-15+ Liter)</del>	2 <del>1</del>	1 <del>1</del>
Cannula, nasal, adult	4	2
O <sub>2</sub> mask, nonrebreather, adult	4	2
O <sub>2</sub> mask, nonrebreather, pediatric	2	1
BVM, with O <sub>2</sub> reservoir		
Adult, <u>pediatric, infant</u> <del>((Pediatric (w/sizes neonatal to adult)</del>	1 <u>ea</u> <del>1</del>	1 <u>ea</u> <del>1</del>
<del>Pocket mask or equivalent</del>	<del>1</del>	<del>1</del>
<b>PATIENT ASSESSMENT AND CARE</b>		
Assessment		
Sphygmomanometer		
Adult, large	1	<del>((0))</del> <u>1</u>
Adult, regular	1	1
Pediatric	1	<del>((0))</del> <u>1</u>
Stethoscope, adult	1	1
Thermometer, <del>((hypothermia and hyperthermia))</del> <u>per county protocol</u>	1 <del>((ea))</del>	0
Flashlight, w/spare or rechargeable batteries & bulb	1	1
<del>((*)</del> ) Defibrillation capability appropriate to the level of personnel. <del>(((*Note: The requirement for defibrillation takes effect January 1, 2002.))</del>	1	1
Personal infection control and protective equipment as required by the department of labor and industries		
<u>Length based tool for estimating pediatric medication and equipment sizes</u>	<u>1</u>	<u>1</u>
<b>TRAUMA EMERGENCIES</b>		
<del>((Trauma registry identification bands</del>	<del>Yes</del>	<del>Yes))</del>
Triage identification for 12 patients <u>per county protocol</u>	Yes	Yes
Wound care		
Dressing, sterile	asst	asst

Note: "asst" means assortment

TABLE ((€)) D: EQUIPMENT	AMBULANCE	AID VEHICLE
Dressing, sterile, trauma	2	2
Roller gauze bandage	asst	asst
Medical tape	asst	asst
Self adhesive bandage strips	asst	asst
Cold packs	4	2
Occlusive dressings	2	2
<del>((Burn sheets</del>	<del>2</del>	<del>2</del> )
Scissors, bandage	1	1
Irrigation solution	2	1
<b>Splinting</b>		
Backboard with straps	2	1
Head <del>((immobilizer))</del> <u>immobilization equipment</u>	1	1
Pediatric immobilization device	1	<del>((0))</del> 1
Extrication collars, rigid		
Adult (small, medium, large)	asst	asst
Pediatric or functionally equivalent sizes	asst	asst
Immobilizer, cervical/thoracic, adult	1	0
Splint, traction, adult w/straps	1	0
Splint, traction, pediatric, w/straps	1	0
Splint, adult (arm and leg)	2 ea	1 ea
Splint, pediatric (arm and leg)	1 ea	1 ea
<b>General</b>		
Litter, wheeled, collapsible, <u>with a functional restraint system per the manufacturer</u>	1	0
Pillows, plastic covered or disposable	2	0
Pillow case, <u>cloth or disposable</u>	4	0
Sheets, <u>cloth or disposable</u>	4	<del>((0))</del> 2
Blankets	2	2
Towels, <u>cloth or disposable 12" x 23" minimum</u>	4	<del>((0))</del> 2
Emesis collection device	1	1
Urinal	1	0
Bed pan	1	0
OB kit	1	1
<u>Epinephrine appropriate for level of certification</u>		
<u>Adult</u>	1	1
<u>Pediatric</u>	1	1
<u>Storage and handling of pharmaceuticals in ambulances and aid vehicles must be in compliance with the manufacturers' recommendations.</u>		
<u>Extrication plan: Agency must document how extrication will be provided when needed.</u>		
<del>((Shovel</del>	<del>1</del>	<del>1</del>
Hammer	1	1
Adjustable wrench, 8"	1	1
Hack saw, with blades	1	1
Crowbar, pinch point, 36" minimum	1	1
Screwdriver, straight tip, 10" minimum	1	1
Screwdriver, 3 Phillips, 10" minimum	1	1
Wrecking bar, 3' minimum	1	1
Locking pliers	1	1
Bolt cutters, 1/2" min. jaw spread	1	1
Rope, utility, 50' x 3/8"	1	1)

**AMENDATORY SECTION** (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-310 Ground ambulance and aid ~~((vehicles))~~ service—Communications equipment. (1)**

Licensed services must provide each licensed ambulance and aid vehicle with communication equipment which:

- (a) Is consistent with state and regional plans;
- (b) Is in good working order;

(c) Allows direct two-way communication between the vehicle and its dispatch control point; and

(d) Allows communication with medical control.

(2) If cellular telephones are used, there must also be another method of radio contact with dispatch and medical control for use when cellular service is unavailable.

(3) Licensed ambulance services must provide each licensed ambulance with communication equipment which:

(a) Allows direct two-way communication with medical control and all hospitals in the service area of the vehicle, from both the driver's and patient's compartment; and

(b) Incorporates appropriate encoding and selective signaling devices(~~(-and~~

~~(e) When transporting patients, allows communications with medical control and designated EMS/TC receiving facilities)).~~

AMENDATORY SECTION (Amending WSR 00-22-124, filed 11/1/00, effective 12/2/00)

**WAC 246-976-320 Air ambulance services.** The purpose of this rule is to ensure the consistent quality of medical care delivered by air ambulance services in the state of Washington.

(1) Air ambulance services must:

(a) Comply with all regulations and standards in this chapter pertaining to verified ambulance services and vehicles, except that WAC 246-976-290 and 246-976-300 are replaced for air ambulance services by subsection (4)(b) and (c) of this section;

(b) ~~((Comply with the standards in this section for all types of transports, including interfacility and prehospital transports;~~

~~(c) Be in current compliance with all state and Federal Aviation Administration statutes and regulations that apply to air carriers, including, but not limited to, those regulations that apply to certification requirements, operations, equipment, crew members, and maintenance, and any specific regulations that apply to air ambulance services;~~

~~(d) Air ambulance services must provide a physician director who is practicing medicine in the response area of the aircraft, as identified in the state EMS/TC plan.)~~ Comply with the standards in this section for all types of transports, including interfacility and prehospital transports;

(c) Provide proof of compliance with Federal Acquisition Regulation (FAR), 14 CFR Part 135 of the operating requirements; commuter and on demand operations and rules governing persons on board such aircraft.

(2) Air ambulance services currently licensed or seeking relicensure ~~((after July 31, 2001,))~~ must have and maintain accreditation by the commission on accreditation of medical transport services (CAMTS) or another accrediting organization approved by the department as having equivalent requirements as CAMTS for aeromedical transport. ~~((Until August 1, 2001, subsections (4) and (5) of this section apply to air ambulance services currently licensed or seeking relicensure.))~~

(3) Air ambulance services requesting initial licensure that are ineligible to attain accreditation because they lack a history of operation at the site, must meet the criteria of sub-

sections (4) and (5) of this section and within four months of licensure must have completed an initial consultation with CAMTS or another accrediting organization approved by the department as having equivalent requirements as CAMTS for aeromedical transport. A provisional license will be granted for no longer than two years at which time the service must provide documentation that it is accredited by CAMTS or another accrediting organization approved by the department as having equivalent requirements as CAMTS for aeromedical transport.

(4) Air ambulance services must provide:

(a) A physician director ~~((who is)):~~

~~(i) ((Practicing medicine in the response area of the aircraft, as identified in the state EMS/TC plan;))~~ Licensed to practice in the state of Washington;

~~(ii) Trained and experienced in emergency, trauma, and critical care;~~

~~(iii) Knowledgeable of the operation of air medical services; and~~

~~(iv) Responsible for supervising and evaluating the quality of patient care provided by the air medical flight personnel;~~

~~(b) If the air medical service utilizes Washington certified EMS personnel:~~

~~(i) The physician director must be a delegate of the MPD in the county where the air service declares its primary base of operation.~~

~~(ii) Certified EMS personnel must follow department-approved MPD protocols when providing care;~~

~~(c) Sufficient air medical personnel on each response to provide ((adequate)) patient care, specific to the mission, including:~~

~~(i) One specially trained, experienced registered nurse or paramedic; and~~

~~(ii) One other person who must be a physician, nurse, physician's assistant, respiratory therapist, paramedic, EMT, or other appropriate specialist appointed by the physician director. If an air ambulance responds directly to the scene of an incident, at least one of the air medical personnel must be trained in prehospital emergency care;~~

~~((e))~~ (d) Aircraft that, when operated as air ambulances:

~~(i) Are configured so that the medical ((attendants)) personnel can access the patient. The configuration must allow medical personnel to begin and maintain advanced life support and other treatment;~~

~~(ii) Allow loading and unloading the patient without excessive maneuvering or tilting of the stretcher;~~

~~(iii) Have appropriate communication equipment;~~

~~(A) The capability to ((insure internal crew and air to-ground exchange of information))~~ communicate between flight personnel ((and)), hospitals, medical control, and the ((flight operations)) services communication center((-and air traffic control facilities));

~~(B) Helicopters must also have the capability to commu-~~ nicate with ground EMS services and public safety vehicles;

~~(iv) Are equipped with:~~

~~(A) ((Appropriate navigational aids;~~

~~(B))~~ Airway management equipment, including:

~~(I) Oxygen;~~

- (II) Suction;
- (III) Ventilation and intubation equipment, adult and pediatric;
- ~~((C))~~ (B) Cardiac monitor/defibrillator;
- ~~((D))~~ (C) Supplies, equipment, and medication as required by the program physician director, for emergency, cardiac, trauma, pediatric care, and other missions; and
- ~~((E))~~ (D) The ability to maintain appropriate patient temperature; ~~((and))~~
- (v) Have ~~((adequate))~~ interior lighting for patient care ~~((arranged so as not to interfere with the pilot's vision;~~
- ~~(d) If using fixed-wing aircraft, pressurized, multiengine aircraft when appropriate to the mission;~~
- ~~(e) If using helicopter aircraft:~~
  - ~~(i) A protective barrier sufficiently isolating the cockpit, to minimize in-flight distraction or interference;~~
  - ~~(ii) Appropriate communication equipment to communicate with ground EMS/TC services and public safety vehicles, in addition to the communication equipment specified in ~~(e)(iii)~~ of this subsection-); ~~and~~~~
  - (vi) Helicopter aircraft must have a protective barrier sufficiently isolating the cockpit, to minimize in-flight distraction or interference.
- (5) All air medical personnel must:
  - (a) Be certified in ACLS;
  - (b) Be trained in:
    - (i) Emergency, trauma, and critical care;
    - (ii) Altitude physiology;
    - (iii) EMS communications;
    - (iv) Aircraft and flight safety; and
    - (v) The use of all patient care equipment on board the aircraft;
  - (c) Be familiar with survival techniques appropriate to the terrain;
  - (d) Perform under protocols.
  - (6) Exceptions:
    - (a) If aeromedical evacuation of a patient is necessary because of a life threatening condition and a licensed air ambulance is not available, the nearest available aircraft that can accommodate the patient may transport. The physician ordering the transport must justify the need for air transport of the patient in writing to the department within thirty days after the incident.
    - (b) Excluded from licensure requirements ~~((those))~~ are:
      - (i) Air services operating aircraft for primary purposes other than civilian air medical transport(~~(-but which))~~. These services may be called ~~((into service))~~ to initiate an emergency air medical transport of a patient to the nearest available treatment facility or rendezvous point with other means of transportation. Examples are: United States Army Military Assistance to Safety and Traffic, United States Navy, United States Coast Guard, Search and Rescue, and the United States Department of Transportation;
      - (ii) Air ambulance services that solely transport patients into Washington state from points originating outside of the state of Washington.

AMENDATORY SECTION (Amending WSR 02-02-077, filed 12/31/01, effective 1/31/02)

**WAC 246-976-330 Ambulance and aid services—Record requirements.** (1) Each ambulance and aid service must maintain a record of, and submit to the department, the following information:

- (a) Current certification levels of all personnel;
- (b) Any changes in staff affiliation with the ambulance and aid service to include new employees or employee severance; and
- (c) Make, model, and license number of all EMS response vehicles(~~;~~ and
- (e) Each patient contact with at least the following information:
  - ~~(i) Names and certification levels of all personnel;~~
  - ~~(ii) Date and time of medical emergency;~~
  - ~~(iii) Age of patient;~~
  - ~~(iv) Applicable components of system response time as defined in this chapter;~~
  - ~~(v) Patient vital signs;~~
  - ~~(vi) Procedures performed on the patient;~~
  - ~~(vii) Mechanism of injury or type of illness;~~
  - ~~(viii) Patient destination;~~
  - ~~(ix) For trauma patients, other data points identified in WAC 246-976-430 for the trauma registry).~~
- (2) ~~((Transporting agencies))~~ The certified EMS provider in charge of patient care must provide ((an initial written report of patient care to the receiving facility at the time the patient is delivered. For patients meeting the state of Washington prehospital trauma triage (destination) procedures, as described in WAC 246-976-930(3), the transporting agency must provide additional trauma data elements described in WAC 246-976-430 to the receiving facility within ten days)) the following information to the receiving facility staff:
  - (a) At the time of arrival at the receiving facility, a minimum of a brief patient report including:
    - (i) Date and time of the medical emergency;
    - (ii) Patient vital signs including serial vital signs where applicable;
    - (iii) Patient assessment findings;
    - (iv) Procedures and therapies provided by EMS personnel;
    - (v) Any changes in patient condition while in the care of the EMS personnel;
    - (vi) Mechanism of injury or type of illness.
  - (b) Within twenty-four hours of arrival, a complete written or electronic patient care report that includes at a minimum:
    - (i) Names and certification levels of all personnel;
    - (ii) Date and time of medical emergency;
    - (iii) Age of patient;
    - (iv) Applicable components of system response time as defined in this chapter;
    - (v) Patient vital signs, including serial vital signs if applicable;
    - (vi) Patient assessment findings;
    - (vii) Procedures performed and therapies provided to the patient; this includes the times each procedure or therapy was provided;

(viii) Document patient response to procedures and therapies while in the care of the EMS provider;

(ix) Mechanism of injury or type of illness;

(x) Patient destination.

(c) For trauma patients, all other data points identified in WAC 246-976-430 for inclusion in the trauma registry must be submitted within ten days of transporting the patient to the trauma center.

(3) Licensed services must make all patient care records available for inspection and duplication upon request of the county MPD or the department.

AMENDATORY SECTION (Amending WSR 00-22-124, filed 11/1/00, effective 12/2/00)

**WAC 246-976-390 Trauma verification of ((trauma care)) prehospital EMS services.** ((1) The department will:

(a) Publish procedures for verification. Verification will expire with the period of licensure. The application for verification will be incorporated in the application for licensure;

(b) Verify prehospital trauma care services in the following categories:

(i) Aid service: Basic, intermediate and advanced (paramedic) life support;

(ii) Ground ambulance service: Basic, intermediate and advanced (paramedic) life support;

(iii) Air ambulance service: After July 31, 2001, the department will consider that an air ambulance service has met the requirements of subsections (4), (6), and (9) of this section if it has been accredited by CAMTS or another accrediting organization approved by the department as having equivalent requirements as CAMTS for aeromedical transport;

(c) Review the minimum response times for verified prehospital trauma services at least biennially, considering data available from the trauma registry and with the advice of the steering committee;

(d) Forward applications for verification for aid and ground ambulance services to the appropriate regional council for review and comment;

(e) Approve an applicant to provide verified prehospital trauma care, based on satisfactory evaluations as described in this section;

(f) Notify the regional council and the MPD in writing of the name, location, and level of verified services;

(g) Renew approval of a verified service upon reapplication, if the service continues to meet standards established in this chapter and verification remains consistent with the regional plan.

(2) The department will identify minimum and maximum numbers of prehospital services, based on the approved regional and state plans. The department will:

(a) Establish and review biennially the minimum and maximum number of prehospital services based upon distribution and level of service identified for each response area in the approved regional plan.

(b) Evaluate an applicant for trauma verification based upon demonstrated ability of the provider to meet standards defined in this section 24 hours every day.

(e) Verify the trauma capabilities of a licensed prehospital service if it determines that the applicant:

(i) Proposes services that are identified in the regional plan for ground services, or the state plan for air ambulance services, in the proposed response areas.

(ii) Agrees to operate under approved regional patient care procedures and prehospital patient care protocols.

(3) Regional council responsibilities regarding verification are described in WAC 246-976-960.

(4) To apply for verification, a licensed ambulance or aid service must submit application on forms provided by the department, including:

(a) Documentation required for licensure specified by WAC 246-976-260(2);

(b) A policy that a trauma training program is required for all personnel responding to trauma incidents. The program must meet learning objectives established by the department and be approved by the MPD;

(c) Documentation that the provider has the ability twenty-four hours every day to deliver personnel and equipment required for verification to the scene of a trauma within the agency response times identified in this section; and

(d) Documentation that the provider will participate in an approved regional quality assurance program.

(5) Verified aid services must provide personnel on each trauma response including:

(a) Basic life support: At least one individual, first responder or above;

(b) Intermediate life support:

(i) At least one ILS technician; or

(ii) At least one IV/airway technician; or

(iii) At least two individuals, one IV technician and one airway technician.

(c) Advanced life support—Paramedic: At least one paramedic.

(6) Verified ambulance services must provide personnel on each trauma response including:

(a) Basic life support: At least two certified individuals—one EMT plus one first responder;

(b) Intermediate life support:

(i) One ILS technician, plus one EMT; or

(ii) One IV/airway technician, plus one EMT; or

(iii) One IV technician and one airway technician;

(c) Advanced life support—Paramedic: At least two certified individuals—one paramedic and one EMT.

(7) Verified BLS vehicles must carry equipment identified in WAC 246-976-300, Table C.

(8) Verified ILS and paramedic vehicles must provide equipment identified in Table D, in addition to meeting the requirements of WAC 246-976-300:



TABLE D: EQUIPMENT FOR VERIFIED TRAUMA SERVICES  
(NOTE: "ASST" MEANS ASSORTMENTS)

	AMBULANCE		AID VEHICLE	
	PAR	HS	PAR	HS
<b>AIRWAY MANAGEMENT</b>				
Airway Adjuncts				
Adjunctive airways, per protocol	†	†	†	†
Laryngoscope handle, spare batteries	†	†	†	†
Adult blades, set	†	†	†	†
Pediatric blades, straight (0, 1, 2)	1ea	1ea	1ea	1ea
Pediatric blades, curved (2)	1ea	1ea	1ea	1ea
McGill forceps, adult & pediatric	†	†	†	†
ET tubes, adult (±1/2 mm)	1ea	1ea	1ea	1ea
ET tubes, pediatric, with stylet				
Uncuffed (2.5–5.0 mm)	1ea	1ea	1ea	1ea
Cuffed or uncuffed (6.0 mm)	1ea	1ea	1ea	1ea
End-tidal CO <sub>2</sub> detector	1ea	1ea	1ea	1ea
Oxygen saturation monitor	1ea	1ea	1ea	1ea
Suction				
Portable, powered	†	†	†	†
<b>PATIENT ASSESSMENT AND CARE</b>				
Sphygmomanometer				
Adult, large	†	†	†	†
Pediatric	†	†	†	†
<b>TRAUMA EMERGENCIES</b>				
IV access				
Administration sets				
Adult	†	†	†	†
Pediatric, w/volume control	4	4	2	2
Catheters, intravenous (14-24 ga)	asst	asst	asst	asst
Needles				
—Hypodermic	asst	asst	asst	asst
—Intraosseous, per protocol	2	2	†	†
Sharps container	†	†	†	†
Syringes	asst	asst	asst	asst
Glucose measuring supplies	Yes	Yes	Yes	Yes
Pressure infusion device	†	†	†	†
Medications according to local patient care protocols				

(9) Verified air ambulance services must meet equipment requirements described in WAC 246-976-320.

(10) Verified aid services must meet the following minimum agency response times for all major trauma responses to response areas as defined by the department and identified in the regional plan:

- (a) To urban response areas: Eight minutes or less, eighty percent of the time;
- (b) To suburban response areas: Fifteen minutes or less, eighty percent of the time;
- (c) To rural response areas: Forty five minutes or less, eighty percent of the time;
- (d) To wilderness response areas: As soon as possible.

(11) Verified ground ambulance services must meet the following minimum agency response times for all major trauma responses to response areas as defined by the department and identified in the regional plan:

- (a) To urban response areas: Ten minutes or less, eighty percent of the time;
- (b) To suburban response areas: Twenty minutes or less, eighty percent of the time;
- (c) To rural response areas: Forty five minutes or less, eighty percent of the time;
- (d) To wilderness response areas: As soon as possible.

(12) Verified air ambulance services must meet minimum agency response times as identified in the state plan:))

(1) The department verifies prehospital EMS services. Veri-

fication is a higher form of licensure that requires twenty-four-hour, seven day a week compliance with the standards outlined in chapter 70.168 RCW and this chapter. Verification will expire with the prehospital EMS service's period of licensure.

(2) To qualify you must be a licensed ambulance or aid service as specified in WAC 246-976-260.

(3) The following EMS services may be verified:

(a) Aid service: Basic, intermediate (AEMT), and advanced (paramedic) life support;

(b) Ground ambulance service: Basic, intermediate (AEMT), and advanced (paramedic) life support;

(c) Air ambulance service.

(4) Personnel requirements:

(a) Verified aid services must provide personnel on each trauma response including:

(i) Basic life support: At least one individual, EMR or above;

(ii) Intermediate life support: At least one AEMT;

(iii) Advanced life support - paramedic: At least one paramedic;

(b) Verified ambulance services must provide personnel on each trauma response including:

(i) Basic life support: At least two certified individuals - one EMT plus one EMR;

(ii) Intermediate life support: One AEMT, plus one EMT;

(iii) Advanced life support - paramedic: At least two certified individuals - one paramedic and one EMT;

(c) Verified air ambulance services must provide personnel as identified in WAC 246-976-320.

(5) Equipment requirements:

(a) Verified BLS vehicles must carry equipment identified in WAC 246-976-300, Table D;

(b) Verified ILS and paramedic vehicles must provide equipment identified in Table E of this section, in addition to meeting the requirements of WAC 246-976-300;

(c) Verified air ambulance services must meet patient care equipment requirements described in WAC 246-976-320.

TABLE E: EQUIPMENT FOR VERIFIED TRAUMA SERVICES

(NOTE: "ASST" MEANS ASSORTMENTS)

AIRWAY MANAGEMENT

Airway adjuncts

Adjunctive airways, assorted per protocol

Laryngoscope handle, spare batteries

Adult blades, set

Pediatric blades, straight (0, 1, 2)

Pediatric blades, curved (2)

McGill forceps, adult & pediatric

ET tubes, adult and pediatric

Supraglottic airways per MPD protocol

End-tidal CO<sub>2</sub> detector

Oxygen saturation monitor

TRAUMA EMERGENCIES

IV access

Administration sets and intravenous fluids per protocol:

Adult

Pediatric volume control device

Catheters, intravenous (14-24 ga)

Needles

Hypodermic

Intraosseous, per protocol

Sharps container

Syringes

Glucose measuring supplies

Pressure infusion device

Length based tool for estimating pediatric medication and equipment sizes

Medications according to local patient care protocols

	<u>AMBULANCE</u>		<u>AID VEHICLE</u>	
	<u>PAR</u>	<u>ILS</u>	<u>PAR</u>	<u>ILS</u>
<u>Adjunctive airways, assorted per protocol</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Laryngoscope handle, spare batteries</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Adult blades, set</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Pediatric blades, straight (0, 1, 2)</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>
<u>Pediatric blades, curved (2)</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>
<u>McGill forceps, adult &amp; pediatric</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>ET tubes, adult and pediatric</u>	<u>asst</u>	<u>0</u>	<u>asst</u>	<u>0</u>
<u>Supraglottic airways per MPD protocol</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>End-tidal CO<sub>2</sub> detector</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>
<u>Oxygen saturation monitor</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>	<u>1 ea</u>
<u>Administration sets and intravenous fluids per protocol:</u>				
<u>Adult</u>	<u>4</u>	<u>4</u>	<u>2</u>	<u>2</u>
<u>Pediatric volume control device</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>1</u>
<u>Catheters, intravenous (14-24 ga)</u>	<u>asst</u>	<u>asst</u>	<u>asst</u>	<u>asst</u>
<u>Needles</u>				
<u>Hypodermic</u>	<u>asst</u>	<u>asst</u>	<u>asst</u>	<u>asst</u>
<u>Intraosseous, per protocol</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>1</u>
<u>Sharps container</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Syringes</u>	<u>asst</u>	<u>asst</u>	<u>asst</u>	<u>asst</u>
<u>Glucose measuring supplies</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>Pressure infusion device</u>	<u>1</u>	<u>1</u>		
<u>Length based tool for estimating pediatric medication and equipment sizes</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>

(6) Aid service response time requirements: Verified aid services must meet the following minimum agency response times as defined by the department and identified in the regional plan:

(a) To urban response areas: Eight minutes or less, eighty percent of the time;

(b) To suburban response areas: Fifteen minutes or less, eighty percent of the time;

(c) To rural response areas: Forty-five minutes or less, eighty percent of the time;

(d) To wilderness response areas: As soon as possible.

(7) Ground ambulance service response time requirements: Verified ground ambulance services must meet the following minimum agency response times for all EMS and trauma responses to response areas as defined by the department and identified in the regional plan:

(a) To urban response areas: Ten minutes or less, eighty percent of the time;

(b) To suburban response areas: Twenty minutes or less, eighty percent of the time;

(c) To rural response areas: Forty-five minutes or less, eighty percent of the time;

(d) To wilderness response areas: As soon as possible.

(8) Verified air ambulance services must meet minimum agency response times as identified in the state plan.

(9) Verified ambulance and aid services must comply with the approved prehospital trauma triage procedures defined in WAC 246-976-010.

(10) The department will:

(a) Identify minimum and maximum numbers of prehospital services, based on:

(i) The approved regional EMS and trauma plans, including: Distribution and level of service identified for each response area; and

(ii) The Washington state EMS and trauma plan;

(b) With the advice of the steering committee, consider all available data in reviewing response time standards for verified prehospital trauma services at least biennially;

(c) Administer the BLS/ILS/ALS verification application and evaluation process;

(d) Approve an applicant to provide verified prehospital trauma care, based on satisfactory evaluations as described in this section;

(e) Obtain comments from the regional council as to whether the application(s) appears to be consistent with the approved regional plan;

(f) Provide written notification to the applicant(s) of the final decision in the verification award;

(g) Notify the regional council and the MPD in writing of the name, location, and level of verified services;

(h) Approve renewal of a verified service upon reapplication, if the service continues to meet standards established in this chapter and verification remains consistent with the regional plan.

(11) The department may:

(a) Conduct a preverification site visit; and

(b) Grant a provisional verification not to exceed one hundred twenty days. The department may withdraw the provisional verification status if provisions of the service's proposal are not implemented within the one hundred twenty-

day period, or as otherwise provided in chapter 70.168 RCW and this chapter.

#### NEW SECTION

**WAC 246-976-395 To apply for initial verification or to change verification status as a prehospital EMS service.** (1) To select verified prehospital EMS services, the department will:

(a) Provide a description of the documents an applicant must submit to demonstrate that it meets the standards as identified in chapter 70.168 RCW and WAC 246-976-390;

(b) Conduct a preverification on-site review for:

(i) All ALS ambulance service applications;

(ii) All ILS ambulance service applications; and

(iii) All BLS ambulance applications if and when there is any question of duplication of services or lack of coordination of prehospital services within the region;

(c) Request comments from the region in which a verification application is received, to be used in the department's review;

(d) Apply the department's evaluation criteria; and

(e) Apply the department's decision criteria.

(2) To apply for verification you must:

(a) Be a licensed prehospital EMS ambulance or aid service as specified in WAC 246-976-260;

(b) Submit a completed application:

(i) If you are applying for verification in more than one region, you must submit a separate application for each region;

(ii) You must apply for verification when you are:

(A) An agency that responds to 9-1-1 emergencies as part of its role in the EMS system;

(B) A new business or legal entity (new UBI) that is formed through consolidation of existing services or a newly formed EMS agency;

(C) An EMS agency that seeks to provide prehospital emergency response in a region in which it previously has not been operating; or

(D) A service that is changing, or has changed its type of verification or its verification status.

(3) The department will evaluate each prehospital EMS service applicant on a point system. In the event there are two or more applicants, the department will verify the most qualified applicant. The decision to verify will be based on at least the following:

(a) Total evaluation points received on all completed applications:

(i) Applicants must receive a minimum of one hundred fifty points of the total two hundred points possible from the overall evaluation scoring tool to qualify for verification.

(ii) Applicants must receive a minimum of thirty points in the evaluation of its clinical and equipment capabilities section of the evaluation scoring tool to qualify for verification;

(b) Recommendations from the on-site review team, if applicable;

(c) Comment from the regional council(s);

(d) Dispatch plan;

(e) Response plan;

- (f) Level of service;
  - (g) Type of transport, if applicable;
  - (h) Tiered response and rendezvous plan;
  - (i) Back-up plan to respond;
  - (j) Interagency relations;
  - (k) How the applicant's proposal avoids unnecessary duplication of resources or services;
  - (l) How the applicant's service is consistent with and will meet the specific needs as outlined in their approved regional EMS and trauma plan including the patient care procedures;
  - (m) Ability to meet vehicle requirements;
  - (n) Ability to meet staffing requirements;
  - (o) How certified EMS personnel have been, or will be, trained so they have the necessary understanding of department-approved medical program director (MPD) protocols, and their obligation to comply with the MPD protocols;
  - (p) Agreement to participate in the department-approved regional quality improvement program.
- (4) Regional EMS and trauma care councils may provide comments to the department regarding the verification application, including written statements on the following if applicable:
- (a) Compliance with the department-approved minimum and maximum number of verified trauma services for the level of verification being sought by the applicant;
  - (b) How the proposed service will impact care in the region to include discussion on:
    - (i) Clinical care;
    - (ii) Response time to prehospital incidents;
    - (iii) Resource availability; and
    - (iv) Unserved or under served trauma response areas;
  - (c) How the applicant's proposed service will impact existing verified services in the region.
  - (5) Regional EMS/TC councils will solicit and consider input from local EMS/TC councils where local councils exist.

**AMENDATORY SECTION** (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-400 Verification—Noncompliance with standards.** If the department finds that a verified prehospital trauma care service is out of compliance with verification standards:

- (1) The department shall promptly notify in writing: The service, the MPD, and the local and regional EMS/TC councils.
- (2) Within thirty days of the department's notification, the service must submit a corrective plan to the department, the MPD, and the local and regional councils outlining proposed action to return to compliance.
- (3) If the service is either unable or unwilling to comply with the verification standards, under the provisions of chapter 34.05 RCW, the department may suspend or revoke the verification. The department shall promptly notify the local and regional councils and the MPD of any revocation or suspension of verification.

If the MPD (~~(or)~~), the local council, or regional council receives information that a service is out of compliance with the regional plan, they may forward their recommendations for corrections to the department.

(4) The department will review the plan within thirty days, including consideration of any recommendations from the MPD (~~(or)~~), local council, and regional council. The department will notify the service whether the plan is accepted or rejected.

(5) The department will monitor the service's progress in fulfilling the terms of the approved plan.

(6) A verified prehospital service that is not in compliance with verification standards will not receive a participation grant.

**AMENDATORY SECTION** (Amending WSR 04-01-041, filed 12/10/03, effective 1/10/04)

**WAC 246-976-890 Interhospital transfer guidelines and agreements.** Designated trauma services must:

(1) Have written guidelines consistent with ~~((your))~~ their written scope of trauma service to identify and transfer patients with special care needs exceeding the capabilities of the trauma service~~((-))~~;

(2) Have written transfer agreements with other designated trauma services. The agreements must address the responsibility of the transferring hospital, the receiving hospital, and the prehospital transport agency, including a mechanism to assign medical control during interhospital transfer~~((-))~~;

(3) Have written guidelines, consistent with ~~((your))~~ their written scope of trauma service, to identify trauma patients who are transferred in from other facilities, whether admitted through the emergency department or directly into other hospital services~~((-))~~;

(4) Use verified prehospital trauma services for interfacility transfer of trauma patients.

**AMENDATORY SECTION** (Amending WSR 00-08-102, filed 4/5/00, effective 5/6/00)

**WAC 246-976-920 Medical program director.** ~~((+))~~ The MPD must:

~~(a) Be knowledgeable in the administration and management of prehospital emergency medical care and services;~~

~~(b) Provide medical control and direction of EMS/TC certified personnel in their medical duties, by oral or written communication;~~

~~(c) Develop and adopt written prehospital patient care protocols to direct EMS/TC certified personnel in patient care. These protocols may not conflict with regional patient care procedures or with the authorized care of the certified prehospital personnel as described in WAC 246-976-182;~~

~~(d) Establish protocols for storing, dispensing, and administering controlled substances, in accordance with state and federal regulations and guidelines;~~

~~(e) Participate with the local and regional EMS/TC councils and emergency communications centers to develop and revise regional patient care procedures;~~

~~(f) Participate with the local and regional EMS/TC councils to develop and revise regional plans and make timely recommendations to the regional council;~~

~~(g) Work within the parameters of the approved regional patient care procedures and the regional plan;~~

(h) Supervise training of all EMS/TC certified personnel;

(i) Develop protocols for special training described in WAC 246-976-021(5);

(j) Periodically audit the medical care performance of EMS/TC certified personnel;

(k) Recommend to the department certification, recertification, or denial of certification of EMS/TC personnel;

(l) Recommend to the department disciplinary action to be taken against EMS/TC personnel, which may include modification, suspension, or revocation of certification;

(m) Recommend to the department individuals applying for recognition as senior EMS instructors.

(2) In accordance with department policies and procedures, the MPD may:

(a) Delegate duties to other physicians, except for duties described in subsection (1)(c), (k), and (l) of this section. The delegation must be in writing;

(i) The MPD must notify the department in writing of the names and duties of individuals so delegated, within fourteen days;

(ii) The MPD may remove delegated authority at any time, which shall be effective upon written notice to the delegate and the department;

(b) Delegate duties relating to training, evaluation, or examination of certified EMS/TC personnel, to qualified nonphysicians. The delegation must be in writing;

(c) Enter into EMS/TC medical control agreements with other MPDs;

(d) Recommend denial of certification to the department for any applicant the MPD can document is unable to function as an EMS provider, regardless of successful completion of training, evaluation, or examinations; and

(e) Utilize examinations to determine the knowledge and abilities of IV technicians, airway technicians, intermediate life support technicians, or paramedics prior to recommending applicants for certification or recertification.

(3) The department may withdraw the certification of an MPD for failure to comply with the Uniform Disciplinary Act (chapter 18.130 RCW) and other applicable statutes and regulations: (1) Qualifications - applicants for certification as a medical program director (MPD) must:

(a) Hold and maintain a current and valid license to practice medicine and surgery pursuant to chapter 18.71 RCW or osteopathic medicine and surgery pursuant to chapter 18.57 RCW; and

(b) Be qualified and knowledgeable in the administration and management of emergency medical care and services; and

(c) Complete a medical director training course approved by the department; and

(d) Be recommended for certification by the local medical community and local emergency medical services and trauma care council.

(2) MPD certification process. In certifying the MPD, the department will:

(a) Work with the local EMSTC council to identify physicians interested in serving as the MPD;

(b) Receive letter of interest and curriculum vitae from the MPD candidate;

(c) Perform required background checks identified in RCW 18.130.064;

(d) Work with and provide technical assistance to local EMSTC councils on evaluating MPD candidates;

(e) Obtain letters of recommendation from the local EMSTC council and local medical community;

(f) Make final appointment of the MPD.

(3) The certified MPD must:

(a) Provide medical control and direction of EMS certified personnel in their medical duties. This is done by oral or written communication;

(b) Develop and adopt written prehospital patient care protocols to direct EMS certified personnel in patient care. These protocols may not conflict with regional patient care procedures. Protocols may not exceed the authorized care of the certified prehospital personnel as described in WAC 246-976-182;

(c) Establish policies for storing, dispensing, and administering controlled substances. Policies must be in accordance with state and federal regulations and guidelines;

(d) Participate with local and regional EMS/TC councils to develop and revise:

(i) Regional patient care procedures;

(ii) County operating procedures when applicable; and

(iii) Participate with the local and regional EMS/TC councils to develop and revise regional plans;

(e) Work within the parameters of the approved regional patient care procedures and the regional plan;

(f) Supervise training of all EMS certified personnel;

(g) Develop protocols for special training described in WAC 246-976-023(4);

(h) Periodically audit the medical care performance of EMS certified personnel;

(i) Recommend to the department certification, recertification, or denial of certification of EMS personnel;

(j) Recommend to the department disciplinary action to be taken against EMS personnel, which may include modification, suspension, or revocation of certification; and

(k) Recommend to the department individuals applying for recognition as senior EMS instructors.

(4) In accordance with department policies and procedures, the MPD may:

(a) Delegate duties to other physicians, except for duties described in subsection (3)(b), (i), (j), and (k) of this section. The delegation must be in writing;

(i) The MPD must notify the department in writing of the names and duties of individuals so delegated, within fourteen days;

(ii) The MPD may remove delegated authority at any time, which shall be effective upon written notice to the delegate and the department.

(b) Delegate duties relating to training, evaluation, or examination of certified EMS personnel, to qualified nonphysicians. The delegation must be in writing;

(c) Enter into EMS medical control agreements with other MPDs;

(d) Recommend denial of certification to the department for any applicant the MPD can document is unable to function as an EMS provider, regardless of successful completion of training, evaluation, or examinations; and

(e) Utilize examinations to determine the knowledge and abilities of certified EMS personnel prior to recommending applicants for certification or recertification.

(5) The department may withdraw the certification of an MPD for failure to comply with the Uniform Disciplinary Act (chapter 18.130 RCW) and other applicable statutes and regulations.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-976-021	Training course requirements.
WAC 246-976-151	Reciprocity, challenges, reinstatement and other actions.

**WSR 10-08-096**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 7, 2010, 8:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-03-037.

Title of Rule and Other Identifying Information: Chapter 308-13 WAC, Board of registration for landscape architects.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on May 13, 2010, at 9:00 a.m.

Date of Intended Adoption: May 17, 2010.

Submit Written Comments to: Kezia Prater, P.O. Box 9045, Olympia, WA 98507, e-mail [landscape@dol.wa.gov](mailto:landscape@dol.wa.gov), fax (360) 570-7098, by May 12, 2010.

Assistance for Persons with Disabilities: Contact Erica Hansen by May 12, 2010, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will implement changes as a result of the passage of SSB 5273.

Reasons Supporting Proposal: The proposed rules will implement changes as a result of the passage of SSB 5273.

Statutory Authority for Adoption: RCW 18.96.060.

Statute Being Implemented: Chapter 18.96 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorin Doyle, Olympia, (360) 664-1387; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies to which this rule applies. Agencies not named can apply this rule to themselves voluntarily. The department of licensing has chosen not to do this.

April 7, 2010

Walt Fahrer

Rules Coordinator

#### Chapter 308-13 WAC

#### BOARD OF ~~((REGISTRATION))~~ LICENSURE FOR LANDSCAPE ARCHITECTS

AMENDATORY SECTION (Amending WSR 02-07-047, filed 3/14/02, effective 4/14/02)

**WAC 308-13-005 Definitions.** (1) ~~((“Registered college” as used in RCW 18.96.070 means a college or school recognized by the Landscape Architectural Accreditation Board (LAAB) as having accredited programs in landscape architecture.))~~ “CLARB” means the National Council of Landscape Architectural Registration Boards, of which the Washington board is a member.

(2) “Entire examination” as referred to in RCW 18.96.090 means the written and graphic examination approved by the board.

(3) ~~((The word “principal” as used in this chapter means a member of a firm offering landscape architectural services to the public who is a landscape architect, a shareholder and director of landscape architecture if the practice is through a corporation, a partner if the practice is through a partnership or the owner if the practice is through a sole proprietorship.))~~

(4)) “Examination” or “L.A.R.E.” means the Landscape Architect Registration Examination for landscape architects.

~~((5) “CLARB” means the National Council of Landscape Architectural Registration Boards, of which the Washington board is a member.))~~

~~((6) “Academic requirement” means graduation from a college or school approved by the board as offering a curriculum in landscape architecture.))~~ (4) “Institution of higher education” as used in RCW 18.96.070 means a college or school recognized by the Landscape Architectural Accreditation Board (LAAB) as having accredited programs in landscape architecture.

(5) Professional development equivalents:

(a) One professional development hour (PDH) is equal to no less than fifty minutes of instruction.

(b) One continuing education unit (CEU) is equal to ten PDHs.

(c) For professional development through an institution of higher education:

(i) One semester hour equals forty-five PDHs.

(ii) One quarter hour equals thirty PDHs.

AMENDATORY SECTION (Amending WSR 08-22-027, filed 10/28/08, effective 11/28/08)

**WAC 308-13-010 ~~((State board of registration.))~~ What does the state board of licensure do? ~~((1) Meet~~**

ings.) The Washington state board of ((registration)) licen-  
sure for landscape architects, hereinafter called the board,  
will hold quarterly regular public meetings each year.

((2) Officers.) At its regular meeting during the second  
quarter of the calendar year, the board shall elect a ((chair-  
man)) chair, a ((vice-chairman)) vice-chair, and a secretary  
for the ((ensuing)) upcoming year. The secretary may dele-  
gate ((the office's)) his or her responsibilities in all or in part  
to the executive ((secretary)) director.

The board shall:

(1) Determine the qualifications for examination.

(2) Review applications to determine eligibility for  
licensure by applicants who do not have a degree, referring  
qualified candidates to CLARB for administration of the  
examination.

(3) Review and act on applications for licensure by reci-  
procity.

(4) Provide application instructions for reissuance of  
license to persons whose license has been suspended or  
revoked in accordance with RCW 18.96.120, 18.96.180,  
18.96.190 and chapter 18.235 RCW.

(5) Provide reinstatement instructions to persons whose  
license is delinquent in accordance with RCW 18.96.110.

(6) Provide guidelines for qualifying professional devel-  
opment activities.

(7) Audit and enforce professional development activi-  
ties.

AMENDATORY SECTION (Amending WSR 08-22-027,  
filed 10/28/08, effective 11/28/08)

WAC 308-13-011 ((The seal/stamp.)) Do I need a  
stamp or seal? ((These rules govern the design and use of the  
landscape architect seal/stamp.

(1) ~~Every landscape architect licensed in the state of  
Washington shall~~) If you were issued your license on or after  
July 1, 2010, you must have a seal/stamp of the design autho-  
rized by the board, bearing ((the registrant's)) your name,  
license number and the legend "((Registered)) Licensed land-  
scape architect, state of Washington." The seal/stamp may be  
used in a horizontal or vertical format ~~(, and sealed as appro-  
priate,))~~ provided it remains readable. Other deviations are  
not allowed. ((Faesimiles)) Examples of the board-  
authorized seal/stamp appear below.

If you were licensed before July 1, 2010, you may con-  
tinue to use your existing registration stamp.

((STRICKEN GRAPHIC))



STATE OF  
WASHINGTON  
REGISTERED  
LANDSCAPE ARCHITECT  
  
(SIGNATURE)  
NAME  
CERTIFICATE NO. 000



STATE OF  
WASHINGTON  
REGISTERED  
LANDSCAPE ARCHITECT  
  
(SIGNATURE)  
NAME  
CERTIFICATE NO. 000

STRICKEN GRAPHIC))



STATE OF  
WASHINGTON  
LICENSED  
LANDSCAPE ARCHITECT

(SIGNATURE)

NAME

LICENSE NO. 000  
EXPIRES ON (EXPIRATION DATE)



STATE OF  
WASHINGTON  
LICENSED  
LANDSCAPE ARCHITECT

(SIGNATURE)

NAME

LICENSE NO. 000  
EXPIRES ON (EXPIRATION DATE)

(1) Your seal/stamp must include your signature and  
your license expiration date.

(2) ((The following shall be signed and sealed/stamped  
by the landscape architect.)) You must seal/stamp the follow-  
ing:

(a) All technical submissions required for building per-  
mits, regulatory approvals and/or construction drawings that  
are filed with authorities having jurisdiction((-));

((\*) (b) Drawings prepared by ((the landscape archi-  
tect)) you on each sheet((-));

((\*) (c) Specifications and other technical submissions  
need only be sealed/stamped on the cover, title page, and all  
pages of the table of contents.

((3) ~~No landscape architect's~~) Your seal/stamp ((or  
countersignature)) shall not be affixed to any drawings not  
prepared by ((the landscape architect)) you or ((his or her))  
you regularly employed subordinates, or not reviewed by

~~((the landscape architect)) you. ((A landscape architect who)) If you seal(s)/stamp(s or signs) drawings or specifications that ((he or she has)) you have reviewed, you shall be responsible to the same extent as if those drawings or specifications were prepared by ((that landscape architect)) you.~~

~~((4)) Without exception, these sealing/stamping requirements for landscape architects shall apply to all work prepared or supervised by the landscape architect.~~

(3) The terms "signature" or "signed" as used in chapter 18.96 RCW and this chapter, shall mean the following:

(a) A handwritten identification or a digital representation of your handwritten identification that represents the act of putting your name on a document to attest to its validity. The handwritten or digital identification must be:

(i) Original and written by hand, or a scanned image of an original, handwritten identification;

(ii) Permanently affixed to the document(s) being certified;

(iii) Applied to the document by the identified licensee;

(iv) Placed adjacent to the seal/stamp of the licensee;

(b) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document. The digital identification may include a scanned or digitized signature. The digital identification must be:

(i) Unique to the licensee using it;

(ii) Capable of independent verification;

(iii) Under the exclusive control of the licensee using it;

(iv) Linked to a document in such a manner that the digital identification is invalidated if any data in the document is changed.

AMENDATORY SECTION (Amending WSR 08-22-027, filed 10/28/08, effective 11/28/08)

**WAC 308-13-012 What are the standards of practice and conduct?** (1) Competence.

(a) In practicing landscape architecture, ~~((a landscape architect)) you~~ shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by landscape architects of good standing practicing in the same locality.

(b) In designing a project, ~~((a landscape architect)) you~~ shall take into account all applicable construction laws, zoning codes and other applicable laws or regulations. ~~((A landscape architect)) You~~ shall not knowingly design a project in violation of such laws and regulations.

(c) ~~((A landscape architect)) You~~ shall ~~((undertake to))~~ perform professional services only when ~~((the landscape architect)) you~~, together with those whom ~~((the landscape architect may)) you~~ engage as consultants, ~~((is)) are~~ qualified by education, training and experience in the specific technical areas involved.

(2) Conflict of interest.

(a) ~~((A landscape architect)) You~~ shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(b) If ~~((a landscape architect has)) you have~~ any business association or direct or indirect financial interest that is sub-

stantial enough to influence ~~((the landscape architect's)) you~~ judgment in connection with the performance of professional services, ~~((the landscape architect)) you~~ shall fully disclose this in writing to the client or employer. If ~~((the landscape architect's)) you~~ client or employer objects to such association or financial interest, ~~((the landscape architect)) you~~ shall either terminate such association or interest or offer to give up the commission or employment.

(c) ~~((A landscape architect)) You~~ shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of landscape contract documents and the judge of contract performance, ~~((a landscape architect)) you~~ shall render decisions impartially, favoring neither party to the contract.

(3) Full disclosure.

(a) ~~((A landscape architect)) You~~ shall disclose whenever ~~((he or she is)) you are~~ being compensated for making public statements concerning landscape architectural issues.

(b) ~~((A landscape architect)) You~~ shall accurately represent to a prospective or existing client or employer ~~((the landscape architect's)) your~~ qualifications and clearly define the scope of ~~((his or her)) your~~ responsibility in connection with work for which ~~((the landscape architect is)) you are~~ claiming responsibility.

(c) If ~~((a landscape architect)) you~~ become~~((s))~~ aware of a decision made by ~~((his or her)) your~~ employer or clients against ~~((the landscape architect's)) you~~ advice~~((s))~~ that violates applicable construction laws, zoning codes or other applicable regulations and that will, in ~~((the landscape architect's)) your~~ judgment, materially and adversely affect the public health, safety and welfare, ~~((the landscape architect)) you~~ shall:

(i) Report the decision to the local authorities or other public official charged with the enforcement of such laws and regulations;

(ii) Refuse to consent to the decision; and

(iii) In circumstances where ~~((the landscape architect)) you~~ reasonably believe~~((s))~~ that other such decisions will be made notwithstanding ~~((his or her)) your~~ objection, then ~~((the landscape architect)) you~~ shall terminate services with reference to the project. In the case of a termination in accordance with ~~((this paragraph of this rule)) (3)(c)(iii) of this section~~, ~~((the landscape architect)) you~~ shall have no liability to the client on account of such termination.

(d) ~~((A landscape architect)) You~~ shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with an application for licensure or renewal.

(e) ~~((A landscape architect)) You~~ shall not assist in the application for licensure of a person known by ~~((the landscape architect)) you~~ to be unqualified in respect to education, examination, experience or character.

(4) Compliance with laws.

(a) ~~((A landscape architect)) You~~ shall not, in the practice of landscape architecture, knowingly violate any criminal law.

(b) ~~((A landscape architect)) You~~ shall neither offer nor make any payment or gift to any governmental official (whether elected or appointed) with the intent of influencing



the official's judgment in connection with a prospective or existing project in which ~~((the landscape architect is))~~ you are interested.

(c) ~~((A landscape architect))~~ You shall comply with the laws and regulations governing professional practice in any jurisdiction.

(5) Professional conduct. ~~((A landscape architect))~~ You shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which ~~((the landscape architect is))~~ you are interested.

AMENDATORY SECTION (Amending WSR 07-05-039, filed 2/15/07, effective 3/18/07)

**WAC 308-13-020** ~~((Qualifications and application for licensure.))~~ How do I get a license? ~~((In addition to having passed the licensing examination required under WAC 308-13-032, applicants for licensure shall provide the following as minimum evidence of qualification for licensure:~~

(1) ~~Three references from landscape architects having personal knowledge of the applicant's practical experience as described in subsection (2) of this section;~~

(2) ~~A summary of the applicant's practical training; and~~

(3) ~~Documentation verifying a minimum of seven years of any combination of academic and practical training experience approved by the board. The board shall use the following criteria when evaluating experience:~~

(a) ~~ACADEMIC TRAINING~~

(i) ~~With a passing grade, 32 semester credit hours or 45 quarter credit hours is considered to be one year. Any fraction, one-half year or greater, will be counted one-half year, and less than one-half year will not be counted.~~

(ii) ~~A degree in landscape architecture or credits from an accredited college will be weighted at one hundred percent with a four year maximum credit for academic training.~~

(iii) ~~Credits in landscape architecture from a college not accredited may be weighted up to seventy-five percent with a three year maximum credit for academic training.~~

(iv) ~~Credits in architecture or civil engineering will be weighted at fifty percent with a two year maximum credit for academic training.~~

(b) ~~PRACTICAL TRAINING~~

(i) ~~Practical training necessary to qualify for licensure will be measured in months.~~

(ii) ~~No training prior to graduation from high school will be accepted.~~

(iii) ~~Credit for practical training will be based on a verifiable demonstration of competency and progressive responsibility in the analysis, synthesis, and evaluation of landscape architecture concepts and data and demonstrating their experience in a position of making independent judgments and decisions. The amount of credit is determined by the following:~~

(A) ~~Full-time credit must be at least thirty-five hours per week for a minimum of ten consecutive weeks;~~

~~(B) Part-time credit must be at least twenty hours per week for six or more consecutive months;~~

~~(C) Project and self-employment credit will be given credit based on verification by at least two licensed landscape architects who have reviewed and provided written acknowledgement of the applicant's work.)~~ You need to fulfill three general requirements before getting your license: Education, examination, and experience.

The board adopts the CLARB's "Standards of Eligibility for Council Certification" as the standard for the education and experience requirements for applicants with a degree. The board does not require a CLARB council certificate for licensure.

Subject to the provisions of RCW 18.96.090, the board adopts the landscape architectural registration examination and grading procedure prepared by CLARB as the state examination for licensure. CLARB will administer the entire examination for Washington candidates, and will collect examination and reexamination fees accordingly.

(1) To register for the examination.

(a) If you have a degree:

(i) Apply directly to CLARB. Your materials will be evaluated using CLARB's "Standards of Eligibility for CLARB Test Center Candidates."

(ii) Contact CLARB to register for the Landscape Architect Registration Examination (LARE).

(iii) CLARB will register you and administer the exam. You will pay the fees for examination and reexamination directly to CLARB.

(b) If you do not have a degree:

(i) You must have a high school diploma or equivalent and at least eight years practical landscape architectural work experience.

(A) At least six years of work experience must be under the direct supervision of a licensed landscape architect.

(B) The remaining two years can be any combination of the following as approved by the board:

(I) Postsecondary education courses in landscape architecture, landscape architectural technology or a related field, if the courses are equivalent to education courses in an accredited landscape architectural degree program.

With a passing grade, thirty-two semester credit hours or forty-five quarter hours is considered to be one year. Any fraction, one-half year or greater, will be counted one-half year, and less than one-half year will not be counted.

(II) Work experience in landscape design as a principal activity.

(C) Work experience will receive credit if it is as follows:

(I) At least thirty-five hours per week for at least two continuous months - 100%.

(II) At least twenty hours per week for at least four continuous months - 50%.

(ii) Submit the following to the board office:

(A) The board's official application form and application fee. The application fee is not refundable.

(B) Evidence of your qualifications and experience as shown by:

(I) National certification from CLARB, sent directly to the Washington board office from CLARB; or

(II) The following materials:

• An official sealed transcript showing any applicable courses you have taken from a community college, technical college, or university. The transcript must be sent directly from the college or university to the board office.

• Verification by at least two licensed landscape architects who have reviewed and provided written acknowledgment of your work.

(iii) If your application is approved, it will be sent to CLARB and CLARB will register you and administer the exam. You will pay the fees for examination and reexamination directly to CLARB.

(2) To obtain a license, submit the following to the board office:

(a) If you have a degree:

(i) The board's official application form with the application fee. The application fee is not refundable;

(ii) Evidence of your qualifications and experience as shown by:

(A) National certification from CLARB, sent directly to the Washington board office from CLARB; or

(B) The following materials:

(I) Verification of successful completion of the exam; and

(II) Statements of previous employers covering full-time employment for a minimum of three years of diversified experience in landscape architecture based on CLARB's Standards of Eligibility for Council Certification;

(iii) The initial license fee;

(iv) A written review of laws related to the practice of landscape architecture as outlined in WAC 308-13-031;

(b) If you don't have a degree:

(i) Evidence of your qualifications and experience as shown by:

(A) National certification from CLARB, sent directly to the Washington board office from CLARB; or

(B) Verification of successful completion of the exam;

(ii) The initial license fee;

(iii) A written review of laws related to the practice of landscape architecture as outlined in WAC 308-13-031.

NEW SECTION

**WAC 308-13-031 Law review.** When you successfully complete the licensing examination, you must then satisfactorily complete the review of laws related to the practice of landscape architecture as determined by the board.

AMENDATORY SECTION (Amending WSR 02-07-047, filed 3/14/02, effective 4/14/02)

**WAC 308-13-050 ((Registration by reciprocity.))**  
**How can I get a license through reciprocity?** ~~(((1) Any landscape architect who is currently registered in another state or country which extends the privileges of reciprocity to landscape architecture in this state, and who desires to practice landscape architecture in Washington, shall make formal application on forms provided by the board, accompanied by the initial license fee and the reciprocity application fee. Applicants shall satisfactorily complete the review of laws related to the practice of landscape architecture as determined~~

~~by the board. The application shall show evidence satisfactory to the board of:~~

~~(a) Having at least the equivalent experience and responsible charge of landscape architectural work as required of candidates for examination;~~

~~(b) Having satisfactorily completed the national examination required of applicants for registration in Washington;~~

~~(c) Applicant's proof of compliance, that shall consist of:~~

~~(i) Education: Transcript of college grades indicating degrees earned. Transcripts are not required if work experience is at least seven years.~~

~~(ii) Employment: Statements of previous employers covering full-time employment for a minimum of three years when the applicant has an accredited degree in landscape architecture or seven years of experience working with landscape architects or a combination of seven years of education and experience, approved by the board.~~

~~(iii) Certification: State of registration where applicant passed the national examination, listing subjects taken and scores received.~~

~~(2) Certification: National certification by the council of landscape architectural registration boards shall be recognized by this board as satisfactory evidence for registration by reciprocity, provided the applicant has passed the national examination and such certification is current and valid at the time of approval by the board.)) If you hold an active landscape architect license in another state or country, you can apply for a Washington license if your qualifications and experience meet the following criteria:~~

~~• If you have a degree, your qualifications will be evaluated using CLARB's Standard of Eligibility for Council Certification.~~

~~• If you do not have a degree, your qualifications and experience must be comparable to WAC 308-13-020.~~

~~Submit to the board office:~~

~~(1) The board's official application form and reciprocity application fee. The application fee is not refundable;~~

~~(2) The initial license fee;~~

~~(3) A written review of laws related to the practice of landscape architecture as outlined in WAC 308-13-031;~~

~~(4) Evidence of your qualifications and experience as shown by:~~

~~(a) National certification from CLARB, sent directly to the Washington board office from CLARB; or~~

~~(b) The following materials:~~

~~(i) Certification from the state of licensure, verifying you hold an active license and have successfully passed the national licensure exam. This certification must be sent directly from the issuing state to the Washington board office;~~

~~(ii) An official sealed transcript showing any applicable courses you have taken from a community college, technical college, or university. The transcript must be sent directly from the college or university to the board office; and~~

~~(iii) Verification of work experience as outlined in WAC 308-13-020 (1)(b).~~

AMENDATORY SECTION (Amending WSR 09-15-124, filed 7/17/09, effective 8/17/09)

**WAC 308-13-150 What are the landscape architect fees and charges?** The following fees will be collected:

Title of Fee	Fee
Application fee	\$250.00
<del>((Reexamination administration fee</del>	<del>250.00))</del>
Renewal (2 years)	450.00
Late renewal penalty	150.00
Duplicate license	25.00
Initial <del>((registration))</del> license (2 years)	450.00
Reciprocity application fee	450.00
Replacement wall certificate	20.00

You will submit any examination fees directly to CLARB.

AMENDATORY SECTION (Amending WSR 99-23-025, filed 11/9/99, effective 11/9/99)

**WAC 308-13-160 ((Renewal of license-)) How do I renew my license?** ~~((1) A courtesy renewal notice is mailed to the address on file, approximately eight weeks prior to the license expiration date. The notice will show the due date, the amount of renewal fee, the penalty fee for late payment and other mailing instructions. The board of registration for landscape architects must be notified in writing of any address changes.~~

~~((2) The renewed landscape architect license is issued for a two-year period that expires on the licensee's birthday.))~~ The landscape architect license renewal period is two years. Your expiration date is your birthday. The department will send a courtesy renewal to your most recent address on file approximately eight weeks before the license expiration date. The renewal notice will show the due date, the amount of renewal fee, the penalty fee for late payment, professional development notice and other mailing instructions. You must notify the board in writing of any address changes.

You are responsible for renewing your license regardless of receiving a renewal notice from the department. If you fail to renew your license, your license is delinquent and you are prohibited from offering and/or providing professional landscape architect services until your license is reinstated.

(1) If your license has been delinquent less than five years, send to the department:

(a) A letter requesting reinstatement;

(b) Payment from the previous renewal cycle, the current renewal fee, and the late penalty fee;

(c) Evidence of completion of twenty-four PDHs. See WAC 308-13-185 regarding qualifying activities.

(2) If your license has been delinquent five or more years, send to the department:

(a) A letter requesting reinstatement;

(b) Payment from the previous renewal cycle, the current renewal fee, and the late penalty fee;

(c) Evidence of completion of twenty-four PDHs. See WAC 308-13-185 regarding qualifying activities;

(d) A resume of landscape architectural activities and projects showing you have been working in another jurisdiction since the date of your license expiration;

(e) A detailed explanation of the circumstances surrounding the failure to maintain current licensure;

(f) A review of laws related to the practice of landscape architecture as outlined in WAC 308-13-031.

If your license has been delinquent five or more years, the board will review all of your reinstatement materials. They may request additional information if necessary.

#### NEW SECTION

**WAC 308-13-165 How do I reactivate my inactive license?** (1) If you are returning to active status from less than five years of inactive status, send to the department:

(a) A letter requesting reactivation;

(b) The current renewal fee;

(c) Evidence of completion of twenty-four PDHs. See WAC 308-13-185 regarding qualifying activities.

(2) If you are returning to active status after five years of inactive status, send to the department:

(a) A letter requesting reinstatement;

(b) The current renewal fee plus the late penalty fee;

(c) A review of laws related to the practice of landscape architecture;

(d) Evidence of completion of twenty-four PDHs. See WAC 308-13-185 for qualifying activities.

AMENDATORY SECTION (Amending WSR 07-05-039, filed 2/15/07, effective 3/18/07)

**WAC 308-13-170 ((Retired status certificate of registration-)) How do I obtain retired status?** ~~((Any individual who has been issued a certificate of registration, in accordance with chapter 18.96 RCW, as))~~ If you are a licensed landscape architect ((having reached)) you may be eligible to obtain retired status if you are at least the age of sixty-five and ((having)) have discontinued active practice ((may be eligible to obtain a "retired certificate of registration.")). If granted, ~~((further certificate of registration))~~ your ongoing licensing renewal fees are waived. ((For the purpose of this provision, "active practice" is as defined in RCW 18.96-030-))

(1) ((Applications. Those persons wishing to obtain the status of a retired registration shall complete an application on a form as provided by the board.)) To obtain retired status, submit a request in writing to the board office. If ((deemed)) the board determines you are eligible ((by the board)), the retired status would become effective on the first scheduled license renewal date ((of the certificate of registration)) that occurs on or after ((the applicant reaches)) you reach the age of sixty-five. ((It shall not be necessary that)) You do not need to renew an expired ((certificate of registration be renewed)) license to be eligible for this status. The board will not provide refund of renewal fees if the application for ((the))retired((the)) status is made and granted before the date of expiration of the certificate of ((registration)) licensure.

(2) Privileges. In addition to the waiver of the renewal fee, as a retired ((registrant is)) licensee you are permitted to:

(a) Retain the board-issued wall certificate of ~~((registration))~~ licensure;

(b) Use the title landscape architect, provided ~~((that it is supplemented by))~~ you also use the term "retired," or the abbreviation "ret";

(c) Work as a landscape architect in a volunteer capacity, provided ~~((that the retired registrant does))~~ you do not create landscape architectural plans, and ~~((does))~~ do not use ~~((his/her))~~ your seal, except as provided for in (d) of this subsection;

(d) Provide experience verifications and references for persons seeking registration under chapter 18.96 RCW. If using ~~((his/her))~~ your professional seal, ~~((the retired registrant may))~~ you must place the word "retired" ~~((in the space designated for the date of expiration))~~ after your signature;

(e) Serve as a volunteer in an instructional capacity on landscape architectural topics;

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to landscape architectural work you performed ~~((by the registrant))~~ before ~~((he/she was))~~ you were granted ~~((a))~~ retired ~~((registration))~~ status;

(g) Serve in a function that supports the principles of ~~((registration))~~ licensure and promotes the profession of landscape architecture, such as members of commissions, boards or committees;

(h) Serve in a landscape architectural capacity as a "good samaritan," as set forth in RCW 38.52.195 and 38.52.1951, provided said work is otherwise performed in accordance with chapter 18.96 RCW.

(3) Restrictions. As a retired ~~((registrant is))~~ licensee, you are not permitted to:

(a) Perform any landscape architectural activity, as provided for in RCW 18.96.030, unless said activity is under the direct supervision of a Washington state licensed landscape architect who has ~~((a valid))~~ an active ~~((registration))~~ license in the records of the board;

(b) Apply ~~((his/her))~~ your professional stamp, as provided for in RCW 18.96.150, to any plan, specification, or report, except as provided for in subsection (2)(d) of this section.

(4) Certificate of ~~((registration))~~ licensure reinstatement. As a retired ~~((registrant))~~ licensee, you may resume active landscape architectural practice upon written request to the board ~~((and))~~ payment of the current renewal fee, ~~((may resume active landscape architectural practice))~~ and providing evidence of completion of twenty-four PDHs. See WAC 308-13-185 regarding qualifying activities. At that time, ~~((the retired registrant))~~ you shall be removed from retired status and placed on ~~((valid))~~ active status in the records of the board. All rights and responsibilities of ~~((a valid))~~ an active ~~((registration))~~ license status will be in effect. At the date of expiration of the reinstated certificate of ~~((registration))~~ licensure, ~~((the registrant))~~ you may elect to either continue active ~~((registration))~~ licensure or may again apply for retired ~~((registration))~~ status in accordance with the provisions of this chapter.

(5) Exemptions. Under no circumstances shall ~~((a registrant))~~ you be eligible for a retired registration if ~~((his/her))~~ your certificate of ~~((registration))~~ licensure has been revoked,

surrendered, or in any way permanently terminated by the board under chapter 18.96 RCW. ~~((Registrants who are))~~ If you have been suspended from practice and/or ~~((who))~~ are subject to terms of a board order at the time ~~((they))~~ you reach age sixty-five, you shall not be eligible for a retired ~~((registration))~~ status until such time that the board has removed the restricting conditions.

(6) Penalties for noncompliance. Any violations of this section shall be considered unprofessional conduct as defined in RCW 18.235.130 and are subject to penalties as provided for in RCW 18.235.110.

#### NEW SECTION

**WAC 308-13-175 Do I need ongoing professional development to maintain my license?** (1) Starting July 1, 2010, to maintain active practice, you must accumulate twenty-four professional development hours (PDHs) for the upcoming two-year renewal period. Starting July 1, 2012, the PDHs you accumulate are subject to audit by the board.

(2) Up to twelve PDHs over the required hours can be carried forward from the second year of your previous renewal period including hours accumulated from July 1, 2009, forward.

AMENDATORY SECTION (Amending WSR 07-05-039, filed 2/15/07, effective 3/18/07)

**WAC 308-13-180 What are the board member rules of conduct**~~((Activities incompatible with public duties—Financial interests in transactions.))~~? (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity, or individual which is engaged in a transaction involving the board, the member shall:

(a) Recuse ~~((him or herself))~~ oneself from the board discussion regarding the specific transaction;

(b) Recuse ~~((him or herself))~~ oneself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) ~~((Transaction involving the board))~~ Does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did

not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(5) The following are examples of possible scenarios related to board member rules of conduct. ~~((Activities incompatible with public duties; financial interests in transactions:))~~

(a) **EXAMPLE 1:**

The board of ~~((registration))~~ licensure for landscape architects disciplines licensed landscape architects in Washington. The board is conducting an investigation involving the services provided by a licensed landscape architect. One of the members of the board is currently serving a subcontractor to that landscape architect on a large project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed landscape architect services.

(b) **EXAMPLE 2:**

The board of ~~((registration))~~ licensure for landscape architects makes licensing decisions on applications for licensure. An applicant for licensure owns a school construction business which employs licensed landscape architects, including one of the board members. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to his or her employer's application for licensure.

(c) **EXAMPLE 3:**

The board of ~~((registration))~~ licensure for landscape architects makes licensing decisions on applications from ~~((registered))~~ licensed landscape architects in

another state or territory of the United States, the District of Columbia, or another country. The board can grant licensure if that individual's qualifications and experience are equivalent to the qualifications and experience required of a person registered under Washington law. An out-of-state applicant is employed as a landscape architect by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the landscape architect for the project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state landscape architect's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to subsection (1) of this section, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

NEW SECTION

**WAC 308-13-185 What activities qualify as professional development?** (1) You are responsible to seek out qualifying activities that can be demonstrated to the board as relevant to professional development.

(a) Activities are not preapproved by the board.

(b) Activities must be relevant to the practice of landscape architecture and may include technical, ethical or managerial content.

(i) At least eighteen PDHs must address public health, safety and welfare.

(ii) All activities must have a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of landscape architecture.

(2) The board is the final authority with respect to claimed qualifying activities and the respective PDH credit.

(3) The qualifying activity becomes eligible for credit upon completion of the given activity.

(4) Examples of qualifying activities:

Activity (1 PDH is equal to no less than 50 minutes of activity)	Maximum PDHs
One hour of preparation and subsequent presentation of a professional development program at seminars, professional/technical meetings, conventions or conferences. This credit does not apply to full-time faculty.	10 PDHs per year
For publication of an authored technical paper or article.	10 PDHs
For publication of an authored book.	30 PDHs
Professional boards or commissions: Serving as an elected officer or appointed chair of a committee of an organization in a professional society or organization. PDH shall not be earned until the completion of each year of service.	4 PDHs per organization
Boards or commissions related to the practice of landscape architecture: Serving as an elected officer or appointed member of a board or commission. PDH shall not be earned until the completion of each year of service.	4 PDHs per organization
Professional examination grading or writing: Serving as an exam grader or on a committee writing exam materials for a professional registration examination.	8 PDHs per biennium
Membership on the regulatory board for the practice of landscape architecture.	8 PDHs per year

Activity (1 PDH is equal to no less than 50 minutes of activity)	Maximum PDHs
One hour of attendance at meetings or hearings of the board. This credit does not apply to existing board members or to parties or witnesses in hearings before the board.	6 PDHs per year
One hour of work, outside normal duties of employment that involves participation in other recognized professional activities.	2 PDHs per year
One hour of self-study.	5 PDHs per year
One hour of participation in sessions or courses, sponsored by technical or professional societies, organizations or the board.	No limit
One hour of participation in organized courses, including employer provided courses, on environmental health topics/first aid/safety, technical or management skills.	No limit
One hour of attendance at professional or technical society meetings with an informational program.	5 PDHs per year
Pro bono service that has a clear purpose and objective and maintains, improves, or expands the professional knowledge or skill of the registrant. Four hours of service is equal to 1 PDH.	4 PDHs per year
One hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment.	5 PDHs per year

(5) The following activities do not qualify as professional development:

- (a) Activities that were conditions of a board order;
- (b) Attendance or testimony at legislative hearings, at city or county council meetings/hearings, or at civil or criminal trials;
- (c) Time spent fund-raising for scholarships or other society purposes or lobbying for legislation;
- (d) Attendance at gatherings that are primarily social in nature;
- (e) Membership and/or attendance in service club meetings.

NEW SECTION

**WAC 308-13-195 How do I record and report my professional development activities?** (1) You must maintain the records of your professional development activities. The records must include the date of the activity, the instructor's name, a description of activity and its location and the number of PDHs.

(2) You must keep your records for the cumulative time in the current renewal period plus the three years before the last renewal (five years total).

(3) By renewing your professional landscape architect license, you attest you have completed the required professional development for that renewal period.

NEW SECTION

**WAC 308-13-205 How does the board verify I have completed my professional development?** (1) The board will audit between five and fifteen percent of the total number of licensees yearly. If you are selected for an audit, the board will provide instructions about how to respond.

(2) You may face disciplinary action for failing to complete your professional development requirement or falsifying your records.

(3) If an audit disqualifies credits that you reported to the board and results in you failing to complete the PDH require-

ments, the board may require the shortage to be made up over a period of time established by the board.

NEW SECTION

**WAC 308-13-215 Are there any exemptions from the professional development requirement?** (1) The board may allow a waiver from the professional development requirement only under the following circumstances. The waiver would only be in effect for the current renewal period. The board requires waiver requests to be in writing.

(a) Physical disability, prolonged illness, or other extenuating circumstances that pose a personal hardship, as determined by the board.

(b) Active military duty for at least one hundred twenty days.

(c) If you have been licensed for twenty-five or more consecutive years in a CLARB-recognized jurisdiction, you may meet the professional development requirement upon completing 4 PDHs per year. See WAC 308-13-185 regarding qualifying activities.

(2) You are exempted from the professional development requirements if you withdraw from active practice and place your license in retired status (see WAC 308-13-225) or inactive status (see RCW 18.96.110(2)). Under these statuses, you are not permitted to perform any landscape architectural activity, as provided for in RCW 18.96.030, unless said activity is under the direct supervision of a Washington state licensed landscape architect who has an active license in the records of the board.

AMENDATORY SECTION (Amending WSR 97-10-026, filed 4/30/97, effective 5/31/97)

**WAC 308-13-240 Reinstatement of suspended certificates, eligibility for registration, or denied renewals.** Where a person's certificate of ((registration)) licensure has been suspended, an applicant has been denied ((certificate)) license renewal, or an applicant has been denied the ability to take the examination for certificate of ((registration)) licen-

sure due to nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, his or her certificate of licensure, license renewal or examination application will be reinstated when the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency, provided, the person shall pay any applicable reinstatement or renewal fee.

#### NEW SECTION

The following sections of the Washington Administrative Code are decodified as follows:

Old WAC Number	New WAC Number
308-13-011	308-13-055
308-13-012	308-13-065
308-13-170	308-13-225
308-13-180	308-13-013

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-13-015	Powers and duties of the board.
WAC 308-13-024	Application for examination.
WAC 308-13-032	Licensing examination.
WAC 308-13-036	Supplemental application after successful completion of examination.
WAC 308-13-040	Review of examinations.
WAC 308-13-045	Initial license.
WAC 308-13-100	Reinstatement of delinquent, suspended, or revoked licenses.

### **WSR 10-08-099**

#### **PROPOSED RULES**

#### **DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:10 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-125 What happens if an employee does not complete the transition review period?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rules do not specify a notice period for an employee receiving notification that they are being separated from a position during a transition review period. We are proposing that the notice period be the same as the notice period of a trial service reversion which is seven calendar days.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capital Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010  
Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-078, filed 5/27/05, effective 7/1/05)

**WAC 357-46-125 What happens if an employee does not complete the transition review period?** (1) The employer may involuntarily separate an employee from a position during the transition review period or the employee may choose to voluntarily separate from a position. The employer must give seven calendar days' written notice to an employee who is being separated during a transition review period. If during the last seven days of the transition review period, the employee commits an egregious act which warrants separation, the employer may immediately separate the employee without seven calendar days' notice. An employee may voluntarily separate a maximum of three times as a result of a single layoff action.

(2) When an employee who is serving a transition review period following appointment to a position as a layoff option is separated from the position during the transition review period, the following applies:

(a) The employee must be provided with a layoff option in accordance with WAC 357-46-035 if the employer involuntarily separates the employee; or

(b) The employee's name is placed on any layoff lists for which the employee is eligible if the employee voluntarily separates.

(3) When an employee who is serving a transition review period following appointment from a layoff list or the general government transition pool is separated from the position during a transition review period, the employee's name is

reinstated on any layoff list from which it was removed at the time of placement in the position. The employee remains on the list until the employee's initial eligibility expires or ((he/she is)) they are rehired. The time served during the transition review period does not extend the period of eligibility for a layoff list or the transition pool.

(4) Separation during the transition review period is not subject to appeal.

**WSR 10-08-100**

**PROPOSED RULES**

**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:12 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-020 What must be included in the employer's layoff procedure?, 357-46-035 Layoff option, and 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change to WAC 357-46-035(2) is housekeeping in nature. The proposed change to subsection (4) will clarify that general government employees have layoff option rights to all classes they have held permanent status in regardless of any breaks in service as provided in subsection (1) of the rule. This is to emphasize that the criteria in subsection (1) must be met.

The proposed changes to WAC 357-46-080 are an attempt to make this rule easier to read. The only language being added is the last two sentences of subsection (2) which say that general government employees have rights to the statewide layoff list for classes in which they held permanent status which are at a higher salary range (than the class the employee is being laid off from) and lower classes in the same class series and higher education (HE) employees do not have access to the statewide layoff list for higher level classes unless the HE employer's layoff procedure allows access.

The proposed change to WAC 357-46-020 is housekeeping. This is in line with the language that was added to WAC 357-46-080 effective September 16, 2009, regarding HE employers addressing in their layoff procedure statewide lay-

off list rights when the employee has had a break in state service.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 07-11-092, filed 5/16/07, effective 7/1/07)

**WAC 357-46-020 What must be included in the employer's layoff procedure?** The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

- Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated, including options for factoring performance into ratings; and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

(10) Higher education employers address in their layoff procedure whether or not employees have layoff list rights to



classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 09-17-064, filed 8/13/09, effective 9/16/09)

**WAC 357-46-035 Layoff option. (1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?**

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

**(2) What if the employee has no option under subsection ((4)) (1) of this section?**

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(iii) The position is comparable or less than comparable; and

(iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

**(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?**

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

**(4) Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?**

General government employees have layoff option rights as provided in subsection (1) of this section to ((aH)) classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 09-17-063, filed 8/13/09, effective 9/16/09)

**WAC 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list?**

(1) Permanent employees who satisfy the following criteria must have their name placed on the statewide layoff list for other employers if the employee exercises this option within the two-year eligibility period:

(a) ~~((Employees who are laid off or notified in writing by the employer that they are scheduled to be laid off are eligible to be on the statewide layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required in the lower classes in the class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.~~

~~(b) Employees who accept a voluntary demotion in lieu of layoff are eligible to be on the statewide layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employees held permanent status and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.~~

~~(c) Employees who accepted less than comparable positions at the time of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status at the current or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series.~~

~~(2) Employees who have been demoted for cause from a class are not eligible to be on the statewide layoff list for that class.) Laid off or notified in writing by the employer they are scheduled to be laid off.~~

(b) Accepted a voluntary demotion in lieu of layoff, or

(c) Accepted less-than-comparable positions at the time of layoff.

For purposes of this subsection "employees" includes Washington management service (WMS) employees who have held permanent status in Washington general service.

(2) All employees who meet the criteria in subsection (1) of this section are eligible to be on the statewide layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required in the lower classes in the same class series. General government employees have statewide layoff list rights to classes in which they held permanent status which are at a higher salary range and lower classes in the same class series. Higher education employees do not have access to the statewide layoff list for higher level classes unless the employer's layoff procedure allows.

(3) WMS employees only have layoff list rights to classes in which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff, or at the time of demotion.

~~((3))~~ (4) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

(5) Higher education employers must address in their layoff procedure whether or not employees will be given layoff list rights to classes they held permanent status in prior to any breaks in state service.

(6) Employees who have been demoted for cause from a class are not eligible to be on the statewide layoff list for that class.

**WSR 10-08-101**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:17 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-320 What happens when a WMS employee promotes to a new WMS position within the same agency while serving in a review period?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective December 15, 2009, WAC 357-19-070 was changed so that employers will have discretion of whether or not to count time served

in a current probationary or trial service period towards the probationary or trial service period of a new position. We are now proposing a similar change be made to WAC 357-58-320. This change will give employers discretion of whether or not to count time served in a WMS review period towards the review period of a new WMS position.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-320 What happens when a WMS employee promotes to a new WMS position within the same agency while serving in a review period?** If a WMS employee is promoted to a different WMS position in the same agency during the review period(~~(s)~~) the ~~((following applies:~~

~~(1) Time served in the initial review period counts towards the review period of the new position if the employer determines the positions are closely related.~~

~~(2) The review period starts over if the employer determines the positions are not closely related))~~ employer may count time served in the initial review period towards the review period of the new position.

**WSR 10-08-102**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:26 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-100 Must an employer have a policy for requesting and approving leave?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010  
Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-31-100 Must an employer have a policy for requesting and approving leave?** Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200((2)) (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020; and

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

**WSR 10-08-103**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:38 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-16-025 How must employers and the department inform

prospective applicants of recruitments?, 357-16-100 Must employers make final examination results available to an applicant?, and 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to the launch of a new on-line recruiting system, the department of personnel staff conducted a review of the recruitment rules (chapter 357-16 WAC). The new system will not have a central talent pool therefore we are proposing to remove the "central talent pool" language from WAC 357-16-025. WAC 357-16-100 currently says an applicant's exam results must be made available "within a reasonable time period." Under the new system the exams are not scored until after the applicant is processed. This could delay the applicant receiving their score. Therefore staff is proposing a repeal of WAC 357-16-100. Also under the new system there is not a way to remove a candidate from a list other than when they are appointed from the list. Staff is therefore proposing we change the rule to say the applicant's name "may be" removed rather than "is" removed.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010  
Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 07-23-009, filed 11/8/07, effective 12/11/07)

**WAC 357-16-025 How must employers and the department inform prospective applicants of recruitments?** Employers shall determine the appropriate method to solicit job seekers, which may include but not be limited to, public announcements; searching the ~~((state central talent pool; or, using an))~~ employer or the department's maintained talent pool. Recruitment announcements shall inform pro-

spective job seekers how to apply for, or express interest in, positions which may come open for recruitment.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

**WAC 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position?** An eligible's name ((~~is~~)) may be removed from the applicant and/or candidate pool for the class to which he/she is appointed and all lower classes in the same class series.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-16-100	Must employers make final examination results available to an applicant?
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**WSR 10-08-104**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:41 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-060 Does a veteran receive any preference in layoff?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language was in the prior merit system rule. This language was inadvertently left out of the new rule. The other proposed changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

**WAC 357-46-060 Does a veteran receive any preference in layoff?** (1) An eligible veteran receives a preference by having ((~~his/her~~)) their seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to ((~~his/her~~)) their unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired, as evidenced by the "DD Form 214" or other official military records, with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

**WSR 10-08-105**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:49 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-400 How much shared leave may an employee receive?, 357-31-675 Is shared leave received under the uniformed service shared leave pool included in the two hundred sixty-one day total specified in RCW 41.04.665?, and 357-31-410 May employees donate leave to employees in other agencies, institutions of higher education, or related higher education boards?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 6724 was passed and signed by the governor on March 23, 2010. This bill expands the total number of days a state employee can receive in shared leave from two hundred sixty-one days to five hundred twenty-two days. The bill also adds language to RCW 41.04.665 which says the employer may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances. Language was also removed from the law which said "leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district." Therefore, employees of school districts or educational service districts are authorized to share leave with employees in other state agencies.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010  
Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 07-11-095, filed 5/16/07, effective 7/1/07)

**WAC 357-31-400 How much shared leave may an employee receive?** The employer determines the amount of leave, if any, which an employee may receive under these rules. However, an employee must not receive more than ~~((two hundred sixty-one))~~ five hundred twenty-two days of shared leave during total state employment ~~((and))~~. An employer may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. A nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is

included in the ~~((two hundred sixty-one))~~ five hundred twenty-two day limit.

Employers are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

**WAC 357-31-410 May employees donate leave to employees in other agencies, institutions of higher education, ~~((or))~~ related higher education boards, educational service districts, or school districts?** Leave donated under the civil service rules and shared leave statutes may be transferred from employees of one employer to an employee of the same employer or, with the approval of the heads of both employers, to an employee of another state employer, educational service district, or an employee of a school district.

AMENDATORY SECTION (Amending WSR 07-17-123, filed 8/20/07, effective 10/1/07)

**WAC 357-31-675 Is shared leave received under the uniformed service shared leave pool included in the ~~((two hundred sixty-one day total))~~ shared leave limits specified in RCW 41.04.665?** Shared leave received under the uniformed service shared leave pool is not included in the ~~((two hundred sixty-one))~~ five hundred twenty-two day total specified in RCW 41.04.665.

## WSR 10-08-106

### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed April 7, 2010, 9:50 a.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 10-04-075.

Title of Rule and Other Identifying Information: WAC 260-40-065 Coupled and multiple entries and 260-60-300 Whom may claim, the amendment would change the number of horses a trainer may enter in an overnight race from two to three with certain restrictions.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on June 10, 2010, at 9:30 a.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [dmoore@whrc.state.wa.us](mailto:dmoore@whrc.state.wa.us), fax (360) 459-6461, by June 7, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by June 7, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To attempt to increase field size by allowing up to three entries in an overnight race by a single trainer.

Reasons Supporting Proposal: An increase of field size has shown to directly influence the mutuel handle which also affects funds generated for purses.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

April 7, 2010  
Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

**WAC 260-40-065 (~~Coupled and~~) Multiple entries.**  
~~((1) Two or more horses owned or leased in whole or part by the same owner must be joined as a coupled entry and single betting interest when entered in the same race. Coupled entries may be uncoupled in stakes races. Common ownership entries may be uncoupled in stakes races with the approval of the board of stewards.~~

~~(2) A coupled entry may not exclude a single entry, except in a race where the conditions are specific as to preference.~~

~~(3) At the time of making a same ownership entry, the trainer, owner, or authorized agent must select which horse will run in the event the coupled entry is not allowed.~~

~~(4)) A trainer, owner, or authorized agent may not enter and start more than ~~((two))~~ three horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:~~

~~((a)) (1) Stake races;~~

~~((b)) (2) Races in which there are fees required to nominate or enter; and~~

~~((c) Allowance/optional claiming or maiden special weight races. In these races a trainer may not enter more than ~~three~~ horses.)~~ (3) The third entry may not exclude a single entry, or be allowed if there are less than seven entries received prior to the entry of the trainer's third horse.

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

**WAC 260-60-300 Who may claim.** (1) In claiming races, any horse is subject to be claimed for its entered price by any owner licensed by the commission, including a prospective owner who has been issued a claiming certificate, or by a licensed authorized agent for the account of such owner.

(2) In order to claim a horse as a prospective owner, a person will submit to the stewards a completed application

for a prospective owner's license and the name of a licensed trainer who will assume the care and responsibility for any horse claimed. The stewards may issue a claiming certificate to the applicant upon satisfactory evidence that the applicant is eligible for an owner's license. Once the prospective owner has successfully claimed a horse and made payment of labor and industry fees due, he/she will be considered an owner. At that time the owner should contact a commission office for a new identification badge.

(3) The names of licensed prospective owners who have been issued a claiming certificate must be prominently displayed in the offices of the commission and the racing secretary.

(4) A claiming certificate will expire forty-five days from the date of issue, but may be extended with approval of the stewards; at the conclusion of the race meet at which it was issued, upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(5) No owner or prospective owner may claim more than one horse in any one race.

(6) An authorized agent may claim up to two horses, if each horse is claimed on behalf of entirely different ownerships, and the ownerships do not have a common interest in both claims. An authorized agent may not make a claim on the same horse for different owners.

(7) No more than two claims may be entered with the same trainer listed in any one race.

(8) No trainer may enter or start more than ~~((two))~~ three horses for a claiming price in one race.

**WSR 10-08-107**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:54 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-360 Must employees who have been ordered to active duty or active training duty be granted paid military leave?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 2403 changes RCW 38.40.060 to reflect that employees are eligible for twenty-one days paid military leave for all required military duty (removes the reference to "active" military duty). Language is also added which says employees shall be

charged military leave only for days that he or she is scheduled to work. These changes become effective June 10, 2010.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; and Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010  
Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-360 Must employees who have been ordered to (~~active~~) required military duty (~~or active training duty~~), training, or drills be granted paid military leave?** (1) Employees must be granted military leave with pay not to exceed twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for (~~active~~) required military duty (~~or to take part in active~~), training duty in the Washington National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States, or to report for drills including those in the National Guard under Title 10 U.S.C., or state active status. The employee is charged military leave only for the days that they are scheduled to work.

(2) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges, or pay.

(3) During paid military leave, the employee must receive the normal base salary.

(4) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

**WSR 10-08-109**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed April 7, 2010, 9:59 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-050 What chapters of civil service rules apply to WMS positions? and chapter 357-55 WAC, Combined fund drive.

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 13, 2010, at 8:30 a.m.

Date of Intended Adoption: May 13, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by May 5, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 5, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 6540, transfers all powers, duties, and functions of the department of personnel relating to the combined fund drive (CFD) to the secretary of state. This bill is effective June 10, 2010. The proposed changes repeal references to the CFD from Title 357 WAC.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

April 7, 2010  
Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-050 What chapters of civil service rules apply to WMS positions?** Other chapters of civil service rules do not apply to WMS positions or employees except for the chapters listed below. If a WMS issue is identified that the director of the department of personnel has not specifically addressed in the adoption of the WMS rules, the other civil service rules do not apply or take precedence in addressing the issue.

Except where specifically stated otherwise, the following chapters apply to positions or employees included in the WMS.

WAC 357-04 General provisions  
WAC 357-07 Public records  
WAC 357-22 Personnel files  
WAC 357-25 Affirmative action program  
WAC 357-26 Reasonable accommodation  
WAC 357-31 Leave  
WAC 357-34 Employee training and development  
WAC 357-37 Performance management  
WAC 357-40 Discipline  
WAC 357-43 Employee business units  
WAC 357-52 Appeals

((WAC 357-55 Combined fund drive))

REPEALER

Chapter 357-55 WAC Combined fund drive.

**WSR 10-08-111**  
**PROPOSED RULES**  
**EMPLOYMENT SECURITY DEPARTMENT**

[Filed April 7, 2010, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-093.

Title of Rule and Other Identifying Information: WAC 192-270-010 and 192-270-015 are revised to update statutory references. WAC 192-270-050 Criteria for approving training plans, is amended for consistency with 2009 legislative changes. New sections are adopted in chapter 192-270 WAC, Training benefits for dislocated workers, to implement 2009 statutory changes.

Hearing Location(s): Employment Secretary Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on May 12, 2010, at 1:30 p.m.

Date of Intended Adoption: May 14, 2010.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by May 11, 2010.

Assistance for Persons with Disabilities: Contact Tammy Crawford by May 11, 2010, TTY (360) 902-9569 or (360) 902-9577.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are made to chapter 192-270 WAC, Training benefits. The amendments implement those sections of chapter 3, Laws of 2009 (ESHB 1906) that were effective on September 6, 2009. The rules define terms, specify the treatment of incomplete applications, and update the criteria for approval of training plans.

Reasons Supporting Proposal: The rules implement changes to the training benefits statute adopted by the 2009 legislature, chapter 3, Laws of 2009.

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

Statute Being Implemented: Sections 4 and 5, chapter 3, Laws of 2009.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules are technical in nature and define terms and modify existing rules consistent with statutory changes adopted by the 2009 legislature.

Benefits paid under the training benefits program are not charged to the individual's previous employer(s).

A cost-benefit analysis is not required under RCW 34.05.328. Any costs imposed by the changes to the training benefits program result from legislative changes rather than the proposed rules. It is anticipated that these changes will not cause the training benefits program to exceed the \$20 million annual appropriation by the legislature.

April 1, 2010

Paul Trause

Deputy Commissioner

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

**WAC 192-270-010 Employment separations for dislocated workers—RCW 50.22.155.** To be eligible for training benefits as a dislocated worker, you must have been terminated or received a notice of termination from your employer ((to be eligible for training benefits)). Training benefits are not available if you left work voluntarily as provided in RCW 50.20.050, regardless of whether you had good cause for leaving, or if you are disqualified from benefits for work-related misconduct under RCW 50.20.060 or RCW 50.20.066, and have not requalified for benefits.

When ((determining)) deciding whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks ((that was)) in employment covered by Title 50 RCW or the comparable laws of another state.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

**WAC 192-270-015 Dislocated workers—Unlikely to return to employment—RCW 50.22.155 (2)(a) and RCW 50.04.075.** Except as provided in ((RCW 50.22.150(3))) RCW 50.22.155(6), the term "unlikely to return to employment" means, but is not limited to, situations where:

- (1) You have:
  - (a) Become unemployed due to a permanent plant closure;
  - (b) Received a federal WARN act notice; or
  - (c) Received a notice of indefinite layoff as a result of a permanent reduction of operations at your place of employment; and
- (2) Suitable work for individuals with your skills is in diminishing demand within your labor market.

**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.

NEW SECTION

**WAC 192-270-017 Military veterans—RCW 50.22.155 (2)(b)(ii).** (1) The term "during the twelve-month period" means the individual served in the United States military or Washington National Guard at any point during the twelve-month period prior to application date.



(2) The term "application date" means the date on which the individual filed an initial application for unemployment benefits.

#### NEW SECTION

**WAC 192-270-018 Members of the Washington National Guard—RCW 50.22.155 (2)(b)(iii).** The term "currently serving" does not include reserve members of the Washington National Guard.

#### NEW SECTION

**WAC 192-270-019 Disabled individuals—RCW 50.22.155 (2)(b)(iv).** (1) For purposes of this section:

(a) "Injury" means a trauma to the integrity or function of a tissue or organ and the resulting physical conditions;

(b) "Illness" means a condition marked by an obvious deviation from the normal healthy state, characterized by sickness, disease, or other disorder. Alcohol abuse, drug abuse, antisocial behavior, or criminal history alone, or your commitment to a treatment facility, is insufficient by itself to show "illness" within the meaning of this section.

(2) Verification of your injury or illness may, at the department's discretion, require verification from a physician.

#### NEW SECTION

**WAC 192-270-047 Incomplete applications.** An application that is incomplete will be returned to you for completion. The filing of an incomplete application does not extend the timeframes under WAC 192-270-035 for filing a completed application for training benefits.

**AMENDATORY SECTION** (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

**WAC 192-270-050 Criteria for approving training plans.** (1) The department will consider the following factors when reviewing your application for training benefits:

(a) Whether you have a current benefit year as required by RCW 50.22.010(9);

~~(b) Whether suitable employment is available in the labor market in which you currently reside (if you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits);~~

~~((e))~~ Your plan for completion of the training including, but not limited to, ~~((what))~~ the financial resources you intend to use to ~~((fund the))~~ complete your training ~~((plan))~~ when training benefits run out;

~~((d))~~ (c) Whether you have the qualifications and aptitudes to successfully complete the training;

~~((e))~~ (d) For each of the following categories of workers:

(i) Dislocated workers under RCW 50.22.155 (2)(a): Whether suitable employment is available in the labor market in which you currently reside and whether the training is likely to enhance your marketable skills and earning power,

based on an assessment of what your earning power would be if training were not provided. If you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits.

(ii) Low income workers under RCW 50.22.155 (2)(b)(i): Whether vocational training is likely to enhance your earning potential. This consists of training for a career in a demand occupation that will help you obtain and maintain stable, quality employment.

(iii) For military veterans, current members of the Washington National Guard, and disabled individuals under RCW 50.22.155 (2)(b)(ii), (iii) and (iv): Whether training is needed to assist you in finding suitable work in your labor market.

(e) Whether the training relates to a high demand occupation ~~((meaning))~~.

(i) For claims with an effective date prior to April 5, 2009, "high demand" means that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers.

(ii) For claims with an effective date on or after April 5, 2009, "high demand" means an occupation with a substantial number of current or projected employment opportunities;

(f) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

(g) ~~((Effective July 1, 2001,))~~ Whether the educational institution and training program meet~~((s))~~ the performance criteria established by the workforce training and education coordinating board.

(2) Academic training may be approved if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria of subsection (1).

~~((4)) In the case of individuals with physical or sensory disabilities, or in other unusual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.~~

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

#### WSR 10-08-113

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed April 7, 2010, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-21 [07-03-022] and 09-16-068.

Title of Rule and Other Identifying Information: WAC 16-228-1010 General pesticide rules definitions, 16-228-1380 Rules relating to vertebrate control pesticides, and

chapters 16-230, 16-231 and 16-232 WAC, amend the definition of a commercial vineyard in the pesticide rules.

Hearing Location(s): Natural Resources Building, Room 205, 1111 Washington Street, Olympia, WA 98504-2560, on May 24, 2010, at 2:00 p.m.; and at the WSDA Yakima Office, Conference Room 238, 21 North First Avenue, Suite 226, Yakima, WA 98902, on May 26, 2010, at 11:00 a.m.

Date of Intended Adoption: June 30, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARuleComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 28, 2010.

Assistance for Persons with Disabilities: Contact Maryann Connell by May 20, 2010, TTY (800) 833-6388 or (360) 902-2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Areas proposed for modification include:

- The entire WAC 16-228-1380, rules relating to vertebrate control pesticides, was revised to match current rule writing language standards. The title of the rule now reads "rules regulating the use of rodenticides."
- Three new definitions were added to WAC 16-228-1010 to clarify the meaning of "properly secured," "loose bait," and "aboveground," all in relation to specific rodent control rules. These definitions were necessary to better define how to safely and legally use rodenticides.
- The industry requested a revision to the rules to clarify current industry practices of indoor above floor treatments with rodenticides.
- The language was revised to match EPA bait box requirements for outdoor above ground treatment and directed towards commercial use only. Homeowner use is covered by EPA.
- Lastly, a new permit requirement was added for rodenticide tracking powder use. Rodenticide tracking powder is a very old and rarely used practice. It can be a very dangerous material to handle, and the potential harm if miss-applied is great. Greater control of the distribution and use of these materials was supported by the department and industry.
- Amend the definition of a commercial vineyard to align with policy.

The current definition of a commercial vineyard in the pesticides rules does not include properties that both grow their own grapes and then use these grapes for their own winery. When the definition was originally developed to protect grape growers from possible effects due to the drift of certain pesticides, these industries did not exist in Washington. Grapes were grown for the fresh market or for juice and the definition was developed to reflect these uses.

The rules that would use this definition specify the restrictions on aerial application of pesticides in Eastern Washington.

Reasons Supporting Proposal: A request was made to the department of agriculture's attorney general to determine if the definition as it currently exists would allow the depart-

ment to apply the county order restrictions to areas around vineyards that grew their own grapes for processing into wine. The department was informed that the current definition would not apply in those circumstances.

Statutory Authority for Adoption: Chapters 15.58, 17.21 RCW.

Statute Being Implemented: Chapters 15.58, 17.21 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed change would eliminate a possible area lacking regulations that were being enforced by policy.

Name of Proponent: Washington state department of agriculture, industry, private and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Robin Schoen-Nessa, (360) 902-2038, and Ann Wick, (360) 902-2051, 1111 Washington Street S.E., Olympia, WA; and Enforcement: Cliff Weed, 1111 Washington Street S.E., Olympia, WA, (360) 902-2040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires the department to prepare a small business economic impact statement for proposed rules that impose a more than minor cost on businesses and industry. The department has analyzed the economic impact of the proposed amendments and concluded that the cost imposed by the proposed changes are "not more than minor" and do not have a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 7, 2010

Bob Arrington

Assistant Director

**AMENDATORY SECTION** (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

**WAC 16-228-1010 What are the definitions that apply to this chapter?** The definitions in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Above ground" means situated on the surface of the ground, not to include treatment of below ground tunnels, burrows and/or nests.

(2) "Agricultural commodity" means any plant, or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

~~((2))~~ (3) "Authorized agent" is any individual who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

~~((3))~~ (4) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated material. It shall be designed to hold rodent bait securely,

allow rodents to enter and leave, and prevent unauthorized individuals and nonpest domestic animals from gaining access to the bait. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes. Fragile materials are unacceptable.

~~((4))~~ (5) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

~~((5))~~ (6) "Blossoming plants" means:

(a) When there are five or more open blooms per square yard on average in a given field; or

(b) When there are one or more open blooms per tree or vine in an orchard or vineyard; or

(c) When there are five or more open weed blooms per square yard on average for the area being measured for groundcover in orchards or vineyards, fence lines, ditch banks, or field, vineyard or orchard edges. This definition shall not apply to plants that are not attractive to bees (e.g., lentils, hops, peas (*Pisum sp.*), pears (second bloom) and potatoes). For the purposes of this definition, "bloom" means a flower head, raceme or spike with one or more open flowers.

~~((6))~~ (7) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

~~((7))~~ (8) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

~~((8))~~ (9) "Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant or a system maintenance compound applied with irrigation water.

~~((9))~~ (10) "Commercial vineyard" means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

~~((10))~~ (11) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

~~((11))~~ (12) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections must also include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspector, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

~~((12))~~ (13) "Controlled disposal site" means any place where solid or liquid waste is disposed of: Provided that the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency. The site must be fenced, barricaded or otherwise enclosed or attended by some

person in charge to control the access of domestic animals, pets, and unauthorized persons.

~~((13))~~ (14) "Department" means the Washington state department of agriculture.

~~((14))~~ (15) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to the application rate for adequate coverage (such as water).

~~((15))~~ (16) "Director" means the director of the department or a duly authorized representative.

~~((16))~~ (17) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

~~((17))~~ (18) "EPA" means the United States Environmental Protection Agency.

~~((18))~~ (19) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

~~((19))~~ (20) "Fertilizer" as included in this chapter means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

~~((20))~~ (21) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 net seq.).

~~((21))~~ (22) "Floor level" means the floor upon which people normally walk—not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

~~((22))~~ (23) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

~~((23))~~ (24) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

~~((24))~~ (25) "High volatile esters" are phenoxy hormone-type herbicides with five or less carbon atoms in the ester group, such as, but not limited to, methyl, ethyl, isopropyl, n-butyl, isobutyl and n-pentyl.

~~((25))~~ (26) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral, inhalation or dermal toxicity.

~~((26))~~ (27) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((27))~~ (28) "Loose bait" means pellet, grain, seed, meal, liquid or any other form of bait that can be spilled or scattered, including bait packaged in a place pack. Loose bait does not include single-block, paste or other single-piece types of bait.

(29) "Low volatile esters" are phenoxy hormone-type herbicides with more than five carbon atoms in the ester group.

~~((28))~~ (30) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((29))~~ (31) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such a violation.

~~((30))~~ (32) "Pollen shedding corn" means that stage of growth when ten percent or more of the corn plants in any one quarter portion of the field are showing spike anthers.

~~((31))~~ (33) "Positive identification" means a photo identification document issued by a U.S. government agency or affiliated jurisdiction (states, tribes, territories). Acceptable photo identification documents are: A driver's license, a passport, a military ID card or an immigration green card. Exception: Nonphoto identification documents may be allowed for religious groups that prohibit members from having their picture taken. In this case, two forms of identification are required, one of which must be a government issued document with a signature (e.g., Social Security card). Other nonphoto identification must identify the holder by name and address (e.g., utility bill).

~~((32))~~ (34) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

~~((33))~~ (35) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((34))~~ (36) "Properly secured" means firmly attached and fixed to a floor or other surface so that animals and children cannot overturn the bait box or displace the bait. In the case of liquid baits, the bait container must be firmly attached and fixed to a floor surface only.

(37) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

~~((35))~~ (38) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW.

~~((36))~~ (39) "Structural pest inspector" means any individual who performs the service of conducting a complete

wood destroying organism inspection or a specific wood destroying organism inspection.

~~((37))~~ (40) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((38))~~ (41) "Use restricted pesticide" means any pesticide determined by the director to need further state restrictions on use under the authority of chapters 17.21 and 15.58 RCW. This designation does not change federal or state restricted use classifications.

~~((39))~~ (42) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

**WAC 16-228-1380 What are the ~~((regulations))~~ requirements for application of ~~((vertebrate))~~ rodent control pesticides?** ~~((Vertebrate))~~ Rodent control pesticides shall be used in and around structures only under the following conditions, provided that the use of rodent control baits registered for home and garden use only, is exempt from this section:

(1) ~~((Vertebrate control pesticides))~~ Bait shall only be placed ~~((only))~~ in locations ~~((that are))~~ not readily accessible to ~~((nonpest animals,))~~ children, ~~((and unauthorized persons, and in a manner that shall preclude contamination of food, feed, drugs, and other consumer commodities. Exposure of rodenticides baits within buildings shall not be above floor levels))~~ pets and nontarget wildlife, provided that when properly secured, a locked and/or sealed tamper-resistant bait box may be used in accessible locations.

(2) ~~((Baits shall be colored or otherwise formulated so that they will be identifiable from foods common to the establishment in which the bait is placed.))~~ Locked bait boxes are required for all outdoor, aboveground bait placement.

(3) ~~((When the use of bait boxes is necessary to ensure that baits are not readily accessible to nonpest animals, children, and unauthorized persons, the bait boxes shall be of sturdy construction and tamper resistant. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper-resistant bait boxes and such bait boxes shall be secured in such a way that nonpest animals, children and unauthorized persons cannot displace or remove the baits out of such bait boxes. Bait boxes shall be labeled clearly with letters on contrasting background showing the following information:~~

~~((a) Any information required by the EPA or Washington state registered label for the bait or the concentrate from which it was formulated.~~

~~((b) The name of the active ingredient(s).~~

~~((c) The name of the firm and/or certified applicator, address, and the telephone number.))~~ Bait shall not be placed

in a manner that can contaminate, or be easily translocated to food, feed, drugs, or other consumer commodities. Spilled bait must be cleaned up immediately.

(4) ~~((Containers used for exposing vertebrate control baits to pests shall be composed of tough, nonabsorbent, corrosion-resistant materials and designed so they cannot be readily overturned or carried off by pest animals. Those containers that are used for exposing vertebrate control pesticides outside of bait boxes shall bear a legible warning label with wording not less restrictive than requirements on bait boxes being used as per WAC 16-228-1380(3), (except for the size of lettering). Food containers, such as "meat boats" and "souffle cups" are unacceptable. Containers used for liquid bait exposure shall be water and/or liquid impervious.))~~ Loose bait, whether contained in a bait box or not, shall not be placed above floor levels, including but not limited to suspended ceilings, shelves, ledges, cupboards and counters. Except that, loose bait may be placed on the floor of an attic, including unfinished walking surfaces, or bottom surfaces in conformance with all other requirements of this section.

(5) All ~~((vertebrate control pesticide stocks, when not in use or when unattended, shall be kept in locked storage or locked service vehicles))~~ bait boxes and containers used for bait placement shall be of sturdy construction, composed of durable, nonabsorbent, corrosion resistant material and designed to prevent overturning. All bait containers holding liquid bait shall be liquid impervious and shall be properly secured.

(6) All bait boxes and containers used for ~~((storing or transporting vertebrate control pesticides shall bear an EPA or department registered label))~~ bait placement shall be labeled with letters on contrasting background and maintained with the following information clearly legible on the outside of the bait box or container:

(a) The name, physical address, and telephone number of the company and/or certified applicator.

(b) The name, Environmental Protection Agency (EPA) registration number, and active ingredient(s) of the rodent control pesticide product.

(7) When detection baits without pesticides are placed in bait containers, the container must clearly identify that the contents are not a pesticide.

~~((7) Applicator's kits which contain vertebrate control pesticides))~~ (8) Rodenticide bait, when in use to fill bait containers shall be handled with ~~((extra))~~ caution ~~((and))~~ according to the label, shall not be left unattended where children ~~((or other unauthorized persons))~~ or nontarget animals might ~~((remove))~~ be exposed to the contents and be in a container that bears an EPA registered label.

~~((8))~~ (9) Upon completion of a baiting operation, all bait ~~((boxes, containers, and/or throw bags)), if ~~((they))~~ it may become readily accessible to the public, shall be recovered ~~((for disposal in an approved manner))~~ and disposed of according to the product label.~~

~~((9) Whenever poisoned carcasses jeopardize public sanitation, or create a health hazard to wildlife, domestic animals, or the public, they shall be recovered and disposed of by burning, burying not less than three feet below the soil surface, or placed in proper waste containers and delivered to an approved disposal site.))~~ (10) Rodenticide tracking powders

shall not be used in any manner that will expose people, non-target animals, food, feed, drugs, or other consumer commodities to the powder. The use of rodenticide tracking powders is prohibited in or on residential structures, except by written permission of the Washington state department of agriculture. Applicators who wish to use a rodenticide tracking powder in or on a residential structure must submit a request in writing to be received by the department at least seven days prior to the intended application date. The written request must include:

(a) The name, address, and telephone number of the occupants of the structure.

(b) The date and time of the intended application.

(c) The specific locations in or on a structure and the means by which the rodenticide tracking powder will be applied.

(d) A justification for the need to use the rodenticide tracking powder.

(e) What steps will be taken to ensure the rodenticide tracking powder does not contaminate any living area or otherwise result in an exposure to people or nontarget animals.

(11) Rodenticide tracking powder that contaminates an unintended location must be immediately and thoroughly cleaned up according to label instructions, or in the absence of label instructions, according to instructions obtained from the manufacturer.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

**WAC 16-230-665 What are the restrictions on aerial applications near vineyards?** (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard: Provided, That the Washington state department of agriculture may approve written requests and issue permit for aerial application of use restricted herbicides that may be applied to lands located one-half to one mile from commercial vineyards: Provided further, That no distance restrictions shall apply to aerial applications of use restricted herbicides near vineyards during the grape dormant season if written permission of the vineyard owner/manager is obtained. EXCEPTIONS are found in Franklin and Grant County restrictions.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

**WAC 16-231-335 What are the restrictions on applications near vineyards?** (1) Aerial applications of use restricted herbicides are prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards shall be considered through written request to the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or

intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

**WAC 16-231-835 What are restrictions for aerial applications near vineyards?** (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards will be considered through written request to the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

**WAC 16-232-030 What are the restrictions on aerial applications near vineyards?** (1) Aerial applications of use restricted herbicides are prohibited within one mile of any commercial vineyard: Provided, That aerial application of use restricted herbicides to lands located within one-half to one mile from commercial vineyards will be considered through written request of the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.