

**WSR 10-21-033**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed October 12, 2010, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-056.

Title of Rule and Other Identifying Information: WAC 392-140-970 through 392-140-975, Finance—Special allocations—Salary bonus for teachers and other certificated staff who hold current certification by the national board.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on December 2, 2010, at 10:00 a.m.

Date of Intended Adoption: December 2, 2010.

Submit Written Comments to: Legal Services, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail ross.bunda@k12.wa.us, fax (360) 753-4201, by December 2, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by December 2, 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 terminate the eligibility of principals to receive the bonus for the 2010–11 school [year] and thereafter, pursuant to section 513 (21)(a)(i) of the 2010–11 State Operating Supplemental Appropriations Act, ESSB 6444. Additionally, schools which provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement of serving thirty of [or] more students, for purpose[s] of the challenging, high poverty school bonus.

Statutory Authority for Adoption: RCW 28A.150.290 (1) and 28A.405.415.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, (360) 725-6308; Implementation: Cal Brodie, OSPI, (360) 725-6301; and Enforcement: Shawn Lewis, OSPI, (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. OSPI 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).

October 12, 2010  
 Randy Dorn  
 State Superintendent  
 of Public Instruction

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

**WAC 392-140-970 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Applicable provisions—Authority.** The provisions of WAC 392-140-970 through (~~392-140-974~~) 392-140-975 govern administration of the salary bonus for teachers and other certificated staff who hold current certification by the national board for professional teaching standards. The authority for WAC 392-140-970 through (~~392-140-974~~) 392-140-975 is the state Biennial Operating Appropriations Act, RCW 28A.405.415, and 28A.150.290 (1).

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

**WAC 392-140-972 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Definitions.** As used in this chapter, "teachers and other certificated staff" includes employees assigned to one of the following duties as defined in the *S-275 Personnel Reporting Handbook*:

- (1) Elementary teacher, duty root 31;
- (2) Secondary teacher, duty root 32;
- (3) Other teacher, duty root 33;
- (4) Other support personnel, duty root 40;
- (5) Library media specialist, duty root 41;
- (6) Counselor, duty root 42;
- (7) Occupational therapist, duty root 43;
- (8) Social worker, duty root 44;
- (9) Speech-language pathologist or audiologist, duty root 45;
- (10) Psychologist, duty root 46;
- (11) Nurse, duty root 47;
- (12) Physical therapist, duty root 48;
- (13) Reading resource specialist, duty root 49;
- (14) Long-term substitute teacher, duty root 52;
- (15) Contractor teacher, duty root 63;
- (16) Contractor educational staff associate, duty root 64;
- ~~((17) Elementary principal, duty root 21;~~
- ~~(18) Elementary vice principal, duty root 22;~~
- ~~(19) Secondary principal, duty root 23; or~~
- ~~(20) Secondary vice principal, duty root 24;))~~ and excludes employees not assigned to the above duties. This excludes employees whose duties consist entirely of the following:
  - ~~((21))~~ (17) Superintendent, duty root 11;
  - ~~((22))~~ (18) Deputy/assistant superintendent, duty root 12;
  - ~~((23))~~ (19) Other district administrator, duty root 13;
  - (20) Elementary principal, duty root 21;
  - (21) Elementary principal, duty root 22;
  - (22) Secondary principal, duty root 23;
  - (23) Secondary vice-principal, duty root 24;
  - (24) Other school administrator, duty root 25;
  - (25) Extracurricular, duty root 51; or
  - (26) Classified staff, duty roots 90 through 99.

AMENDATORY SECTION (Amending WSR 10-12-020, filed 5/21/10, effective 6/21/10)

**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(~~(c)~~

~~(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 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 head-count 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)) school~~ shall be categorized based upon the highest grades served as follows:

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

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

(iii) A ~~((building)) school~~ whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school(~~(c) provided, that, a building~~).

(c) A school shall be considered only if it serves thirty or more students, or is the largest ~~((building)) school~~ in the district serving its designated category.

~~((e))~~ (d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student head-count enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

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

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

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

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

## WSR 10-21-038

### PROPOSED RULES

### LIQUOR CONTROL BOARD

[Filed October 13, 2010, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-048.

Title of Rule and Other Identifying Information: Chapter 314-24 WAC, Domestic wineries and domestic wine distributors.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 1, 2010, at 10:00 a.m.

Date of Intended Adoption: December 8, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by December 1, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by December 1, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to outline the requirements and conditions under which a distributor may charge a retailer a handling fee on bottles of wine purchased in quantities less than a full case.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.200.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director of Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328.

October 13, 2010  
Sharon Foster  
Chairman

### NEW SECTION

**WAC 314-24-085 Split cases.** A wine distributor may collect a handling fee from retail licensees who order and receive wine in less than the smallest multiple-package case available. The handling fee must meet the following criteria:

(1) A wine distributor who elects to impose a handling fee for handling individual bottles of wine must impose an identical handling fee on every order for wine in less than the smallest multiple-package case, whether the retail licensee placing the order is purchasing wine for on-premises or off-premises consumption, and without regard to the total volume of wine purchased by the retail licensee.

(2) A distributor who elects to impose a handling fee for handling individual bottles of wine must impose an identical handling fee on each bottle of wine sold without regard to the price of the specific wine.

(3) A distributor who elects to impose a handling fee for handling individual bottles of wine must include on each invoice, information that identifies precisely what the handling fee is.

(4) No distributor who elects to impose a handling fee for handling individual bottles of wine may discriminate against any retail licensee or class of retail licensees.

(5) A distributor who elects to impose a handling fee for handling individual bottles of wine may cease imposing such fee at any time, but cannot reinstate such handling fee for at least six months thereafter.

**WSR 10-21-054**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 14, 2010, 12:53 p.m.]

Continuance of WSR 10-16-140.

Preproposal statement of inquiry was filed as WSR 10-07-127.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, Rates and rating system for Washington workers' compensation insurance; and chapter 296-17B

WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): CenterPlace Regional Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on September 30, 2010, at 3:00 p.m.; and at the Department of Labor and Industries, Room S118, 7273 Linderson Way S.W., Tumwater, WA 98501, on October 4, 2010, at 10:00 a.m.

Date of Intended Adoption: October 18, 2010.

Submit Written Comments to: Diane Doherty, P.O. Box 44180, Olympia, WA 98504, e-mail Dohr235@lni.wa.gov, fax (360) 902-4258, by 5:00, October 5, 2010.

Assistance for Persons with Disabilities: Contact Diane Doherty at (360) 902-4835 or office of information and assistance, TTY (360) 902-5797, by September 28, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to add two additional public hearings, extending the public comment period from September 3, 2010, to October 5, 2010. The department wanted to give stakeholders additional time to offer input regarding the proposed rules.

The extension and the additional hearing times and locations were announced at the hearings, which were listed in the original CR-102 proposal. The extension and the additional hearing times and locations were also sent to current retro participants via letter, as well as to the retrospective rating program listserv and the L&I rules listserv of interested parties.

Reasons Supporting Proposal: This rule making will be a significant change to the retrospective rating program. The transition will require extended communications. It is important the department and stakeholders have ample opportunity to exchange information.

Statutory Authority for Adoption: RCW 51.18.010(2), 51.04.020.

Statute Being Implemented: RCW 51.18.010, 51.04-020.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Diane Doherty, Tumwater, Washington, (360) 902-4835; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025(3) does not apply to a rule described in RCW 34.05.310(4), and that subsection exempts rules that "set or adjust fees pursuant to legislative standards." These proposed rules clarify one part of the process for calculating retrospective rating premiums.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 exempts from its requirements rules "that set or adjust fees pursuant to legislative stan-

dards." These proposed rules clarify one part of the process for calculating retrospective rating premiums.

October 14, 2010

Judy Schurke

Director

**WSR 10-21-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed October 18, 2010, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-045.

Title of Rule and Other Identifying Information: Amending WAC 415-02-030 Definitions, and new sections WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions?, 415-02-750 How does the department comply with Internal Revenue Code distribution rules?, 415-02-751 How does the department comply with Internal Revenue Code rollover rules?, 415-02-752 How does the department comply with Internal Revenue Code compensation limit rules?, 415-02-753 How does the department comply with Internal Revenue Code vesting rules?, 415-02-754 How does the department comply with Internal Revenue Code definitely determinable benefit rules?, 415-02-755 How does the department comply with Internal Revenue Code USERRA rules?, and 415-02-756 How does the department comply with Internal Revenue Code exclusive benefit rules?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on November 23, 2010, at 2:00 p.m.

Date of Intended Adoption: December 1, 2010.

Submit Written Comments to: Ken Goolsby, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-5397, by 5:00 p.m. on November 23, 2010.

Assistance for Persons with Disabilities: Contact Ken Goolsby, Rules Coordinator, by November 12, 2010, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update and rewrite rules to comply with the federal Internal Revenue Code.

Reasons Supporting Proposal: The new rules ensure compliance with the federal Internal Revenue Code on a global level for the department. The new global rules replace outdated system level rules.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Ken Goolsby, P.O. Box 48380, Olympia, WA 98504-8380,

(360) 664-7291; Implementation and Enforcement: Shawn Merchant, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

October 18, 2010

Ken Goolsby

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-01-021, filed 12/8/08, effective 1/8/09)

**WAC 415-02-030 Definitions.** This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCWs and WACs.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.-802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1. August 31 would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.-010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into an investment account in which tax is deferred until funds are withdrawn. The benefit is based on the contribution rate and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **Gainsharing** is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(20) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(21) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(22) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(23) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(24) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(25) **Participant** means an eligible employee who participates in a deferred compensation or dependent care assistance plan.

(26) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation or dependent care assistance plan.

(27) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(28) **PERS** means the Washington public ~~((employee's))~~ employees' retirement system created by chapter 41.40 RCW.

(29) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(30) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(31) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(32) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(33) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

(34) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((34))~~ (35) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((35))~~ (36) **Public record** is defined in RCW 42.17.020(41).

~~((36))~~ (37) **Restoration** is the process of restoring a member's service credit for prior periods.

~~((37))~~ (38) **Retirement system employer - see "employer."**

~~((38))~~ (39) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((39))~~ (40) **Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

~~((40))~~ (41) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((41))~~ (42) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((42))~~ (43) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((43))~~ (44) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((44))~~ (45) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

~~((45))~~ (46) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((46))~~ (47) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((47))~~ (48) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

#### NEW SECTION

**WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? (1) Basic Internal Revenue Code (IRC) section 415 limitations.** Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under IRC section 415.

(2) **Definitions.** As used in this section:

(a) "IRC section 415(b) limit" refers to the limitation on benefits established by IRC section 415(b);

(b) "IRC section 415(c) limit" refers to the limitation on annual additions established by IRC section 415(c); and

(c) Limitation year is the calendar year.

(3) **Basic IRC section 415(b) limitation.** Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415(b)(1)(A), subject to the applicable adjustments in IRC section 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from this plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(4) **Annual benefit definition.** For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to the after-tax employee contributions (except pursuant to IRC section 415(n)) and to all rollover contributions as defined in IRC section 415(b)(2)(A). The "benefit attributable" shall be determined in accordance with treasury regulations.

(5) **Adjustments to basic IRC section 415(b) limitation for form of benefit.** If the benefit under this plan is other than a straight life annuity with no ancillary benefit, then the benefit shall be adjusted so that it is the equivalent of the straight life annuity, using factors prescribed in treasury regulations.

If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the IRC section 415(b) limit applicable at the annuity starting date or adjusting the form of

benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefits as follows:

(a) For a benefit paid in a form to which IRC section 417(e)(3) does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code).

(b) For a benefit paid in a form to which IRC section 417(e)(3) applies (a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code).

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the

thirty-year treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

**(6) Benefits not taken into account for IRC section 415(b) limit.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity; and

(c) Any other benefit not required under IRC section 415 (b)(2) and treasury regulations thereunder to be taken into account for purposes of the limitation of IRC section 415 (b)(1).

**(7) Other adjustments in IRC section 415(b) limitation.**

(a) In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

(b) In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in (a) of this subsection shall not apply.

(c) The reductions provided for in (a) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

**(8) Less than ten years of service adjustment for IRC section 415(b) limitation.** The maximum retirement benefits payable to any member who has completed less than ten years of service shall be the amount determined under subsection (1) of this section multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

**(9) Effect of cost-of-living adjustment (COLA) without a lump sum component on IRC section 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

(a) A member's applicable IRC section 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic COLAs;

(b) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for

COLA increases until such time as the benefit plus the accumulated increases are less than the IRC section 415(b) limit; and

(c) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic COLA increases, shall be tested under the then applicable IRC section 415(b) limit including any adjustment to the IRC section 415 (b)(1)(A) dollar limit under IRC section 415(d), and the treasury regulations thereunder.

**(10) Effect of COLA with a lump sum component on IRC section 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration COLA increases as required by IRC section 415(b) and applicable treasury regulations.

**(11) IRC section 415(c) limit.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars, as adjusted pursuant to IRC section 415(d), or one hundred percent of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the IRC section 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415(c)-2, or successor regulation; provided; however, that member contributions picked up under IRC section 414(h) shall not be treated as compensation.

(c) Unless another definition of compensation that is permitted by Treasury Regulation section 1.415(c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051 (a)(3), and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401 (a)(2)).

(i) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC sections 125(a), 402 (e)(3), 402 (h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132 (f)(4).

(ii) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of

the limitation year that includes the date of the employee's severance from employment if:

(A) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(B) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(iii) Back pay, within the meaning of Treasury Regulation section 1.415 (c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(iv) Beginning January 1, 2009, to the extent required by IRC sections 3401(h) and 414 (u)(2), an individual receiving a differential wage payment (as defined in section 3401 (h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**(12) Service purchases under IRC section 415(n).** Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:

(a) The requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(b) The requirements of IRC section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(c) For purposes of applying this subsection, the plan will not fail to meet the reduced limit under IRC section 415 (b)(2)(C) solely by reason of this subsection and will not fail to meet the percentage limitation under IRC section 415 (c)(1)(B) solely by reason of this subsection.

(d) For purposes of this subsection the term "permissive service credit" means service credit:

(i) Recognized by the plan for purposes of calculating a member's benefit under the plan;

(ii) Which such member has not received under the plan; and

(iii) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding

(d)(ii) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(e) The plan will fail to meet the requirements of this section if:

(i) More than five years of nonqualified service credit are taken into account for purposes of this subsection; or

(ii) Any nonqualified service credit is taken into account under this subsection before the member has at least five years of participation under the plan.

(f) For purposes of (e) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(i) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC section 415 (k)(3));

(ii) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in (f)(i) of this subsection) of an education organization described in IRC section 170 (b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) Service as an employee of an association of employees who are described in (f)(i) of this subsection; or

(iv) Military service, other than qualified military service under section 414(u), recognized by the plan.

(g) In the case of service described in (f)(i), (ii), or (iii) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(h) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC section 403 (b)(13)(A) or 457 (e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(i) The limitations of (e) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(ii) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(i) For an eligible member, the limitation of IRC section 415 (c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (12)(i), an eligible member is an individual who first became a member in the plan before January 1, 1998.

**(13) Modification of contributions for IRC sections 415(c) and 415(n) purposes.** Notwithstanding any other



provision of law to the contrary, the department may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

(a) If the law allows, the department may establish either a lump sum or a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC sections 415(c) or 415(n).

(b) If payment pursuant to (a) of this subsection will not avoid a contribution in excess of the limits imposed by IRC sections 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

**(14) Repayments of cash outs.** Any repayment of contributions, including interest thereon, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the state or a local government within the state shall not be taken into account for purposes of IRC section 415, in accordance with applicable treasury regulations.

**(15) Participation in other qualified plans: Aggregation of limits.**

(a) The IRC section 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC section 414(j) maintained by the member's employer shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(b) The IRC section 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC section 414(i) maintained by the member's employer shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

**(16) Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's defined benefit component under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans; and next, by reducing the member's defined contribution component benefit under any defined benefit plans; and next by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided; however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

#### NEW SECTION

**WAC 415-02-750 How does the department comply with Internal Revenue Code distribution rules?** (1) All

benefits paid from the retirement plan shall be distributed in accordance with a reasonable and good faith interpretation of the requirements of section 401 (a)(9) of the Internal Revenue Code, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions:

(a) Distribution of a member's benefit must begin by the later of April 1st following the calendar year in which a member attains age seventy and one-half or April 1st of the year following the calendar year in which the member retires;

(b) Unless distributed in a lump sum, the member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and designated beneficiary;

(c) The life expectancy of a member or the member's spouse or beneficiary may not be recalculated after the benefits commence;

(d) If a member dies before the required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31st of the calendar year following the calendar year of the member's death; or

(ii) Distributed within five years of the member's death.

(e) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of section 401 (a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation section 1.401 (a)(9)-6, Q&A 2; and

(f) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

(2) The retirement system pursuant to a valid dissolution order as defined in RCW 41.50.500 may establish separate benefits for a member and nonmember.

(3) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in section 401 (a)(9)(G) of the Internal Revenue Code and Treasury Regulation section 1.401-1 (b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the plan.

#### NEW SECTION

**WAC 415-02-751 How does the department comply with Internal Revenue Code rollover rules?** (1) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401 (a)(31) of the federal Internal Revenue Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the distributee with the following exceptions:

(a) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under section 401 (a)(9) of the Internal Revenue Code;

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than two hundred dollars during the year.

Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408 (a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(3) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the Internal Revenue Code;

(b) An individual retirement annuity described in section 408(b) of the Internal Revenue Code;

(c) An annuity plan described in section 403(a) of the Internal Revenue Code;

(d) A qualified trust described in section 401(a) of the Internal Revenue Code;

(e) Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code;

(f) Effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into such 457(b) plan from this plan; or

(g) Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(4) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former

employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401 (a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

#### NEW SECTION

#### **WAC 415-02-752 How does the department comply with Internal Revenue Code compensation limit rules? (1)**

As used in this section, the term "eligible member" means a person who first became a member of the plan prior to the plan year beginning after December 31, 1995. Pursuant to section 13212 (d)(3)(A) of OBRA '93, and the regulations issued under that section, eligible members are not subject to the limits of section 401 (a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the plan for eligible members shall be the maximum amount allowed by the plan to be so used on July 1, 1993. The limits referenced in subsections (2) and (3) of this section apply only to years beginning after December 31, 1995, and only to individuals who first became plan members in plan years beginning on and after January 1, 1996.

(2) Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member (who is not an eligible member) which exceeds one hundred fifty thousand dollars (as adjusted for cost-of-living increases under section 401 (a) (17)(B) of the Internal Revenue Code) shall be ignored for purposes of computing employee and employer contributions to or benefits due from the plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of section 414 (g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen before the close of the year.

(3) Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member (who is not an eligible member) which exceeds two hundred thousand dollars (as adjusted for cost-of-living increases in accordance with section 401 (a)(17)(B) of the Internal Revenue Code) may not be used in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If

the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is used in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The determination period for testing contributions is the calendar year.

NEW SECTION

**WAC 415-02-753 How does the department comply with Internal Revenue Code vesting rules?** (1) In addition to protections provided by state law, a plan member shall be one hundred percent vested in all plan benefits upon attainment of the normal retirement age and service requirements.

(2) A plan member shall be one hundred percent vested in his or her accumulated contributions at all times.

(3) The plan may only be terminated by action of the legislature and employer contributions must be paid in accordance with state law. In the event the legislature took action to terminate a plan, in whole or in part, or discontinue employer contributions to the plan, any applicable state law and constitutional protections would apply to accrued benefits. In such event, pursuant to federal rules, a plan member's accrued benefit under the plan in nonforfeitable to the extent funded.

NEW SECTION

**WAC 415-02-754 How does the department comply with Internal Revenue Code definitely determinable benefit rules?** (1) In conformity with section 401 (a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

(2) In conformity with section 401 (a)(25) of the Internal Revenue Code, actuarial equivalence for purposes of calculating benefit options is determined using the following assumptions and without employer discretion:

Interest rate: Five percent; and

(a) For years prior to January 1, 2009, the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62; or

(b) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code, Notice 2008-85, or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code.

NEW SECTION

**WAC 415-02-755 How does the department comply with Internal Revenue Code USERRA rules?** Effective December 12, 1994, notwithstanding any other provisions of

state law, contributions, benefits and service credit with respect to qualified military service are governed by section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.

Effective with respect to deaths occurring on and after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of Title 38 of the United States Code), to the extent required by section 401 (a)(37) of the Internal Revenue Code, survivors of a member of a retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified service must be counted for vesting purposes.

NEW SECTION

**WAC 415-02-756 How does the department comply with Internal Revenue Code exclusive benefit rules?** No assets of the retirement system may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 415-106-050 How does the department comply with Internal Revenue Code distribution rules?
- WAC 415-106-060 What are the IRS limitations on maximum benefits and maximum contributions?
- WAC 415-106-070 Assets for exclusive benefit of members and beneficiaries.
- WAC 415-108-181 How does the department comply with Internal Revenue Code distribution rules?
- WAC 415-108-182 What are the IRS limitations on maximum benefits and maximum contributions?
- WAC 415-108-183 Assets for exclusive benefit of members and beneficiaries.
- WAC 415-110-050 How does the department comply with Internal Revenue Code distribution rules?
- WAC 415-110-060 What are the IRS limitations on maximum benefits and maximum contributions?

WAC 415-110-070	Assets for exclusive benefit of members and beneficiaries.
WAC 415-112-050	How does the department comply with Internal Revenue Code distribution rules?
WAC 415-112-060	What are the IRS limitations on maximum benefits and maximum contributions?
WAC 415-112-070	Assets for exclusive benefit of members and beneficiaries.

vide comments on the revised structure, the department will conduct a second public hearing prior to adopting the rules. Rules are needed to establish enforceable standards to reduce the risk of substandard care to the public.

Statutory Authority for Adoption: RCW 70.168.050 and 70.168.060.

Statute Being Implemented: Chapters 18.73, 18.71 RCW and RCW 70.24.260.

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, 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.

October 18, 2010

B. White

for Mary C. Selecky

Secretary

**WSR 10-21-070**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed October 18, 2010, 9:04 a.m.]

Supplemental Notice to WSR 10-08-092.

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, supplemental notice for emergency medical services (EMS) and trauma system (TS) prehospital rules and standards for training, licensure, and verification, and prehospital [prehospital] system administration.

Hearing Location(s): Washington State Department of Health, Town Center 1 Building, 101 Israel Road S.E., Room 163, Tumwater, WA 98501, on November 23, 2010, at 9:00 a.m.

Date of Intended Adoption: November 30, 2010.

Submit Written Comments to: Michael Lopez, P.O. Box 47853, Olympia, WA 98504-7853, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2830, by November 23, 2010.

Assistance for Persons with Disabilities: Contact Denece Thomas by November 22, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department determined that it would be beneficial to EMS licensees and stakeholders to restructure the format of the proposed rules filed April 6, 2010, to provide clarity of the requirements. The purpose of the proposed supplemental rules is to provide EMS stakeholders, licensees, and stakeholders an opportunity to review and comment on the proposed structure of the rules before adoption. The proposed rule language and intent has not changed substantively and new sections with tables have been added for clarity.

Reasons Supporting Proposal: The proposed rules reflect changes in EMS industry standards and practice and objectives recommended by the governor's steering committee for EMS and TS in its 2006 strategic plan. The department also decided to restructure the format of the proposed rules in order to make the language clearer for stakeholders. In order for the stakeholders to have an opportunity to pro-

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.

~~((3))~~ (2) This chapter does not contain detailed procedures to implement the state EMS/TC system. Requests for procedures, guidelines, or any publications referred to in this chapter must be obtained 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 and the definitions in this section apply ((to)) throughout this chapter unless the context clearly requires otherwise. 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.))~~

(1) "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.))~~

(2) "Adolescence" means the period of physical and psychological development from the onset of puberty to maturity, approximately twelve to eighteen years of age.

(3) "Advanced cardiac life support (ACLS)" means a course that includes the education and clinical interventions used to treat cardiac arrest and other acute cardiac related problems.

(4) "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.

(5) "Advanced first aid((;)) ((for the purposes of RCW 18.73.120, 18.73.150, and 18.73.170.)) means ((a course of at least twenty-four hours of instruction, which includes at least:

- CPR;
- Airway management;
- Trauma/wound care;
- Immobilization))

an advanced first-aid course prescribed by the American Red Cross or its equivalent.

(6) "Advanced life support (ALS)" means invasive emergency medical services requiring the advanced medical treatment skills of a paramedic.

(7) "Agency" means an aid or ambulance service licensed by the department to provide prehospital care or interfacility ambulance transport.

(8) "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.))

(9) "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.))~~

(10) "Ambulance service" means an agency licensed by the department to operate one or more ground or air ambulances. ((Ground ambulance service operation must be con-

~~sistent with regional and state plans. Air ambulance service operation must be consistent with the state plan.))~~

(11) "Approved" means approved by the department of health.

(12) "ATLS" means advanced trauma life support, a course developed by the American College of Surgeons.

(13) "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.

(14) "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.))~~

(15) "Basic life support (BLS)" means emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

(16) "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.

(17) "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.

(18) "BP" means blood pressure.

(19) "Certification" means the department recognizes that an individual has ((met)) proof of meeting predetermined qualifications, and authorizes the individual to perform certain procedures.

(20) "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, ((Heensing and certification committee,)) or regional or local EMS/TC councils.

(21) "Continuing medical education (((CME))) method" ((or "continuing medical education method" or "CME") or ((") (CME method("is the completion of))) means prehospital EMS recertification education ((requirements)) required after initial ((prehospital)) EMS certification to maintain and enhance skill and knowledge. The CME method requires the successful completion of ((a written)) department-approved knowledge and practical skill((s)) certification examinations to recertify.

(22) "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 do not conflict with regional patient care procedures.

(23) "CPR" means cardiopulmonary resuscitation.

(24) "Critical care transport" means the interfacility transport of a patient whose condition requires care by a physician, RN or a paramedic who has received special training and approval by the MPD.

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

(26) "Dispatch" means to identify and direct an emergency response unit to an incident location.

(27) "Diversion" (~~for trauma care~~) means the EMS transport of a (~~trauma~~) patient past the usual receiving (~~trauma service~~) facility due to temporary unavailability of (~~trauma~~) care resources at the usual receiving (~~trauma service~~) facility.

(28) "E-code" means external cause code, an etiology included in the International Classification of Diseases (ICD).

(29) "ED" means emergency department.

(30) "Emergency medical procedures" means the skills that are performed within the scope of practice of EMS personnel certified by the department under chapters 18.71 and 18.73 RCW.

(31) "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 services and trauma care system includes prevention activities, prehospital care, hospital care, and rehabilitation.

(32) "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.

(33) "Emergency medical technician (EMT)" means a person who has been examined and certified by the department as an EMT to render prehospital EMS care as defined in RCW 18.73.081.

(34) "EMS" means emergency medical services.

(35) "EMS provider" means an individual certified by the department or the University of Washington School of Medicine under chapters 18.71 and 18.73 RCW to provide prehospital emergency response, patient care, and transport.

(36) "EMS/TC" means emergency medical services and trauma care.

(~~"EMT" means emergency medical technician.~~)

(37) "General surgeon" means a licensed physician who has completed a residency program in surgery and who has surgical privileges delineated by the facility.

(38) "ICD" means the international classification of diseases, a coding system developed by the World Health Organization.

(~~"ILS" means intermediate life support.~~)

(39) "Injury prevention" means any combination of educational, legislative, enforcement, engineering and emergency response initiatives used to reduce the number and severity of injuries.

(40) "Interfacility transport" means medical transport of a patient between recognized medical treatment facilities requested by a licensed health care provider.

(41) "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.)~~

(42) "IV" means (~~intravenous.~~

~~"Licensing and certification committee (L&C committee)" means the emergency medical services licensing and certification advisory committee created by RCW 18.73.040) a fluid or medication administered directly into the venous system.~~

(43) "Local council" means a local EMS/TC council authorized by RCW 70.168.120(1).

(44) "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.

(45) "Medical control" means (~~(MPD authority to direct the)~~) oral or written direction of medical care (~~(provided by)~~) that certified prehospital EMS personnel (~~(in the prehospital EMS system)~~) provide to patients of all age groups. The oral or written direction is provided by the MPD or MPD delegate.

(46) "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.

(47) "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.

(48) "MPD delegate" means a physician appointed by the MPD and recognized and approved by the department. An MPD delegate may be:

(a) A prehospital training physician who supervises specified aspects of training EMS personnel; or

(b) A prehospital supervising physician who provides on-line medical control of EMS personnel.

(49) "Ongoing training and evaluation program (OTEP)" (~~(or "ongoing training and evaluation program (OTEP)" or "OTEP" or "OTEP program" or "OTEP method" is)~~) means a continuous program of prehospital EMS education for EMS personnel (~~(that)~~) after completion of initial training. 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)~~) evalua-

tions of the knowledge and skills covered in the topic content following ((completion of)) each topic presentation ((to determine student competence of topic content)).

(50) "PALS" means a pediatric advanced life support((; a)) course ((developed by the American Heart Association)).

(51) "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, examined and certified by the department under chapter 18.71 RCW.~~

(52) "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.

(53) "PEPP" means pediatric education for prehospital professionals.

(54) "PHTLS" means a prehospital trauma life support course.

(55) "Physician" means an individual licensed under the provisions of chapters 18.71 or 18.57 RCW.

(56) "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.

(57) "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.

(58) "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" means providers of prehospital care or interfacility ambulance transport.))~~

(59) "Prehospital index (PHI)" means a scoring system used to ~~((activate))~~ trigger activation of a hospital trauma resuscitation team.

(60) "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 meet or exceed statewide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

(61) "Prehospital provider" means EMS provider.

(62) "Prehospital trauma care service~~((s))~~" means ~~((agencies))~~ an agency that ~~((are))~~ is verified by the department to provide prehospital trauma care.

(63) "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).

(64) "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.

(65) "Quality improvement (QI)" or ~~((("QI" or))~~ "quality assurance (QA)" means a process/program to monitor and evaluate care provided in ~~((trauma services and))~~ the EMS/TC system~~((s))~~.

(66) "Regional council" means the regional EMS/TC council established by RCW 70.168.100.

(67) "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 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 are consistent with the transfer procedures in chapter 70.170 RCW. Patient care procedures do not relate to direct patient care.

(68) "Regional plan" means the plan defined in WAC 246-976-960 (1)(b) that has been approved by the department.

(69) "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.))~~

(70) "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.

(71) "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.

(72) "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:

(\*) (a) For physicians, by the facility's medical staff;

(\*) (b) For registered nurses, by the facility's department of nursing;

(\*) (c) For physician assistants and advanced registered nurse practitioners, as defined in the facility's bylaws.

~~("Specialized training" means approved training of certified EMS personnel to use a skill, technique, or equipment that is not included in the standard course curriculum.)~~

(73) "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).

(74) "Steering committee" means the EMS/TC steering committee created by RCW 70.168.020.

(75) "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 ~~((+))~~ and two thousand people per square mile.

(76) "System response time" for trauma means the interval from discovery of an injury until the patient arrives at a designated trauma facility. It includes:

(a) "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;))~~ (b) "System access time":

The interval from discovery of the injury to call received by 9-1-1 public safety answering point (PSAP).

(c) "Call processing time": The interval from the time the PSAP answers the call and the time it takes the PSAP to:

- (i) Process the call, including caller interrogation; and
- (ii) Provide the call interrogation information to the EMS dispatcher.

(d) "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.

(e) "En route time": The time interval from the time the agency is notified until the EMS vehicle is en route to the call.

(f) "Arrival time": The time interval from when the EMS vehicle is en route until arrival at the incident scene.

(g) "On scene time": The time interval from arrival at the scene until the EMS transport vehicle departs the incident scene.

(h) "Transport time": The time interval from when the EMS transport vehicle leaves the incident scene until arriving at the health care facility.

(77) "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.)~~

(78) "Trauma rehabilitation coordinator" means a person designated to facilitate early rehabilitation interventions and the trauma patient's access to a designated rehabilitation center.

(79) "Trauma response area" means a service coverage zone identified in an approved regional plan.

(80) "Trauma service" means the clinical service within a hospital or clinic that is designated by the department to provide care to trauma patients.

(81) "Urban" means:

(\*) (a) An incorporated area over thirty thousand; or

(\*) (b) An incorporated or unincorporated area of at least ten thousand people and a population density over two thousand people per square mile.

(82) "Verification" means a prehospital agency is capable of providing verified trauma care services and is credentialed under chapters 18.73 and 70.168 RCW.

(83) "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) To apply for initial department approval as an EMS training program, applicants shall meet the requirements in Table A of this section.

**Table A  
EMS Training Program Requirements For Approval**

REQUIREMENTS	
Organization type	<p>Must be one of the following:</p> <ul style="list-style-type: none"> <li>• A local EMS and trauma care council or a county office responsible for EMS training for the county. This includes county agencies established by ordinance and approved by the MPD to coordinate and conduct EMS programs;</li> <li>• A regional EMS and trauma care council providing EMS training throughout the region;</li> <li>• An accredited institution of higher education; or</li> </ul>



REQUIREMENTS	
	<ul style="list-style-type: none"> <li>• A private educational business, licensed as a private vocational school.</li> </ul>
Optional organization	<ul style="list-style-type: none"> <li>• If the organizations listed above do not exist or are unable to provide an EMS training program, the local EMS and trauma care council may recommend to the department another entity that is able to provide training.</li> <li>• In the absence of a local EMS council, the regional EMS and trauma care council may provide such recommendation.</li> <li>• Initial training courses conducted for licensed EMS agencies under the oversight of a department-approved EMS training program.</li> </ul>
Need for new training program	Applicant must demonstrate need for new or additional EMS training programs.
Training program application	Complete a DOH EMS training program application on forms provided by the department indicating the levels of EMS training the program wants to conduct.
Class room and laboratory	Provide a description of classroom and laboratory facilities.
Training equipment and supplies	Provide a list of equipment and supplies on hand (or accessible) for use in the training program.
Course enrollment	For each level of EMS training applying for, provide a description of: <ul style="list-style-type: none"> <li>• Course entry prerequisites;</li> <li>• Selection criteria; and</li> <li>• The process used to screen applicants.</li> </ul>
Student handbook	Provide a student handbook for each level of EMS training applied for that provides: <ul style="list-style-type: none"> <li>• Training program policies, including minimum standards to enter training consistent with this chapter;</li> <li>• Course requirements and minimum standards required for successful completion of examinations, clinical/field internship rotations, and the EMS course;</li> <li>• Initial certification requirements the student must meet to become certified as identified in WAC 246-976-141; and</li> </ul>

REQUIREMENTS	
	<ul style="list-style-type: none"> <li>• A listing of clinical and field internship sites available.</li> </ul>

(2) Approved training programs shall meet the requirements in Table B of this section.

**Table B  
EMS Training Program Requirements**

REQUIREMENTS	
General	An approved training program must: <ul style="list-style-type: none"> <li>• Conduct courses following department requirements;</li> <li>• In conjunction with the course instructor, ensure course applicants meet the course application requirements in WAC 246-976-041;</li> <li>• 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;</li> <li>• For the purposes of program and course evaluation, provide to the department, county MPD, or MPD delegate access to all course related materials;</li> <li>• Conduct examinations over course lessons and other Washington state required topics; and</li> <li>• Participate in EMS and trauma care council educational planning.</li> </ul>
Certification examination	Coordinate activities with the department-approved certification examination provider, including: <ul style="list-style-type: none"> <li>• Registering the training program;</li> <li>• Assisting students in registering with the examination provider;</li> <li>• Providing verification of cognitive knowledge and psychomotor skills for students successfully completing the EMS course; and</li> <li>• Assisting students in scheduling the examination.</li> </ul>
Student records	Maintain student records for a minimum of four years.
Evaluation	Monitor and evaluate the quality of instruction for the purposes of quality improvement, including course examination scores for each level taught.

REQUIREMENTS	
Reporting	<p>Submit an annual report to the department which includes:</p> <ul style="list-style-type: none"> <li>• Annual, overall certification examination results;</li> <li>• A summary of complaints against the training program and what was done to resolve the issues;</li> <li>• Quality improvement activities including a summary of issues and actions to improve training results.</li> </ul>

(3) To apply for reapproval, an EMS training program must meet the requirements in Table C of this section.

**Table C  
EMS Training Program Reapproval**

REAPPROVAL	
Requirements	<p>An EMS training program must be in good standing with the department and:</p> <ul style="list-style-type: none"> <li>• Have no violations of the statute and rules;</li> <li>• Have no pending disciplinary actions;</li> <li>• Maintain an overall pass rate of seventy-five percent on department-approved state certification examinations.</li> </ul>
Reapplication	<p>Complete:</p> <ul style="list-style-type: none"> <li>• The requirements in Tables A and B of this section; and</li> <li>• Submit an updated EMS training program application to the department at least six months prior to the program expiration date.</li> </ul>

(4) Training program approval is effective on the date the department issues the certificate. Approval must be renewed every five years. The expiration date is indicated on the approval letter.

(5) 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) Falsification of EMS course documents; or
- (iv) 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 Initial EMS training course requirements and course approval.** To be approved to conduct each initial EMS training course, an EMS training program must:

- (1) Meet the requirements identified in Table A of this section;
- (2) Submit a completed EMS course training application on forms provided by the department, postmarked or received by the department at least three weeks prior to the course start date identified on the application;
- (3) Have the approval of the training program's medical director and the recommendation for approval from the county medical program director; and
- (4) Have written course approval from the department.

**Table A  
Initial EMS Training Course Requirements**

REQUIREMENTS
<p><b>The EMS training program must:</b></p> <ul style="list-style-type: none"> <li>• With the course SEI or lead instructor, ensure course applicants meet the course application requirements in WAC 246-976-041;</li> <li>• Supply each student with a student handbook as specified in WAC 246-976-022;</li> <li>• Provide each student, prior to beginning their field internship rotations, current, county specific, county medical program director field protocols and any specific information they will need while completing the internship; and</li> <li>• Use field internship preceptors who monitor and evaluate students in a standard and consistent manner.</li> </ul>
<p><b>EMS course SEI or lead instructor:</b> The EMS course instructors identified in this section, under the general supervision of the county medical program director (MPD) are responsible:</p> <ul style="list-style-type: none"> <li>• For the overall conduct of the course, quality of instruction, and administrative paperwork;</li> <li>• For following the course curricula or instructional guidelines for the level of training conducted;</li> <li>• For evaluating the students' knowledge and practical skills throughout the course;</li> </ul>

<b>REQUIREMENTS</b>
<ul style="list-style-type: none"> <li>For providing on-site instruction during each class and to supervise any other course instruction, unless arrangements have been made for another SEI or lead instructor to supervise. When using other instructors, the SEI or lead need not be physically present but must be immediately available for consultation.</li> </ul>
<p><b>Emergency medical responder (EMR) and EMT courses:</b></p> <p>The course instructor must be a department-approved SEI. An SEI candidate may instruct under the supervision of the SEI for the purpose of demonstrating instructional proficiency to the SEI.</p>
<p><b>AEMT courses:</b></p> <p>The course instructor for advanced EMT courses must be:</p> <ul style="list-style-type: none"> <li>An AEMT that is recognized by the department as an SEI; or</li> <li>A paramedic; or</li> <li>Program instructional staff when training is provided by an accredited paramedic training program; and</li> <li>Approved by the county medical program director.</li> </ul>
<p><b>Paramedic/EMT-paramedic courses:</b></p> <ul style="list-style-type: none"> <li>The lead instructor for paramedic courses must have proof of clinical experience at the paramedic level or above; and</li> <li>Must have the approval of the training program's medical director and the county medical program director.</li> </ul>
<p><b>EMS Evaluators:</b></p> <ul style="list-style-type: none"> <li>Evaluators must be MPD and department-approved EMS evaluators;</li> <li>EMS evaluators for EMR and EMT courses must be certified at the EMT level or higher;</li> <li>EMS evaluators for advanced EMT courses must be certified at the AEMT or paramedic level.</li> </ul>
<p><b>Other instructors that may instruct individual course lessons when knowledgeable and skilled in the topic, approved by the MPD and under supervision of the SEI or lead instructor:</b></p> <ul style="list-style-type: none"> <li>Guest instructors;</li> <li>Department-approved EMS evaluators, to assist the SEI or lead instructor in the instruction of the course, who must be certified at or above the level of education provided; and</li> <li>The MPD, MPD delegate or other physicians approved by the MPD.</li> </ul>
<p><b>Course curriculum or instructor guidelines:</b></p> <p><i>The National Emergency Medical Services Training Standards - Emergency Medical Responder Instructor Guidelines</i> published January 2009 for the level of instruction; and</p> <ul style="list-style-type: none"> <li>Instruction in multicultural health appropriate to the level of training; and</li> <li>A department-approved, four hour infectious disease training program that meets the requirements of chapter 70.24 RCW; and</li> <li>Other training consistent with MPD protocols.</li> </ul>
<p><b>EMS course practical skill evaluations:</b></p> <p>SEIs or department-approved EMS evaluators conduct psychomotor evaluations during the course and provide corrective instruction for students. For EMR and EMT courses, evaluators must be certified as an EMT or higher level.</p>
<p><b>End of course practical skill examinations:</b></p> <p>Department-approved SEIs or department-approved EMS evaluators must conduct practical skill examinations. For EMR and EMT courses, evaluators must be certified at the EMT level or higher.</p>

#### NEW SECTION

**WAC 246-976-024 EMS specialized training.** (1) MPDs may submit a proposal to conduct pilot training programs to determine the need for skills, techniques, or equipment that is not included in standard course curricula/instructional guidelines. A pilot program allows the MPD to conduct field research to determine:

- (a) The effectiveness of the training;
- (b) EMS provider knowledge and skills competency;

(c) EMS provider ability to provide proper patient care after the training.

(2) To request approval of a pilot training program, the MPD must submit a proposal which includes the following information to the department for review:

- (a) A needs statement describing what the proposed pilot will address;
- (b) The level of certified EMS provider who will be participating in the pilot training;
- (c) The length of the pilot project;

- (d) The method by which the pilot project will be evaluated;
  - (e) Course curriculum/lesson plans;
  - (f) Type of instructional personnel required to conduct the pilot training;
  - (g) Course prerequisites;
  - (h) Criteria for successful course completion, including student evaluations and/or examinations; and
  - (i) Prehospital patient care protocols for use in the pilot program.
- (3) The department will:
- (a) Review the request and training plan;
  - (b) Consult with the prehospital technical advisory committee to determine the need for, and the benefits of the requested training throughout the state.
  - (c) Based on recommendation of the prehospital TAC, approve or deny the request for the pilot program.
- (4) The MPD must report the results of the pilot training to the department and the prehospital TAC.
- (5) The department and the prehospital TAC will review the results of the pilot training project to determine whether or not the new training will be implemented statewide.
- (6) If the pilot training is approved for statewide use, the department will adopt it as specialized training and notify all 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) approval.** ~~((1) Responsibilities.~~ The SEI is responsible for the overall instructional quality of initial first responder or EMT-basic courses, under the general supervision of the medical program director (MPD). The SEI must conduct courses following department-approved curricula identified in WAC 246-976-021. The SEI candidate shall document the completion of requirements for initial and renewal recognition on forms provided by the department.

~~(2) Initial recognition.~~ 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 EMT or higher EMS certification;~~
- ~~(ii) At least three years prehospital EMS experience as an 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;~~
- ~~(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;~~

~~(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).~~

~~(b) Submission of prerequisites.~~ Candidates must submit proof of successful completion of the prerequisites to the department.

~~(i) Candidates meeting the prerequisites will be issued the IRAP by the department.~~

~~(ii) 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 EMT-basic course students of course entry prerequisites;~~

~~(iii) Assure students selected for admittance to the course meet DOH 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 under the supervision of the course lead SEI, utilizing the EMT-basic training course curriculum identified in WAC 246-976-021, and be evaluated on the instruction of each of the following lessons:~~

~~(A) Lesson 1-2—Well Being of the EMT-Basic, including Infectious Disease Prevention for EMS Providers, Revised 10/1997 (available from the department of health, office of emergency medical and trauma prevention);~~

~~(B) Lesson 2-1—Airway;~~

~~(C) Lesson 3-2—Initial Assessment;~~

~~(D) Lesson 3-3—Focused History and Physical Exam: Trauma;~~

~~(E) Lesson 3-4—Focused History and Physical Exam: Medical;~~

~~(F) Lesson 3-5—Detailed Physical Exam;~~

~~(G) Lesson 3-6—Ongoing Assessment;~~

~~(H) Lesson 3-9—Practical Lab: Patient Assessment;~~

~~(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):~~

~~(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;~~

~~(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 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 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:~~

~~(i) Coordinate and perform as the lead SEI for one initial first responder or EMT-basic course including the supervision of all practical skills evaluations;~~

~~(ii) Receive performance evaluations from a currently recognized SEI, on two candidate instructed first responder or EMT-basic course lessons;~~

~~(iii) 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 approved SEI workshop.~~

~~(e) **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.~~

~~(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.~~

~~(iv) Successful completion of an examination developed and administered by the department on current EMS training and certification statutes, WAC and the UDA.~~

~~(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.**—Recognition as a 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:~~

~~(i) Violations of chapter 18.130 RCW, the Uniform Disciplinary Act;~~

~~(ii) A failure to:~~

~~(A) Maintain EMS certification;~~

~~(B) Update the following personal information with DOH 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;~~

~~(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;~~

~~(I) Maintain security on all department 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.)~~ (1) **Responsibilities and requirements.**

(a) The SEI is responsible for the overall instructional quality and the administrative paperwork associated with initial EMR or EMT courses, under the general supervision of the MPD.

(b) The SEI must:

(i) Follow department-approved curricula/instructional guidelines identified in WAC 246-976-023;

(ii) Ensure course applicants meet the course application requirements in WAC 246-976-041; and

(2) To become an approved SEI, an EMS provider must meet the requirements identified in Table A of this section.

Table A  
Requirements For Initial Senior EMS Instructor Approval

<b><u>REQUIREMENTS</u></b>
<p><b><u>Prerequisites:</u></b></p> <p><u>Candidates for initial recognition must submit proof of successful completion of the following prerequisites to the department. Candidates meeting the prerequisites will be issued the <i>Initial Recognition Application Procedures (IRAP) for Senior EMS Instructors</i>, which include the <i>Initial Senior EMS Instructor Application and Agreement</i>, instructor objectives, instructions and forms necessary for initial recognition:</u></p> <ul style="list-style-type: none"> <li><u>• Current Washington state certification at the EMT or higher EMS certification level;</u></li> <li><u>• At least three years prehospital EMS experience at the EMT or higher EMS certification level, with at least one recertification;</u></li> <li><u>• Approval as an EMS evaluator as identified in WAC 246-976-161;</u></li> <li><u>• Current recognition as a health care provider level CPR instructor from a nationally recognized training program for CPR, foreign body airway obstruction (FBAO), and defibrillation;</u></li> <li><u>• Successful completion of an instructor training course by the U.S. Department of Transportation, National Highway Traffic Safety Administration, an instructor training course from an accredited institution of higher education, or equivalent instructor course approved by the department;</u></li> <li><u>• Pass an examination developed and administered by the department on current EMS training and certification statutes, Washington Administrative Code (WAC), the Uniform Disciplinary Act (UDA) and course administration.</u></li> </ul>
<p><b><u>Candidate objectives:</u></b></p> <p><u>Candidates must successfully complete the IRAP under the supervision of a currently recognized SEI.</u></p> <p><u>As part of an initial EMT course, the candidate must demonstrate to the course lead SEI the knowledge and skills necessary to complete the following instructor objectives:</u></p> <ul style="list-style-type: none"> <li><u>• Accurately complete the course application process and meet application timelines;</u></li> <li><u>• Notify potential EMT course applicants of course entry prerequisites;</u></li> <li><u>• Assure that applicants selected for admittance to the course meet department training and certification prerequisites;</u></li> <li><u>• Maintain course records;</u></li> <li><u>• Track student attendance, scores, quizzes, and performance, and counsel/remediate students as necessary;</u></li> <li><u>• Assist in the coordination and instruction of one entire EMT course, including practical skills, under the supervision of the course lead SEI using the EMT training course instructor guidelines identified in WAC 246-976-023, and be evaluated on the instruction of each of the following sections/lessons:</u> <ul style="list-style-type: none"> <li><u>= Preparatory section, including <i>Infectious Disease Prevention for EMS Providers</i>, Revised 01/2009;</u></li> <li><u>= Airway section;</u></li> <li><u>= Assessment section;</u></li> <li><u>= Pharmacology section;</u></li> <li><u>= Medical section, Cardiovascular and Respiratory lessons;</u></li> <li><u>= Special Patient Populations section, Obstetrics, Neonatal Care, and Pediatrics lessons;</u></li> </ul> </li> </ul>

<b>REQUIREMENTS</b>
<ul style="list-style-type: none"> <li>- <u>Trauma section, Head, Facial, Neck and Spine Trauma and Chest Trauma lessons;</u></li> <li>- <u>EMS Operations section, Vehicle Extrication, Incident Management, and Multiple Casualty Incidents lessons; and</u></li> <li>- <u>Multicultural Awareness component.</u></li> </ul> <ul style="list-style-type: none"> <li>• <u>Coordinate and conduct an EMT final end of course comprehensive practical skills evaluation.</u></li> </ul>
<p><b>Candidate evaluation:</b>  <u>Performance evaluations must be conducted by an SEI for each instructor objective performed by the candidate on documents identified in the IRAP. These documents consist of:</u></p> <ul style="list-style-type: none"> <li>• <u>An evaluation form, to evaluate lesson instruction objectives performed by the candidate;</u></li> <li>• <u>A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate; and</u></li> <li>• <u>An objective completion record, to document successful completion of each instructor objective performed by the candidate.</u></li> </ul>
<p><b>Application:</b>  <u>Submit the following documents to the county MPD to obtain a recommendation:</u></p> <ul style="list-style-type: none"> <li>• <u>The original initial SEI application/agreement, signed by the candidate ; and</u></li> <li>• <u>The original completed IRAP, all objective completion records, and evaluation documents.</u></li> </ul> <p><u>The completed application must be submitted to the department including:</u></p> <ul style="list-style-type: none"> <li>• <u>The original application signed by both the candidate and the MPD;</u></li> <li>• <u>The original completed IRAP, all objective completion records, and evaluation documents.</u></li> </ul>

(3) SEI approval is effective on the date the department issues the certification card. Certifications must be renewed every three years. The expiration date is indicated on the certification card.

**NEW SECTION**

**WAC 246-976-032 Senior EMS instructor (SEI) reapproval of recognition.** (1) To become reapproved, an SEI must meet the requirements identified in Table B of this section.

(2) The renewal application procedures (RAP) will be provided by the department to individuals upon recognition as an SEI. The RAP must be completed by the SEI during the recognition period.

**Table B  
 Requirements For Senior EMS Instructor Reapproval**

<b>REQUIREMENTS</b>
<p><b>Prerequisites:</b>                      Document proof of completion of the following prerequisites:</p> <ul style="list-style-type: none"> <li>• Current or previous recognition as a Washington state SEI;</li> <li>• Current Washington state certification at the EMT or higher EMS certification level;</li> <li>• Current recognition as a health care provider level CPR instructor from a nationally recognized training program for CPR, foreign body airway obstruction (FBAO), and defibrillation;</li> <li>• Pass an examination developed and administered by the department on current EMS training and certification statutes, Washington Administrative Code (WAC), the Uniform Disciplinary Act (UDA) and course administration.</li> </ul>
<p><b>Candidate objectives:</b>                      Successfully complete the following objectives for each recognition period:</p> <ul style="list-style-type: none"> <li>• Coordinate and perform as the lead SEI for one initial EMR or EMT course including the supervision of all practical skills evaluations;</li> <li>• Receive performance evaluations from a currently recognized SEI, on two candidate instructed EMR or EMT course lessons;</li> <li>• Perform two performance evaluations on the instruction of EMR or EMT course lessons for SEI initial or renewal recognition candidates; and</li> <li>• Attend one department-approved SEI or instructor improvement workshop.</li> </ul>

REQUIREMENTS
<p><b>Candidate evaluation:</b></p> <p>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;</p> <ul style="list-style-type: none"> <li>• An evaluation form, to evaluate lesson instruction objectives performed by the candidate;</li> <li>• A quality improvement record, to document improvement necessary to successfully complete an instructor objective performed by the candidate; and</li> <li>• An objective completion record, to document successful completion of each instructor objective performed by the candidate.</li> </ul>
<p><b>Application:</b></p> <p>Submit the documented prerequisites and 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.</p> <p>The completed application must be submitted to the department including:</p> <ul style="list-style-type: none"> <li>• Current proof of successful completion of the prerequisites listed in this section;</li> <li>• The original SEI renewal application/agreement that has been signed by the candidate and the county MPD; and</li> <li>• The original completed RAP document and all forms used for evaluation, quality improvement purposes and verification of successful completion as identified in the RAP.</li> </ul>

(3) An EMS instructor approved in another state, country, or U.S. military branch may obtain reciprocal recognition. To become an SEI, the applicant must:

(a) Meet the initial recognition prerequisites as defined in this section;

(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;

(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.

(4) An SEI whose recognition has expired for more than twelve months must complete the initial recognition process.

(5) Approval is effective on the date the department issues the certificate. Certifications must be renewed every three years. The expiration date is indicated on the certification card.

(iv) Comply with requirements in WAC 246-976-031(1);

(v) Participate in the instructor candidate evaluation process in an objective and professional manner without cost to the individual being reviewed or evaluated;

(vi) Complete all forms and maintain records in accordance with this chapter;

(vii) Demonstrate all skills and procedures based on current standards;

(viii) Follow the requirements of the Americans with Disabilities Act; or

(ix) Maintain security on all department-approved examination materials.

(2) 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.

NEW SECTION

**WAC 246-976-033 Denial, suspension, modification or revocation of SEI recognition.** (1) The department may deny, suspend, modify or revoke an SEI's recognition when it finds the SEI has:

(a) Violated chapter 18.130 RCW, the Uniform Disciplinary Act;

(b) Failed to:

(i) Maintain EMS certification;

(ii) Update the following personal information with the department as changes occur:

(A) Name;

(B) Address;

(C) Home and work phone numbers;

(iii) Maintain knowledge of current EMS training and certification statutes, WAC, the UDA, and course administration;

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~~ seventeen years old at the beginning of the course. Variations 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.)) To obtain initial EMS provider certification following the successful completion of Washington state approved EMS course.** ((1) Department responsibilities. 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;
  - (b) The process for administration of examinations; and
  - (c) Administrative requirements and the necessary forms.
- (2) Applicant responsibilities. To apply for initial certification, submit to the department:
- (a) An application for certification on forms provided by the department;
  - (b) Proof of identity: An official photo identification (which may be state, federal or military identification, drivers' license, or passport);
  - (c) Proof of age;
  - (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) Proof of active membership, paid or volunteer, in one of the following EMS/TC organizations:
  - (i) Licensed provider of aid or ambulance services;

- (ii) Law enforcement agency; or
  - (iii) Other affiliated EMS/TC service;
  - (h) The MPD's recommendation for certification;
  - (i) For EMTs, proof of high school graduation, GED, or equivalent;
  - (j) Other information required by this chapter.
- (3) Certification is effective on the date the department issues the certificate, and will be valid for three years except as extended by the department for the efficient processing of license renewals. The expiration date will be indicated on the certification card.
- (4) Certification of intermediate level technicians and paramedics is valid only:
- (a) In the county or counties where recommended by the MPD and approved by the department;
  - (b) In other counties where formal EMS/TC medical control agreements are in place; or
  - (c) 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, a certified intermediate level technician or paramedic may function as an EMT in counties other than those described in (a) through (c) of this subsection.)) To apply for initial EMS provider certification following the successful completion of a Washington state approved EMS course, an applicant must submit to the department:
- (1) A completed initial certification application on forms provided by the department.
  - (2) Proof of meeting the requirements identified in Table A of this section.

Table A  
Applicants Who Have Completed a Washington State Approved EMS Course

<u>REQUIREMENTS</u>
<p><b><u>EMS education:</u></b> Candidate must provide proof of successful EMS course completion from a department-approved EMS training program.</p> <p><b><u>Certification examination:</u></b> Provide proof of a passing score on the department-approved certification examination for the level of certification. Applicants will have three attempts within twelve months of course completion to pass the examination. After three unsuccessful attempts, the applicant may retake the initial EMS training course, or within twelve months of the third unsuccessful attempt, complete department-approved refresher training covering airway, medical, pediatric, and trauma topics identified below, and pass the department-approved certification examination:</p> <ul style="list-style-type: none"> <li>• <u>EMR twelve hours.</u></li> <li>• <u>EMT twenty-four hours.</u></li> <li>• <u>AEMT thirty hours - pharmacology review must be included in the refresher training.</u></li> <li>• <u>Paramedic forty-eight hours - pharmacology review must be included in the refresher training.</u></li> </ul>
<p><b><u>Certification application:</u></b> High school diploma or GED: Required for EMT, AEMT and paramedic only. Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport). Provide proof of age - at least eighteen years of age. Variances to this age requirement will not be granted. Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> <li>• <u>Licensed aid or ambulance service;</u></li> <li>• <u>Law enforcement agency;</u></li> </ul>

<u>REQUIREMENTS</u>
<ul style="list-style-type: none"> <li>• <u>Business with organized industrial safety team;</u></li> <li>• <u>Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</u></li> </ul> <p><u>Recommendation of county medical program director - required. MPD must sign application.</u></p> <p><u>Background check - required. May include requirement for fingerprint card and FBI background check.</u></p>

NEW SECTION

**WAC 246-976-142 To obtain reciprocal (out-of-state) EMS certification, based on a current out-of-state or national EMS certification approved by the department.** To apply for certification, an applicant must submit to the department:

- (1) A completed certification application on forms provided by the department; and
- (2) Proof of meeting the requirements identified in Table B.

**Table B  
Reciprocity—Out-of-State Applicants Seeking EMS Certification**

<u>REQUIREMENTS</u>
<p><b>EMS educational program:</b> EMS courses conducted according to the U.S. Department of Transportation, national EMS training course standards. After June 30, 1996, paramedic training program must be accredited by a national accrediting organization approved by the department.</p>
<p><b>Additional education:</b> Provide proof of a department-approved four-hour infectious disease course or a seven-hour HIV/AIDS course as required by chapter 70.24 RCW.</p>
<p><b>Current credential:</b> Provide proof of valid EMS certification from another state or national certifying agency approved by the department.</p>
<p><b>Certification examination:</b> Provide proof of a passing score on a department-approved certification examination for the level of certification. The score is valid for twelve months from the date of the examination. After twelve months, a passing score on a department-approved certification examination is required. Applicants will have three attempts within twelve months from the first examination date to pass the examination.</p>
<p><b>Certification application:</b> High school diploma or GED: Required for EMT, AEMT and paramedic only. Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport). Provide proof of age - at least eighteen years of age. Variances to this age requirement will not be granted. Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> <li>• Licensed aid or ambulance service;</li> <li>• Law enforcement agency;</li> <li>• Business with organized industrial safety team;</li> <li>• Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</li> </ul> <p>Recommendation of county medical program director - required. MPD must sign application. Background check - required. May include requirement for fingerprint card and FBI background check.</p>

NEW SECTION

**WAC 246-976-143 To obtain EMS certification by challenging the educational requirements, based on possession of a current health care providers credential.** To apply for certification, an applicant must submit to the department:

- (1) A completed certification application on forms provided by the department; and
- (2) Proof of meeting the requirements identified in Table C.

**Table C**  
**Health Care Providers Seeking to Challenge the Educational Requirements for EMS Certification**

REQUIREMENTS
<p><b>Education:</b>                      Course completion documents showing education equivalent to the knowledge and skills at the EMR, EMT or AEMT training level.                      Applicants seeking paramedic certification - successful completion of a paramedic course through a training program accredited by a department-approved national accrediting organization.</p>
<p><b>Additional education:</b>                      Provide proof of a department-approved four-hour infectious disease course or a seven-hour HIV/AIDS course as required by chapter 70.24 RCW.</p>
<p><b>Current credential:</b>                      Provide proof of a valid health care provider credential.</p>
<p><b>Certification examination:</b>                      A passing score on a department-approved certification examination. Applicants will have three attempts within twelve months from the first examination date to pass the examination. After twelve months, the applicant must complete an approved initial EMS course to reapply for certification.</p>
<p><b>Certification application:</b>                      High school diploma or GED: Required for EMT, AEMT and paramedic only.                      Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport).                      Provide proof of age - at least eighteen years of age. Variances to this age requirement will not be granted.                      Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> <li>• Licensed aid or ambulance service;</li> <li>• Law enforcement agency;</li> <li>• Business with organized industrial safety team.</li> </ul> <p>Recommendation of county medical program director - required. MPD must sign application.                      Background check - required. May include requirement for fingerprint card and FBI background check.</p>

NEW SECTION

**WAC 246-976-144 EMS certification.** (1) Certification is effective on the date the department issues the certificate. Certifications must be renewed every three years. The expiration date is indicated on the certification card.

(2) The department may extend the certification period to accommodate the efficient processing of recertification applications. The expiration date will be indicated on the certification card issued by the department.

(3) Certification of AEMTs and paramedics is valid only:

(a) In the county or counties where recommended by the MPD and approved by the department;

(b) In other counties where formal EMS medical control agreements are in place; or

(c) In other counties when accompanying a patient in transit.

(d) While responding to other counties for mutual aid purposes, mass care, or other incidents. In these situations, EMS provider will provide patient care following the prehospital patient care protocols of their supervising MPD.

(4) A certified AEMT or paramedic may function at a lower certification level in counties other than those described in subsection (3)(a) through (c) of this section, with approval of that county's MPD.

(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 of the change. Changes submitted must 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 General education requirements for ~~((certification))~~ EMS provider recertification.** ~~((+))~~ Education is required for the recertification of all certified EMS personnel. This education may be obtained by completing the continuing medical education (CME) method, ~~or~~ through the ongoing training and evaluation program (OTEP) method, identified below:

**(a) CME topic content:**

(i) Must meet annual and certification period educational requirements identified in Table A of this section, utilizing:

~~(A) Cognitive, affective and psychomotor objectives found in curricula identified in WAC 246-976-021, for the level of certification being taught.~~

~~(B) Current national standards published for CPR, foreign body airway obstruction (FBAO), and automatic defibrillation.~~

(C) County medical program director (MPD) protocols, regional patient care procedures, and county operating procedures.

(D) Training updates in standards as identified by the department.

(ii) Must be approved by the MPD.

(iii) May incorporate nationally recognized training programs as part of CME for content identified in (a)(i)(A) of this subsection.

**(b) To complete the CME method you must:**

(i) Complete and document the educational requirements, indicated in Table A of this section, appropriate to your level of certification.

(ii) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to your level of certification.

(A) IV starts for IV technicians, combined IV/airway technicians, ILS technicians, combined ILS/airway technicians, or paramedics:

(I) During your first certification period, you must perform a minimum of one hundred eight successful IV starts.

• 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 successful IV starts per year, which may be averaged over the second and third years of the certification period.

(II) 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) 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 thirty-six successful endotracheal intubations:

• During the first year, you must perform a minimum of twelve successful endotracheal intubations of which four of the endotracheal intubations must be performed on humans.

• During the second and third year, you must perform a minimum of twelve endotracheal intubations per year, which may be averaged over the second and third years of the certification period. Four of these endotracheal intubations per year must be performed on humans.

(II) If you have completed a certification period, you must perform a minimum of four 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).

(III) 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 MPD and department-approved intensive airway management training program, utilizing cognitive, affective and psychomotor objectives covering all aspects of emergency airway management.

(iii) Successfully complete the Washington state written examination and practical skills examination as identified in WAC 246-976-171.

(e) Any applicant changing from the CME method to the OTEP method must meet all requirements of the OTEP method.

**(d) Ongoing training and evaluation programs:**

(i) Must meet annual and certification period educational requirements identified in Table A, utilizing:

(A) Cognitive, affective and psychomotor objectives found in curricula identified in WAC 246-976-021, for the level of certification being taught, in the following core content areas:

(I) Airway/ventilation (including intensive airway management training for personnel with advanced airway qualifications to determine competency);

(II) Cardiovascular;

(III) Medical emergencies/behavioral;

(IV) Trauma (including intensive IV therapy training for personnel with qualifications to determine competency);

(V) Obstetrics and pediatrics;

(VI) Operations.

(B) The current national standards published for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification.

(C) County medical program director (MPD) protocols, regional patient care procedures, and county operating procedures.

(D) Training updates in standards as identified by the department.

(ii) Must provide cognitive, affective and psychomotor evaluations following completion of each topic presentation to determine student competence of topic content.

Psychomotor skill evaluations must be recorded on skill evaluation forms from nationally recognized training programs, or on forms provided in approved curricula identified in WAC 246-976-021, for the level of certification being taught. If an evaluation form is not provided, a skill evaluation form must be developed and approved by the MPD to evaluate the skill.

(iii) Must be approved by the MPD; any additions or major changes to an approved OTEP require documented approval from the county MPD and the department.

(iv) Must be presented and evaluated by course personnel meeting the following qualifications:

(A) Evaluators must:

(I) Be a currently certified BLS or ALS provider who has completed at least one certification cycle. Certification must be at or above the level of certification being evaluated.

(II) Complete an MPD approved evaluator's workshop, specific to the level of certification being evaluated, and teach proficiency in utilizing skill evaluation forms identified in (d)(ii) of this subsection;

(III) Complete the evaluator application, DOH Form 530-012;

(IV) Be approved by the county MPD and the department.

(B) Instructors must:

(I) Be a currently certified BLS or ALS provider who has completed at least one certification cycle at or above the level of certification being taught.

(II) Be a currently approved evaluator at the level of certification being taught.

(III) Be approved by the county MPD to instruct and evaluate EMS topics.

(C) 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.

(v) May incorporate nationally recognized training programs within an OTEP for the core content areas identified in (d)(i)(A) of this subsection.

**(e) To complete the OTEP method you must:**

(i) Complete a department and MPD approved OTEP that includes requirements indicated in Table A of this section, appropriate to your level of certification.

(ii) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to your level of certification.

(A) IV starts for IV technicians, combined IV/airway technicians, ILS technicians, combined ILS/airway technicians, or paramedics:

(I) During your first certification period, you must perform a minimum of thirty six successful IV starts.

- 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 successful IV starts per year, which may be averaged over the second and third years of the certification period.

(II) If you have completed a certification period, you must demonstrate proficiency in starting IVs to the satisfac-

tion of the MPD (see later certification periods in Table B of this section):

(B) 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 twelve successful endotracheal intubations:

- 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 human endotracheal intubations per year, which may be averaged over the second and third years of the certification period.

(II) If you have completed a certification period, you must perform a minimum of two 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):

(C) Skills maintenance requirements may be obtained as part of the OTEP.

(D) Individuals participating in an OTEP meet skill maintenance requirements by demonstrating proficiency in the application of those skills to the county MPD during the OTEP.

(f) Any applicant changing from the OTEP method to the CME method must meet all requirements of the CME method.

(g) 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/Air	ILS	ILS/Air	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
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

"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) Skill maintenance requirements—Table B:

TABLE B: SKILLS MAINTENANCE REQUIREMENTS	Intermediate Life Support (EMT-Intermediate Levels)					Paramedic (ALS)
	IV	Air	IV/Air	ILS	ILS/Air	Paramedic
<b>First Certification Period</b>						
• <b>First Year of Certification</b>						

<b>TABLE B: SKILLS MAINTENANCE REQUIREMENTS</b>	<b>Intermediate Life Support (EMT-Intermediate Levels)</b>					<b>Paramedic (ALS)</b>
IV Starts						
<b>Continuing Education Method</b> may not be averaged	36		36	36	36	36
<b>OPEP 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>OPEP Method</b>		4	4		4	4
Intraosseous infusion placement	X		X	X	X	X
<del>• Second and Third Years of Certification</del>						
<del>• Annual Requirements</del>						
IV Starts*						
<b>Continuing Education Method</b>	36		36	36	36	36
<b>OPEP Method</b>	12		12	12	12	12
Endotracheal intubations* (4 per year must be performed on humans for each method)						
<b>Continuing Education Method</b>		12	12		12	12
<b>OPEP Method</b>		4	4		4	4
Intraosseous infusion placement	X		X	X	X	X
<del>• During the Certification Period</del>						
Pediatric airway management		X	X		X	X
Multi-lumen airway placement				X	X	
Defibrillation				X	X	
<del>Later Certification Periods</del>						
<del>• Annual Requirements</del>						
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>OPEP Method</b>		2	2		2	2
Intraosseous infusion placement	X		X	X	X	X
<del>• During the Certification Period</del>						
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.

(i) Skill maintenance requirements for individuals requesting reciprocal certification:  
(i) Reciprocity candidates credentialed less than three years must meet Washington state's skill maintenance requirements for the initial certification period identified above.

(ii) Reciprocity candidates credentialed three years or more must meet Washington state's skill maintenance requirements for second and subsequent certification periods.  
(iii) 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) Description of selected terms used in Tables A and B:

(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 includes 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.

(iv) 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) Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.

(vi) Intraosseous infusion: Proficiency in intraosseous line placement in pediatric patients.

(vii) 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 airway placement: Proficiency includes the verification of tube placement and continued placement of the multi-lumen airway through procedures identified in county MPD protocols.

(ix) 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) 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) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for first responders).

(xii) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.

(xiii) 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) 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.)~~ (1) Education is required to recertify as an EMS provider.

(a) The EMS provider must complete the continuing medical education and examination (CME) method, identified in WAC 246-976-162 or the ongoing training and evaluation program (OTEP) method, identified in WAC 246-976-163 for each certification period.

(b) The EMS provider shall maintain records of successfully completed educational, practical skill evaluation and skill maintenance requirements.

(2) Education for recertification must be approved by the MPD. Educational and topic content requirements must include:

(a) Knowledge and skills found in instructor guidelines identified in WAC 246-976-023, appropriate to the level of certification being taught;

(b) Nationally recognized training programs for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification. Training must be at the health care provider level and meet Journal of American Medical Association (JAMA) standards; and

(c) Current county medical program director (MPD) protocols, regional patient care procedures, county operating procedures and state triage destination procedures.

(3) Nationally recognized training programs may be incorporated as part of content identified in subsection (2) of this subsection.

(4) Skill maintenance is a required educational component for recertification:

(a) For EMS providers completing the CME method the required skills are defined in WAC 246-976-162.

(b) For EMS providers completing the OTEP method the required skills are defined in WAC 246-976-163. These requirements may be obtained as part of an OTEP.

(5) Upon approval of the MPD, if an EMS provider is unable to complete the required endotracheal intubations as defined in WAC 246-976-162 or 246-976-163 the EMS provider may meet the endotracheal intubation requirements by completing an MPD and department-approved intensive airway management training program, covering all knowledge and skill aspects of emergency airway management.

NEW SECTION

**WAC 246-976-162 The CME method of recertification.** To complete the CME method of recertification, an EMS provider must:

(1) Complete and document the requirements, indicated in Table A of this section, appropriate to the level of certification for each certification period.

**Table A  
Education Requirements for Recertification**

	EMR	EMT	AEMT	Paramedic
<b>Annual Requirements</b>				
Cardiovascular education and training	X	X	X	X
Spinal immobilization	X	X	X	X
Patient assessment	X	X	X	X
<b>Certification Period Requirements</b>				
Infectious disease	X	X	X	X
Trauma	X	X	X	X
Pharmacology		X	X	X
Other pediatric topics	X	X	X	X
Total minimum education hours per certification period:	15 hrs	30 hrs	60 hrs	150 hrs

"X" Indicates an individual must demonstrate knowledge and competency in the topic or skill.

(2) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to the level of certification.

**Table B  
Skills Maintenance Requirements for the CME Method**

	EMR	EMT	AEMT	Paramedic
<b>First Certification Period or Three Years</b>				
<input type="checkbox"/> <b>First Year</b>				
IV starts		EMT w/IV therapy skill	36	36



	EMR	EMT	AEMT	Paramedic
		36		
Endotracheal intubations (4 must be performed on humans)				12
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> <b>Second and Third Years</b>				
IV starts over the two-year period		EMT w/IV therapy skill 72	72	72
Endotracheal intubations over the two-year period (4 per year must be performed on humans)				24
Intraosseous infusion placement		EMT w/IV therapy skill X		
<b>During the Certification Period</b>				
Pediatric airway management				X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X
<b>Later Certification Periods</b>				
<input type="checkbox"/> <b>Annual Requirements</b>				
IV starts		EMT w/IV therapy skill X	X	X
Endotracheal intubations (2 per year must be performed on humans)				4
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> <b>During the Certification Period</b>				
Pediatric airway management				X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X

"X" Indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

(3) An EMS provider must successfully complete department-approved knowledge and practical skill examinations as identified in WAC 246-976-171.

(4) An EMS provider changing from the CME method to the OTEP method must meet all requirements of the OTEP method.

(5) Definitions of selected terms used in Tables A and B of this section:

(a) Cardiovascular education and training for adults, children, and infants includes:

(i) Nationally recognized training programs for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification;

(ii) The use of airway adjuncts appropriate to the level of certification;

(iii) The care of cardiac and stroke patients.

- (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.
- (c) Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.
- (d) Intraosseous infusion: Proficiency in intraosseous line placement.
- (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.
- (f) Supraglottic airway placement: Proficiency includes the verification of tube placement and continued placement of the supraglottic airway, in a skill lab setting, through procedures identified in county MPD protocols.
- (g) Other pediatric topics: This includes anatomy and physiology and medical problems including special needs patients appropriate to the level of certification.
- (h) Patient assessment: This includes adult, pediatric and geriatric patients appropriate to the level of certification.
- (i) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for EMRs).
- (j) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.
- (k) Spinal immobilization and packaging: This includes adult, pediatric, and geriatric patients appropriate to the level of certification
- (l) Trauma: For adult, pediatric, and geriatric patients appropriate to the level of certification.

**NEW SECTION**

**WAC 246-976-163 The OTEP method of recertification.** (1) Ongoing training and evaluation programs (OTEP):

- (a) Must provide knowledge and skill evaluations following completion of each topic presentation to determine student competence of topic content.
  - (i) Must record practical skill evaluations on skill evaluation forms from nationally recognized training programs, or on department-approved practical skill evaluation forms, 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;
- (b) Must be conducted at least on a quarterly basis;
- (c) 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;

- (d) Must be presented and evaluated by course personnel meeting the following qualifications:
  - (i) Evaluators must:
    - (A) Be a currently certified Washington EMS provider who has completed at least one certification cycle. Certification must be at or above the level of certification being evaluated;
    - (B) Complete an MPD approved evaluator's workshop, specific to the level of certification being evaluated, which teaches participants to properly evaluate practical skills using the skill evaluation forms identified in (a) of this subsection. Participants must demonstrate proficiency to successfully complete the workshop;
    - (C) Complete the evaluator application, DOH Form 530-012;
      - (I) Be approved by the county MPD and the department; and
      - (II) Submit the MPD approved EMS evaluator application to the department.
    - (D) Meet education and participation requirements as identified by the county medical program director;
    - (E) Be recommended for reapproval by the county medical program director upon EMS credential recertification.
  - (ii) Instructors must:
    - (A) Be a currently approved EMS evaluator at or above the level of certification being taught;
    - (B) Be approved by the county MPD to instruct and evaluate EMS topics;
    - (iii) Guest lecturers, when used, 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;
  - (e) May use on-line training to provide all or a portion of an OTEP when:
    - (i) On-line training provides sufficient topic content 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.
- (2) To complete the OTEP method of recertification, the EMS provider:
  - (a) Must complete a county MPD and department-approved OTEP that includes requirements indicated in Table A of this section, for the certification period, appropriate to the level of certification;

**Table A  
Education Requirements for Recertification**

	EMR	EMT	AEMT	Paramedic
<b>Annual Requirements</b>				
Cardiovascular education and training	X	X	X	X

	EMR	EMT	AEMT	Paramedic
Spinal immobilization	X	X	X	X
Patient assessment	X	X	X	X
<b>Certification Period Requirements</b>				
Infectious disease	X	X	X	X
Trauma	X	X	X	X
Pharmacology		X	X	X
Other pediatric topics	X	X	X	X
* Total minimum education hours per certification 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.

(b) Complete and document the skills maintenance requirements, indicated in Table B of this section, appropriate to the level of certification. Skill maintenance requirements may be obtained as part of the OTEP.

**Table B**  
**Skills Maintenance Requirements for the OTEP Method**

	EMR	EMT	AEMT	Paramedic
<b>First Certification Period or Three Years</b>				
<input type="checkbox"/> <b>First Year</b>				
IV starts		EMT w/IV therapy skill 12	12	12
Human endotracheal intubations				4
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> <b>Second and Third Years</b>				
IV starts over the two-year period		EMT w/IV therapy skill 12	24	24
Human endotracheal intubations over the two-year period				8
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<b>During the Certification Period</b>				
Pediatric airway management		EMR & EMT X	X	X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X
<b>Later Certification Periods</b>				
<input type="checkbox"/> <b>Annual Requirements</b>				
IV starts		EMT w/IV therapy skill	X	X

	EMR	EMT	AEMT	Paramedic
		X		
Human endotracheal intubation				2
Intraosseous infusion placement		EMT w/IV therapy skill X	X	X
<input type="checkbox"/> <b>During the Certification Period</b>				
Pediatric airway management		EMR & EMT X	X	X
Supraglottic airway placement		EMT w/supraglottic airway skill X	X	X
Defibrillation	X	X	X	X

"X" Indicates an individual must demonstrate proficiency of the skill to the satisfaction of the MPD.

(c) EMS providers using the OTEP method meet skill maintenance requirements by demonstrating proficiency in the application of those skills to the county MPD during the OTEP.

(d) Any EMS provider changing from the OTEP method to the CME method must meet all requirements of the CME method.

(3) Skill maintenance requirements for applicants requesting reciprocal certification:

(a) Reciprocity applicants credentialed less than three years must meet Washington state's skill maintenance requirements for the initial certification period identified above.

(b) Reciprocity applicants credentialed three years or more must meet Washington state's skill maintenance requirements for second and subsequent certification periods.

(c) The county MPD may evaluate an EMS provider's skills to determine proficiency in the application of those skills prior to recommending certification. The MPD may recommend that an EMS provider obtain specific training to become proficient in any skills deemed insufficient by the MPD or delegate.

(4) Definitions of selected terms used in Tables A and B of this section:

(a) Cardiovascular education and training for adults, children, and infants includes:

(i) Nationally recognized training programs for CPR, foreign body airway obstruction (FBAO), and defibrillation and patient care appropriate to the level of certification;

(ii) The use of airway adjuncts appropriate to the level of certification; and

(iii) The care of cardiac and stroke patients.

(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.

(c) Infectious disease: Infectious disease training must meet the requirements of chapter 70.24 RCW.

(d) Intraosseous infusion: Proficiency in intraosseous line placement.

(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.

(f) Supraglottic airway placement: Proficiency includes the verification of tube placement and continued placement of the supraglottic airway, in a skill lab setting, through procedures identified in county MPD protocols.

(g) Other pediatric topics: This includes anatomy and physiology and medical problems including special needs patients appropriate to the level of certification.

(h) Patient assessment: This includes adult, pediatric, and geriatric patients appropriate to the level of certification.

(i) Pharmacology: Pharmacology specific to the medications approved by the MPD (not required for EMRs).

(j) Proficiency: Ability to demonstrate and perform all aspects of a skill properly to the satisfaction of the MPD or delegate.

(k) Spinal immobilization and packaging: This includes adult, pediatric, and geriatric patients appropriate to the level of certification.

(l) Trauma: For adult, pediatric, and geriatric patients appropriate to the level of certification.

AMENDATORY SECTION (Amending WSR 04-08-103, filed 4/6/04, effective 5/7/04)

**WAC 246-976-171 ((To apply for recertification/renewal.) Recertification, reversion, reissuance, 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) To apply for recertification, an EMS provider must:~~

~~(a) Meet the requirements identified in Table A of this section for EMS providers completing the CME method; or~~

~~(b) Meet the requirements identified in Table B of this section for EMS providers completing the OTEP method; and~~

~~(c) Submit to the department a completed certification application on forms provided by the department.~~

Table A  
EMS Providers Participating in the CME Method of Recertification

<u>REQUIREMENTS</u>
<p><b><u>EMS Education Requirements:</u></b>  <u>EMS providers participating in the CME method must provide proof of the following to the MPD or MPD delegate:</u></p> <ul style="list-style-type: none"> <li>• <u>Successful completion of the educational requirements at the level of certification being sought, as specified in this chapter and identified in WAC 246-976-162, Table A;</u></li> <li>• <u>Successful completion of skills maintenance required for the level of recertification being sought, as specified in this chapter and identified in WAC 246-976-162, Table B;</u></li> <li>• <u>Passing department-approved practical skill certification examination for the level of certification being sought, within twelve months before submitting the application.</u></li> </ul>
<p><b><u>Recertification Examination:</u></b>  <u>Provide proof of a passing score on the department-approved recertification examination for the level of recertification being sought. The EMS provider will have three attempts within twelve months of course completion to pass the examination. If the EMS provider is unsuccessful after three attempts, prior to subsequent attempts, refresher training must be completed as follows:</u></p> <ul style="list-style-type: none"> <li>• <u>EMR twelve hours.</u></li> <li>• <u>EMT twenty-four hours.</u></li> <li>• <u>AEMT thirty hours - pharmacology review must be included in the refresher training.</u></li> <li>• <u>Paramedic forty-eight hours - pharmacology review must be included in the refresher training.</u></li> </ul>
<p><b><u>Certification application:</u></b>  <u>Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport).</u>  <u>Provide proof of EMS agency association - active membership, paid or volunteer with:</u></p> <ul style="list-style-type: none"> <li>• <u>Licensed aid or ambulance service;</u></li> <li>• <u>Law enforcement agency;</u></li> <li>• <u>Business with organized industrial safety team;</u></li> <li>• <u>Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</u></li> </ul> <p><u>Recommendation of county medical program director.</u></p> <ul style="list-style-type: none"> <li>• <u>Obtain the county MPD recommendation for recertification and endorsement of EMT specialized training.</u></li> <li>• <u>The county MPD may require additional examinations to determine competency on department-approved MPD protocols prior to recommendation of recertification.</u></li> <li>• <u>Required - MPD must sign application.</u></li> </ul> <p><u>Background check - may be required.</u></p>

Table B  
EMS Providers Participating in the OTEP Method of Recertification

<b>REQUIREMENTS</b>
<p><b><u>EMS Education Requirements:</u></b> EMS providers participating in the CME method must provide proof of the following to the MPD or MPD delegate:</p> <ul style="list-style-type: none"> <li>• <u>Successful completion of the educational requirements at the level of certification being sought, as specified in this chapter and identified in WAC 246-976-163, Table A;</u></li> <li>• <u>Successful completion of skills maintenance required for the level of certification being sought, as specified in this chapter and identified in WAC 246-976-163, Table B;</u></li> <li>• <u>Successful completion of the OTEP knowledge and skill evaluations at the level of recertification being sought.</u></li> </ul>
<p><b><u>Recertification Examination:</u></b> The evaluations required under this section fulfill the requirement of department-approved knowledge and practical skill recertification examinations.</p>
<p><b><u>Certification Application:</u></b> Provide proof of identity - state or federal photo I.D. (military ID, driver's license, passport). Provide proof of EMS agency association - active membership, paid or volunteer with:</p> <ul style="list-style-type: none"> <li>• <u>Licensed aid or ambulance service;</u></li> <li>• <u>Law enforcement agency;</u></li> <li>• <u>Business with organized industrial safety team;</u></li> <li>• <u>Senior EMS instructors or training coordinators, teaching at department-approved EMS training programs, who are unable to be associated with approved agencies above.</u></li> </ul> <p><u>Recommendation of county medical program director.</u></p> <ul style="list-style-type: none"> <li>• <u>Obtain the county MPD recommendation for recertification and endorsement of EMT specialized training.</u></li> <li>• <u>The county MPD may require additional examinations to determine competency on department-approved MPD protocols prior to recommendation of recertification.</u></li> <li>• <u>Required - MPD must sign application.</u></li> </ul> <p><u>Background check - may be required.</u></p>

(2) To voluntarily revert to a lower level of certification, an EMS provider must:

(a) For the CME method, complete the recertification education requirements identified in WAC 246-976-161 and 246-976-162, Tables A and B for the lower level of certification; or

(b) For the OTEP method, complete the recertification education requirements identified in WAC 246-976-161 and 246-976-163, Tables A and B at the lower level of certification; and

(c) Submit a completed certification application on forms provided by the department.

(3) An EMS provider may not provide EMS care with an expired certification.

(4) To apply for reissuance of an expired Washington state EMS certification:

(a) If a certification is expired for one year or less, the EMS provider must provide proof of the following to the county MPD or MPD delegate:

(i) Complete one additional year of annual recertification education requirements; and

(ii) For EMS providers completing the CME method, complete the requirements identified in Table A of this section; or

(iii) For EMS providers completing the OTEP method, complete the requirements identified in Table B of this section.

(b) If a certification is expired more than one year and less than two years, the EMS provider must provide proof of the following to the county MPD or MPD delegate:

(i) One additional year of annual recertification education requirements; and

(ii) Twenty-four hours of educational topics and hours specified by the department and the MPD; and

(iii) For EMS providers completing the CME method, complete the requirements identified in Table A of this section; or

(iv) For EMS providers completing OTEP, complete the requirements identified in Table B of this section.

(c) If a certification is expired for two years or longer, the EMS provider must provide proof of the following to the MPD or delegate:

(i) For nonparamedic EMS personnel:

(A) Complete a department-approved initial training program, and successfully complete department-approved knowledge and practical skill certification examinations;

(B) Complete the initial certification application requirements identified in WAC 246-976-141.

(ii) For paramedics whose certification has been expired between two and six years:

(A) Current status as a provider or instructor in the following: ACLS, PHTLS or BTLS, PALS or PEPPS, or state approved equivalent;

(B) Current status in health care provider level CPR;

(C) Completing a state approved forty-eight hour EMT-paramedic refresher training program or complete forty-eight hours of ALS training that consists of the following core content:

(I) Airway, breathing and cardiology - sixteen hours.

(II) Medical emergencies - eight hours.

(III) Trauma - six hours.

(IV) Obstetrics and pediatrics - sixteen hours.

(V) EMS operations - two hours.

(D) Successful completion of any additional required MPD and department-approved refresher training;

(E) Successful completion of MPD required clinical and field evaluations;

(F) Successful completion of department-approved knowledge and practical skill certification examinations;

(G) Complete the initial certification application requirements identified in WAC 246-976-141.

(d) A request for reissuance of a paramedic certification that has been expired greater than six years will be reviewed by the department to determine the disposition.

(5) 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 petitioner must:

(i) Provide proof of completion of all requirements identified by the departmental disciplinary authority; and

(ii) Meet the reissuance requirements in this section.

(6) When EMS personnel change or add membership with an EMS agency, or their contact information changes, they must notify the department within thirty days of the change. 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(~~(/FE)~~) 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:

~~((a))~~ (i) Included in the approved instructional guidelines/curriculum for the individual's level of certification; or

~~((b))~~ (ii) Included in approved specialized training; and

~~((c) That is)~~ (iii) Included in state approved county MPD protocols.

(2) ~~((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.

(3) ~~((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~~(3))~~.

~~((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 the clinical practice of certified individuals.

~~((3))~~ (4) Before recommending ~~((revocation, suspension, modification, or denial of a certificate))~~ disciplinary action, the MPD must initiate ~~((corrective action))~~ protocol and procedural 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;~~

~~((Evidence))~~ A completed application for licensure on forms provided by the department;

(b) Proof of ~~((Ability))~~ 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;

(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;

(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) Licensed services that provide critical care interfacility ambulance transports, must 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 ~~((curb 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.

~~((11))~~ (9) Vehicle brakes, ~~((tires,))~~ regular and special electrical equipment, ~~((windshield wipers,))~~ heating and 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 ~~((E))~~ D on each licensed vehicle, when available for service.

Note: "asst" means assortment

TABLE <del>((E))</del> <u>D</u> : EQUIPMENT	AMBULANCE	AID VEHICLE
AIRWAY MANAGEMENT		
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	1	1
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))</u> PSI minimum, or equivalent liquid oxygen system	1	0
300 L Oxygen ( <del>(cylinder)</del> ) <u>supply, with regulator, 500 ((Lbs))</u> PSI minimum, or equivalent liquid oxygen system	2	1
( <del>Regulator, oxygen (0-15+ Liter)</del> )	<del>±</del>	<del>±</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		
<u>Adult, pediatric, infant</u>	1 ea	1 ea
( <del>Pediatric (w/sizes neonatal to adult)</del> )	<del>±</del>	<del>±</del>
<u>Pocket mask or equivalent</u>	<del>±</del>	<del>±</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>((*) Defibrillation capability appropriate to the level of personnel.</del>		
<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><u>TRAUMA EMERGENCIES</u></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
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

Splinting

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

General

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

Epinephrine and supplies appropriate for level of certification per MPD protocols.

<u>Adult</u>	<u>1</u>	<u>1</u>
<u>Pediatric</u>	<u>1</u>	<u>1</u>

Storage and handling of pharmaceuticals in ambulances and aid vehicles must be in compliance with the manufacturers' recommendations.

Extrication plan: Agency must document how extrication will be provided when needed.

<del>((Shovel</del>	±	±
Hammer	±	±
Adjustable wrench, 8"	±	±
Hack saw, with blades	±	±
Crowbar, pinch point, 36" minimum	±	±
Screwdriver, straight tip, 10" minimum	±	±
Screwdriver, 3 Phillips, 10" minimum	±	±
Wrecking bar, 3' minimum	±	±
Locking pliers	±	±
Bolt cutters, 1/2" min. jaw spread	±	±
Rope, utility, 50' x 3/8"	±	±))

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 subsections (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 communicate 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 on request:

(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 written or electronic patient report including agency name, EMS personnel, and:

(i) Date and time of the medical emergency;

(ii) Time of onset of symptoms;

(iii) Patient vital signs including serial vital signs where applicable;

(iv) Patient assessment findings;

(v) Procedures and therapies provided by EMS personnel;

(vi) Any changes in patient condition while in the care of the EMS personnel;

(vii) 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 providing patient care;

(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) 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.

(c) 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)

**AIRWAY MANAGEMENT**

**Airway Adjuncts**

Adjunctive airways, per protocol

	AMBULANCE		AID VEHICLE	
	PAR	ILS	PAR	ILS
Adjunctive airways, per protocol	+	+	+	+

TABLE D: EQUIPMENT FOR VERIFIED TRAUMA SERVICES  
(NOTE: "ASST" MEANS ASSORTMENTS)

	AMBULANCE		AID VEHICLE	
	PAR	HS	PAR	HS
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 <sup>2</sup> detector	1ea	1ea	1ea	1ea
Oxygen saturation monitor	1ea	1ea	1ea	1ea
Suction				
Portable, powered	+	+	+	+
PATIENT ASSESSMENT AND CARE				
Sphygmomanometer				
Adult, large	+	+	+	+
Pediatric	+	+	+	+
TRAUMA EMERGENCIES				
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. Verification 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 for trauma verification, an agency 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 who is an 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. "X" INDICATES REQUIRED.)

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

	<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>

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>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>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 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 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 under chapter 18.71 RCW or osteopathic medicine and surgery under 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 a 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 of appointment;

(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 non-physicians. 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.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

- WAC 246-976-950 Licensing and certification committee.

**WSR 10-21-077  
PROPOSED RULES  
HEALTH CARE AUTHORITY  
(Basic Health Plan)**

[Order 10-03—Filed October 18, 2010, 4:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-107.

Title of Rule and Other Identifying Information: Basic health subsidized and nonsubsidized program rules contained in chapter 182-25 WAC.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Sue Crystal Center Conference Room, Olympia, WA, on November 23, 2010, at 3:00 p.m.

Date of Intended Adoption: November 30, 2010.

Submit Written Comments to: Alyson Chase, Basic Health Communications Manager, P.O. Box 42683, Olympia, WA 98504-2683, e-mail alyson.chase@hca.wa.gov, fax (360) 923-2765, by November 23, 2010.

Assistance for Persons with Disabilities: Contact Nikki Johnson by November 5, 2010, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 182-25 WAC to revise rules for the basic health plan and to create new rules governing the Washington health program (nonsubsidized basic health).

Reasons Supporting Proposal: The health care authority (HCA) intends to reorganize program rules, the basic health plan rule, and provide clarification of the recertification process. The HCA will also add rules to administer the Wash-

ington health plan. Other changes and corrections may be incorporated as a result of the passage of federal or state legislation.

Statutory Authority for Adoption: RCW 70.47.050.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Preston W. Cody, 676 Woodland Square Loop, Lacey, WA, (360) 412-4361.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

October 18, 2010

Jason Siems

Rules Coordinator

**Chapter 182-22 WAC**

**WASHINGTON HEALTH PLAN AND BASIC  
HEALTH PLAN ADMINISTRATION**

**PART 1—AUTHORITY AND DEFINITIONS**

NEW SECTION

**WAC 182-22-100 Authority.** The administrator's authority to promulgate and adopt rules is contained in RCW 70.47.050.

NEW SECTION

**WAC 182-22-110 Definitions.** The definitions in this section apply throughout chapters 182-22, 182-23, 182-24, and 182-25 WAC.

"Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

"Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees or applicants which cannot be resolved in an informal manner to the appellant's satisfaction.

"Basic health plan" or "BHP" means the system of enrollment and payment for subsidized basic health care services administered by the HCA through managed health care systems.

"BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and BHP. Eligibility for BHP Plus is determined by the department of social and health services, based on medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They

must be Washington state residents, not eligible for medicare, and may be required to meet additional DSHS eligibility requirements.

"Copayment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the managed health care system.

"Covered services" means those services and benefits in the applicable BHP or WHP schedule of benefits (as outlined in the member handbook), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, coinsurance and deductible.

"Dependent," as it applies to BHP or WHP, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is younger than age twenty-six, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) A child younger than age twenty-six who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for coverage.

"Disenrollment" means the termination of coverage for an enrollee.

"Effective date of enrollment" means the first date, as established by BHP or WHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

"Eligible full-time employee" means an employee who meets all applicable eligibility requirements and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington state.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

"Eligible part-time employee" means an employee who meets all the criteria in definition "eligible full-time employee" of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

"Employee" means one who is in the employment of an employer, as defined under RCW 50.04.080.

"Employer" means an enterprise licensed to do business in Washington state, as defined under RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

"Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP or WHP, and for whom applicable premium payments have been made.

"Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment, an individual cannot be a member of more than one family.

"Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

"Health care authority" or "HCA" means the Washington state health care authority.

"Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, medicaid personal care, community options program entry system (COPES) or respite care (up to level three).

"Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions, government-funded acute health care or mental health facilities except as provided above, chemical dependency facilities, and nursing homes.

"Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

"Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

"Managed health care system" or "MHCS" means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

"Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on medicaid eligibility criteria.

"Medicaid" means the Title XIX medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

"Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

"Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

"Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage.

"Participating employer" means an employer who has been approved for enrollment as an employer group.

"Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

"Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes for enrollment in BHP or WHP.

"Program" means BHP, WHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within chapters 182-22 through 182-24 WAC.

"Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

"Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP or WHP health care benefits to enrollees.

"Schedule of benefits" means the health care services adopted and from time to time amended by the administrator for BHP or WHP, as applicable, which an enrollee shall be entitled to receive from a managed health care system in

exchange for payment of premium and applicable copayments, as described in the member handbook.

"Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

"Subscriber" is a person who applies for coverage on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom the administrator sends notices and communications. The subscriber may be an enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

"Washington health program" means the system of enrollment and payment for nonsubsidized basic health care services administered by the HCA through managed health care systems.

"Washington state resident" or "resident" means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during holidays and scheduled breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition at an accredited secondary school, college, university, technical college, or school of nursing, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

## PART 2—GROUP PARTICIPATION

### NEW SECTION

**WAC 182-22-210 Employer groups.** (1) BHP and WHP may accept applications for group enrollment from business owners, their spouses and eligible dependents, and on behalf of their eligible full-time and/or part-time employees, their spouses and eligible dependents.

(2) With the exception of home care agencies, the employer must enroll at least seventy-five percent of all eligible employees within a classification of employees, and the employer must not offer other health care coverage to the same classification of employees. For purposes of this section, a "classification of employees" means a subgroup of employees (for example, part-time employees, full-time employees or bargaining units). Employees who demon-

strate in the application process that they have health care coverage from other sources, such as their spouse or a federal program, shall be excluded from the minimum participation calculation.

(3) BHP and WHP may require a minimum financial contribution from the employer for each enrolled employee.

(4) The employer will provide the employees the complete choice of managed health care systems available within the employee's county of residence.

(5) The employer will pay all or a designated portion of the premium, as determined by the administrator, on behalf of the enrollee. It is the employer's responsibility to collect the employee's portion of the premium and remit the entire payment to BHP or WHP, as applicable, and to notify BHP or WHP of any changes in the employee's account.

(6) In the event that an employer group will be disenrolled, all affected employee(s) will be notified prior to the disenrollment, and will be informed of the opportunity to convert their BHP or WHP group membership to individual account(s).

(7) Employees enrolling in BHP or WHP must meet all eligibility requirements.

#### NEW SECTION

**WAC 182-22-220 Home care agencies.** BHP and WHP will accept applications from home care agencies under contract with the department of social and health services (DSHS) for group enrollment, with premiums paid by the home care agency or DSHS or a designee, under the provisions for employer groups with the following exceptions or additions:

(1) To qualify for premium reimbursement through DSHS, home care agencies who enroll under the provisions of this section must be under current contract with DSHS as a home care agency, as defined by DSHS.

(2) Home care agencies need not enroll at least seventy-five percent of all eligible employees in BHP or WHP, and home care agencies may offer other coverage to the same classification of employees.

(3) Home care agencies need not make a minimum financial contribution for each enrolled employee.

(4) Home care agencies are not subject to WAC 182-22-210(5).

(5) Individual home care providers may enroll in BHP or WHP as individuals.

#### NEW SECTION

**WAC 182-22-230 Financial sponsors.** (1) A third party may, with the approval of the administrator, become a financial sponsor to BHP or WHP enrollees. Financial sponsors may not be a state agency or a managed health care system.

(2) BHP and WHP may require a minimum financial contribution from financial sponsors who are paid to deliver BHP or WHP services. Sponsors who meet the following criteria will be exempt from the minimum contribution:

(a) Organizations that are not paid to perform any function related to the delivery of BHP or WHP services, and do not receive contributions from other organizations paid to deliver BHP or WHP services;

(b) Charitable, fraternal or government organizations (other than state agencies) that are not paid to perform any function related to the delivery of BHP or WHP services, who receive contributions from other individuals or organizations who may be paid to deliver BHP or WHP services, if the organization can demonstrate all of the following:

(i) Organizational autonomy (the organization's governance is separate and distinct from any organization that is paid to deliver BHP services);

(ii) Financial autonomy and control over the funds contributed (contributors relinquish control of the donated funds);

(iii) Sponsored enrollees are selected by the sponsoring organization from all persons within the geographic boundaries established by the sponsor organization who meet the selection criteria agreed upon by the sponsor organization and the HCA; and

(iv) There is no direct financial gain to the sponsoring entity.

(c) Charitable, fraternal, or government organizations (other than state agencies) that are paid to perform a health care function related to the delivery of BHP services, if the organization can demonstrate all of the following:

(i) The organization's primary purpose is not the provision of health care or health care insurance, including activities as a third-party administrator or holding company;

(ii) There is organizational and financial autonomy (the organization's governance and funding of sponsored enrollees is separate and distinct from the function that is paid to deliver BHP services);

(iii) The selection of sponsored enrollees is made by the organization separate and distinct from the function that is paid to deliver BHP services, and sponsored enrollees are selected from all eligible persons who meet the selection criteria agreed upon by the sponsor organization and the HCA, who live within the geographic boundaries established by the sponsor organization; and

(iv) There is no direct financial gain to the sponsoring entity.

(3) The financial sponsor will establish eligibility for participation in that particular financial sponsor group; however, sponsored enrollees must meet all eligibility requirements.

(4) The financial sponsor will pay all or a designated portion of the premium on behalf of the sponsored enrollee. The financial sponsor must collect the enrollee's portion of the premium, if any, and remit the entire payment to BHP or WHP and to notify BHP or WHP of any changes in the sponsored enrollee's account.

(5) A financial sponsor must inform sponsored enrollees and BHP or WHP of the minimum time period for which they will act as sponsor. At least sixty days before the end of that time period, the financial sponsor must notify sponsored enrollees and BHP or WHP if the sponsorship will or will not be extended.

(6) A financial sponsor must not discriminate for or against potential group members based on health status, race, color, creed, political beliefs, national origin, religion, age, sex or disability.

(7) A financial sponsor must disclose to the sponsored enrollee all the managed health care systems within the enrollee's county of residence, the estimated premiums for each of them, and the BHP or WHP toll-free information number.

(8) BHP and WHP may periodically conduct a review of the financial sponsor group members to verify the eligibility of all enrollees.

### PART 3—ADMINISTRATIVE PROCEDURES

#### NEW SECTION

**WAC 182-22-310 Where to find instructions for filing an appeal.** (1) WAC 182-22-320 and 182-22-330 cover appeals submitted by or on behalf of BHP and WHP enrollees or applicants. To appeal a decision regarding a child enrolled in BHP Plus or a woman receiving maternity benefits through medical assistance, subscribers must contact the Washington state department of social and health services (DSHS) to request a fair hearing under chapter 388-526 WAC.

(2) WAC 182-22-320 covers appeals of decisions made by the health care authority, such as decisions regarding eligibility, premium, premium adjustments or penalties, enrollment, suspension, disenrollment, or a member's selection of managed health care system (MHCS). Decisions which affect an entire group (for example, the disenrollment of an employer group) should be appealed for the entire group by the employer, home care agency, or financial sponsor, using these same rules.

(3) WAC 182-22-330 covers appeals of decisions made by the enrollee's managed health care system (MHCS), such as decisions regarding coverage disputes or benefits interpretation.

#### NEW SECTION

**WAC 182-22-320 How to appeal health care authority (HCA) decisions.** (1) HCA decisions regarding the following may be appealed under this section:

- (a) Eligibility;
- (b) Premiums;
- (c) Premium adjustments or penalties;
- (d) Enrollment;
- (e) Suspension;
- (f) Disenrollment; or
- (g) Selection of managed health care system (MHCS).

(2) To appeal an HCA decision, enrollees or applicants must send a letter of appeal to the HCA. The letter of appeal should be signed by the appealing party and must be received by the HCA within thirty calendar days of the date of the decision. The letter of appeal should include:

- (a) The name, mailing address, and BHP or WHP account number of the subscriber or applicant;
- (b) The name and address of the enrollee or applicant affected by the decision, if that person is not the subscriber on the account;
- (c) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed;

(d) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation; and

(e) If the appealing party is not an enrollee or the subscriber on the account, a signed agreement from the enrollee, authorizing the appealing party to act on his/her behalf.

(3) When an appeal is received, the HCA will send a notice to the appealing party, confirming that the appeal has been received and indicating when a decision can be expected. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber.

(4) **Initial HCA decisions:** The HCA will conduct appeals according to RCW 34.05.485. The HCA appeals committee or a single presiding officer designated by the HCA will review and decide the appeal. The appealing party may request an opportunity to be present in person or by telephone to explain his or her view. If the appealing party does not request an opportunity to be present to explain, the HCA appeals committee or presiding officer will review and decide the appeal based on the information and documentation submitted.

(5) The HCA will give priority handling to appeals regarding a loss of coverage for an enrollee with an urgent medical need that could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, provided:

(a) The appeal is received within ten business days of the effective date of the loss of coverage; and

(b) The enrollee has clearly stated in the letter of appeal or has otherwise notified the HCA that he or she has an urgent medical need.

(6) For all other appeals, the HCA will send the appealing party written notice of the initial HCA decision within sixty days of receiving the letter of appeal. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber. The notice will include the reasons for the initial decision and instructions on further appeal rights.

(7) **Review of initial HCA decision:** The initial HCA decision becomes the final agency decision unless the HCA receives a valid request for a review from the appealing party.

(a) To be a valid request for review, the appealing party's request may be either verbal or in writing, but must:

(i) Be received within thirty days of the date of the initial HCA decision.

(ii) Include a summary of the initial HCA decision being appealed and state why the appealing party believes the decision was incorrect; and

(iii) Provide any additional information or documentation that the appealing party would like considered in the review.

(b) Requests for review of an initial HCA decision regarding a disenrollment for nonpayment will be reviewed by the office of administrative hearings through a hearing conducted under chapter 34.12 RCW and RCW 34.05.488 through 34.05.494.

(c) All other requests for review of an initial HCA decision will be reviewed by a presiding officer designated by the HCA according to the requirements of RCW 34.05.488 through 34.05.494, with the following exception: These



review decisions will be based on the record and documentation submitted, unless the presiding officer decides that an in-person or telephone hearing is needed. If an in-person or telephone hearing is needed, the presiding officer will decide whether to conduct the hearing as an informal hearing or formal adjudicative proceeding.

(d) The presiding officer will issue a written notice of the review decision, giving reasons for the decision, within twenty-one days of receiving the request for review, unless the presiding officer finds that additional time is needed for the decision.

(8) Enrollees who appeal a disenrollment decision that was based on eligibility issues and not related to premium payments may remain enrolled during the appeal process, provided:

(a) The appeal was submitted according to the requirements of this section; and

(b) The enrollee:

(i) Remains otherwise eligible;

(ii) Continues to make all premium payments when due; and

(iii) Has not demonstrated a danger or threat to the safety or property of the MHCS or health care authority or their staff, providers, patients or visitors.

(9) Enrollees who appeal a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.

(10) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.

#### NEW SECTION

**WAC 182-22-330 How to appeal a managed health care system (MHCS) decision.** (1) Enrollees who are appealing an MHCS decision, including decisions related to coverage disputes; denial of claims; benefits interpretation; or resolution of complaints must follow their MHCS's complaint/appeals process.

(2) Each MHCS must maintain a complaint/appeals process for enrollees and must provide enrollees with instructions for filing a complaint and/or appeal. This complaint/appeals process must comply with the requirements of chapters 48.43 RCW and 284-43 WAC.

(3) On the request of the enrollee, the HCA may assist an enrollee by:

(a) Attempting to informally resolve complaints against the enrollee's MHCS;

(b) Investigating and resolving MHCS contractual issues; and

(c) Providing information and assistance to facilitate review of the decision by an independent review organization.

## PART 4—AGENCY OPERATIONS

### NEW SECTION

**WAC 182-22-410 Producers.** If specific funding has been appropriated for that purpose, insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed HCA's training program, will be paid a commission for assisting eligible applicants to enroll.

(1) Individual policy commission: Subject to availability of funds, and as a pilot program, HCA will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP or WHP to an eligible individual applicant if that applicant has not been a BHP or WHP member within the previous five years.

(2) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(3) Insurance brokers or agents must provide the prospective applicant with the BHP or WHP toll-free information number and inform them of BHP or WHP benefits, limitations, exclusions, waiting periods, cost sharing, all MHCSs available to the applicant within his/her county of residence and the estimated premium for each of them.

(4) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP or WHP, except they will not be required to be appointed by the MHCS.

(5) HCA will not pay renewal commissions.

### NEW SECTION

**WAC 182-22-420 Application processing.** Except as otherwise provided, applications for enrollment will be reviewed by HCA within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

### NEW SECTION

**WAC 182-22-430 Open enrollment.** An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

## PART 5—MHCS DUTIES

### NEW SECTION

**WAC 182-22-450 MHCS duties.** When an MHCS assists applicants in the enrollment process, it must provide

them with the toll-free number for BHP or WHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

### Chapter 182-23 WAC

#### WASHINGTON HEALTH PLAN

##### NEW SECTION

**WAC 182-23-010 Definitions.** "Standard health questionnaire" or "SHQ" has the same meaning as described in RCW 48.43.018.

"WHP enrollee" or "nonsubsidized enrollee" means an individual who enrolls in WHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in WHP, without subsidy from the HCA.

##### NEW SECTION

**WAC 182-23-020 Eligibility.** (1) To be eligible for enrollment in WHP, an individual may have any income level and must:

- (a) Not be eligible for free or purchased medicare;
- (b) Not be receiving medical assistance from the department of social and health services (DSHS);
- (c) Not be enrolled in BHP;
- (d) Not be confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;
- (e) Be accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire or SHQ under RCW 48.43.018, or, based upon the results of the SHQ, the potential enrollee would not qualify for coverage under the Washington state health insurance pool;
- (f) Reside in an area of the state served by a managed health care system participating in the plan;
- (g) Choose to obtain coverage from a particular managed health care system; and
- (h) Pay or have paid on their behalf the full costs for participation in the plan, including the cost of administration, without any subsidy from HCA.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by WHP, will not be enrolled. An enrollee who is no longer a Washington resident or who is later determined to have failed to meet WHP's eligibility criteria at the time of enrollment, will be disenrolled.

##### NEW SECTION

**WAC 182-23-040 Washington health benefits.** (1) The administrator shall design and from time to time may revise WHP benefits, according to the requirements of chapter 70.47 RCW, as amended. These benefits will include physician services, prescription drugs and medications, and inpatient and outpatient hospital services, mental health care services, limited chemical dependency services, limited

organ transplant services, and all services necessary for prenatal, postnatal and well-child care, and will emphasize proven preventive and primary care services. WHP benefits may include copayments, waiting periods, limitations and exclusions that the administrator determines are appropriate and consistent with the goals and objectives of the plan. WHP benefits will be subject to a nine-month waiting period for preexisting conditions. Exceptions (for example, children up to age nineteen, maternity, prescription drugs, services for a newborn or newly adopted child) are outlined in the schedule of benefits. Credit toward the waiting period will be given for any continuous period of time for which an enrollee was covered under similar health coverage if that coverage was in effect at any time during the three-month period immediately preceding the date of application for coverage under WHP. Similar coverage includes BHP; all DSHS programs administered by the medical assistance administration which have the medicaid scope of benefits; the DSHS program for the medically indigent; Indian health services; most coverages offered by health carriers; and most self-insured health plans. A list of WHP benefits, including copayments, waiting periods, limitations and exclusions, will be provided to the subscriber.

(2) In designing and revising WHP benefits, the administrator will consider the effects of particular benefits, copayments, limitations and exclusions on access to necessary health care services, as well as the cost to the enrollees and to the state, and also will consider generally accepted practices of the health insurance and managed health care industries.

(3) Before enrolling, WHP will provide each applicant with a written description of covered benefits. This includes a description of all copayments, waiting periods, limitations and exclusions. WHP will advise individuals how to access information on the services, providers, facilities, hours of operation, and information about the managed health care system(s) available to enrollees in a given service area.

(4) WHP will send to all subscribers written notice of any changes in the scope of benefits provided under WHP, or program changes that will affect premiums and member cost sharing at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect. The administrator may make available a separate schedule of benefits for children, eighteen years of age and younger, for those dependent children in the plan.

##### NEW SECTION

**WAC 182-23-050 Premiums and cost sharing.** (1) Subscribers or their employer or financial sponsor shall be responsible for paying the full monthly premium to WHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule.

(2) Once WHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by WHP unless the premium has been

paid by the due date given. Thereafter, WHP will bill each subscriber or employer or financial sponsor monthly.

(3) Full payment for premiums due must be received by WHP by the date specified on the premium statement. If WHP does not receive full payment of a premium by the date specified on the premium statement, WHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with WHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the enrollee will be disenrolled for nonpayment as set forth herein. Partial payment of premiums due, payment which for any reason cannot be applied to the correct WHP enrollee's account, or payment by check which is not signed, cannot be processed, or is returned due to non-sufficient funds will be regarded as nonpayment.

(4) Enrollees shall be responsible for paying any required copayment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS.

#### NEW SECTION

**WAC 182-23-060 Enrollment in the plan.** (1) Any individual applying for enrollment in WHP must submit a signed, completed WHP application and SHQ. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child and for completion of the SHQ. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook.

(a) Applicants for enrollment must provide evidence of Washington state residence, for example, a valid Washington state driver's license number, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(b) WHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility, or MHCS selection.

(c) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment. Intentional submission of false information may result in disenrollment of the subscriber and all enrolled dependents.

(2) Each member may be enrolled in only one WHP account. Each family applying for enrollment must designate an MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for

WHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of an MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the WHP member handbook.

(3) Generally, enrollees may change from one MHCS to another only during open enrollment.

(a) If an enrollee moves to a new location in Washington state and their current MHCS is no longer available, they must choose an MHCS in their new service area (county). Until the family is enrolled in a new MHCS, only emergency services are covered in their new location.

(b) Enrollees meeting the requirements of (a) of this subsection are not required to reapply or complete the SHQ so long as there is not a gap in coverage longer than one month.

(4) Enrollees may change between the maximum benefit limits, but only when the subscriber completes a new application and SHQ. All individuals on an account are required to have the same maximum benefit limit.

(5)(a) Not all family members are required to apply for enrollment in WHP; however, any family member for whom application for enrollment is not made at the same time that other family members may apply at any time provided they complete and pass the SHQ, and are otherwise eligible.

(b) Addition of an eligible newborn child or a child newly placed for adoption provided WHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption.

(6) Subscribers must notify WHP within thirty days of any changes that could affect their eligibility or their dependents' eligibility.

(7) Enrollees must annually submit documentation satisfactory to WHP. This process is called recertification and includes the following:

(a) Washington state residence;

(b) Medicare ineligibility for enrollees age sixty-five or over and enrollees who have been receiving Social Security disability benefits for twenty-four consecutive months or more;

(c) Enrollees who fail to comply with a recertification request will be disenrolled.

#### NEW SECTION

**WAC 182-23-070 Disenrollment from WHP.** (1) An enrollee or employer group may disenroll effective the first day of any month by giving WHP at least ten days prior notice of the intention to disenroll.

(2) WHP may disenroll any enrollee or group from WHP for good cause, which includes:

(a) Failure to meet the WHP eligibility requirements;

(b) Nonpayment of premium;

(c) Changes in MHCS or program availability when the enrollee's MHCS will no longer be available to him or her and no other MHCS in the area where the enrollee lives is accepting new enrollment in the enrollee's program;

(d) Fraud, intentional misrepresentation of information or withholding information that the enrollee knew or should

have known was material or necessary to accurately determine their eligibility or premium responsibility, failure to provide requested verification of eligibility, or knowingly providing false information;

(e) Abuse or intentional misconduct;

(f) Danger or threat to the safety or property of the MHCS or the health care authority or their staff, providers, patients or visitors; and

(g) Refusal to accept or follow procedures or treatment determined by an MHCS to be essential to the health of the enrollee, when the MHCS has advised the enrollee and demonstrated to the satisfaction of WHP that no professionally acceptable alternative form of treatment is available from the MHCS.

(3) In addition to being disenrolled, any enrollee who knowingly provides false information to WHP or to a participating managed health care system may be held financially responsible for any covered services fraudulently obtained through WHP.

(4) At least ten days prior to the effective date of disenrollment, WHP will send enrollees written notice of disenrollment.

(a) The notice of disenrollment will:

(i) State the reason for the disenrollment;

(ii) State the effective date of the disenrollment;

(iii) Describe the procedures for disenrollment; and

(iv) Inform the enrollee of his or her right to appeal the disenrollment decision as set forth in chapter 182-22 WAC.

(b) A notice of disenrollment will be sent to both the employer or sponsor and to all members of an employer group, home care agency group or financial sponsor group that is disenrolled under these provisions. Enrollees affected by the disenrollment of a group account will be offered coverage under individual accounts. Coverage under individual accounts will not begin unless the premium for individual coverage is paid by the due date for the coverage month. A one-month break in coverage may occur for enrollees who choose to transfer to individual accounts.

(5) Enrollees who are notified that they will be disenrolled due to incomplete recertification documents shall not be disenrolled if they submit complete documents within thirty days after the disenrollment letter is mailed.

(6) Under the provisions of this subsection, WHP will suspend or disenroll enrollees and groups who do not pay their premiums when due. Partial payment or payment by check which cannot be processed or is returned due to non-sufficient funds will be regarded as nonpayment.

(a) At least ten days before coverage will lapse, WHP will send a delinquency notice to each subscriber whose premium payment has not been received by the due date. The delinquency notice will include a final due date and a notice that WHP coverage will lapse unless payment is received by the final due date.

(b) Except as provided in (c) of this subsection, coverage will be suspended for one month if an enrollee's premium payment is not received by the final due date, as shown on the delinquency notice. WHP will send written notice of suspension to the subscriber, which will include:

(i) The effective date of the suspension;

(ii) The due date by which payment must be received to restore coverage after the one-month suspension;

(iii) Notification that the subscriber and any enrolled dependents will be disenrolled if payment is not received by the final due date; and

(iv) Instructions for filing an appeal as provided in chapter 182-22 WAC.

(c) Enrollees whose premium payment has not been received by the delinquency due date, and who have been suspended twice within the previous twelve months will be disenrolled for nonpayment as of the effective date of the third suspension.

(d) Enrollees who are suspended and do not pay the premium for the next coverage month by the due date on the notice of suspension will be immediately disenrolled and issued a notice of disenrollment, which will include:

(i) The effective date of the disenrollment; and

(ii) Instructions for filing an appeal as provided in WAC 182-22-310.

(7)(a) Unless otherwise specified, enrollees who voluntarily disenroll or are disenrolled from WHP may not reenroll for a period of twelve months from the date their coverage ended and until all other requirements for enrollment have been satisfied. An exception to the twelve-month wait period will be made for:

(i) Enrollees who left WHP for other health insurance, who are able to provide proof of continuous coverage from the date of disenrollment, and who apply to reenroll in WHP within thirty days of losing the other coverage;

(ii) Enrollees who left WHP because they lost eligibility and who subsequently become eligible to reenroll;

(iii) Enrollees who were disenrolled by WHP because no MHCS was contracted to serve the program in which they were enrolled in the geographic area where they live. These enrollees may reenroll, provided all enrollment requirements are met, if an MHCS begins accepting enrollment for their program in their area or if they become eligible and apply for another HCA program; and

(iv) Enrollees who were disenrolled for failing to provide requested documentation of eligibility for recertification or as otherwise requested by WHP, who provide all required documentation within six months of disenrollment and are eligible to reenroll. Reenrollment in the plan will not be retroactive and shall take place within forty-five days of WHP receiving complete reenrollment documents that verify eligibility.

(b) An enrollee who is required to wait twelve months for reenrollment under (a) of this subsection may not reenroll prior to the end of the required twelve-month wait.

## Chapter 182-24 WAC

### BASIC HEALTH PLAN

#### NEW SECTION

**WAC 182-24-010 Definitions.** The following definitions apply throughout this chapter.

"BHP enrollee," "subsidized enrollee," or "reduced premium enrollee" means an individual who is not a full-time student who has received a temporary visa to study in the

United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

"Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

#### NEW SECTION

**WAC 182-24-020 Eligibility.** (1) To be eligible for enrollment in BHP, unless otherwise specified elsewhere in this chapter, an individual must be a Washington state resident who:

- (a) Is not eligible for free or purchased medicare;
- (b) Is not receiving medical assistance from the department of social and health services (DSHS);
- (c) Is not enrolled in WHP;
- (d) Is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;
- (e) Is not a full-time student who has received a temporary visa to study in the United States;
- (f) Resides in an area of the state served by a managed health care system participating in the plan;
- (g) Chooses to obtain coverage from a particular managed health care system;
- (h) Pays or has paid on their behalf their portion of the costs for participation in the plan; and
- (i) Whose gross family income at the time of enrollment meets the definition of a subsidized enrollee.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by BHP, will not be enrolled. An enrollee who is no longer a Washington resident or who is later deter-

mined to have failed to meet BHP's eligibility criteria at the time of enrollment, will be disenrolled.

(3) Eligibility for BHP Plus and maternity benefits through medical assistance is determined by DSHS, based on medicaid eligibility criteria.

(4)(a) An individual otherwise eligible for enrollment in BHP may be denied enrollment if the administrator has determined that acceptance of additional enrollment would exceed limits established by the legislature, would jeopardize the orderly development of BHP, or would result in an overexpenditure of BHP funds. An individual otherwise eligible for enrollment in BHP also may be denied enrollment if no managed health care system(s) is accepting new enrollment in that program or from the geographic area where the applicant lives.

(b) If the administrator closes or limits enrollment, to the extent funding is available, BHP will continue to accept and process applications for enrollment from:

- (i) Children eligible for BHP, who were referred to DSHS for BHP Plus coverage, but were found ineligible for BHP Plus for reasons other than noncompliance;
- (ii) Employees of a home care agency group enrolled or applying for coverage under WAC 182-22-220;
- (iii) Eligible individual home care providers;
- (iv) Licensed foster care workers;
- (v) Persons who disenrolled from BHP in order to enroll in medicaid, and subsequently became ineligible for medicaid;
- (vi) Limited enrollment of new employer groups;
- (vii) Members of the Washington National Guard and Reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents; and

(viii) Subject to availability of funding, additional space for enrollment may be reserved for other applicants as determined by the administrator, in order to ensure continuous coverage and service for current individual and group accounts. (For example: Within established guidelines, processing routine income changes that may affect subsidy eligibility for current enrollees; adding new family members to an existing account; transferring enrollees between group and individual accounts; restoring coverage for enrollees who are otherwise eligible for continued enrollment under WAC 182-24-070 (7)(b) after a limited suspension of coverage due to late payment or other health care coverage; adding newly hired employees to an existing employer group; or adding new or returning members of federally recognized Native American tribes to that tribe's currently approved financial sponsor group.)

(c) If the administrator has closed or limited enrollment, applicants for BHP who are not in any of the categories in (b) of this subsection may reserve space on a waiting list to be processed according to the date the waiting list request or application is received by BHP. When enrollment is reopened by the administrator, applicants whose names appear on the waiting list will be notified by BHP of the opportunity to enroll. BHP may require new application forms and documentation from applicants on the waiting list, or may contact applicants to verify continued interest in applying, before determining their eligibility.

NEW SECTION

**WAC 182-24-025 How is income calculated?** "Gross family income" means total cash receipts, as defined in subsection (1) of this section, before taxes, from all sources, for subscriber and dependents regardless of whether they are enrolled in BHP, with the exceptions noted in subsection (2) of this section. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(1) Income includes:

(a) Wages, tips, and salaries before any deductions;

(b) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). A net loss from self-employment will not be used to offset other income sources. In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, except that:

(i) A deduction for business use of the home may be allowed in cases where the enrollee has documented that more than fifty percent of their home is used for the business for the majority of the year; or

(ii) A deduction for business use of the home may be allowed in cases where the enrollee has documented that they maintain a separate building located on the same property as their home that is used exclusively for the business;

(c) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from self-employment will not be used to offset other income sources;

(d) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, workers' compensation, and strike benefits from union funds;

(e) Payments for punitive damages;

(f) Public assistance, alimony, child support, and military family allotments;

(g) Work study, assistantships, or training stipends;

(h) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(i) Net rental income, net royalties, and net gambling or lottery winnings;

(j) Lump sum inheritances and periodic receipts from estates or trusts; and

(k) Short-term capital gains, such as from the sale of stock or real estate.

(2) Income does not include the following types of money received:

(a) Any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car;

(b) Tax refunds, gifts, loans, one-time insurance payments, other than for punitive damages, and one-time payments or winnings received more than one month prior to application;

(c) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as medicare, medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(d) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(e) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(f) College or university scholarships, grants, and fellowships;

(g) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13A.005 through 74.13A.080;

(h) Long-term capital gains;

(i) Crime victims' compensation;

(j) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(i) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school during the time the child care expenses were paid; and

(ii) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

NEW SECTION**WAC 182-24-030 Failure to report correct income.**

(1) If BHP determines that the enrollee has received a subsidy overpayment due to failure to report income correctly, BHP may:

(a) Bill the enrollee for the amount of subsidy overpaid by the state; or

(b) If the overpayment was due to fraud, intentional misrepresentation of information, or withholding information that the enrollee knew or should have known was material or necessary to accurately determine the premium, impose civil penalties of up to two hundred percent of the subsidy overpayment.

(2) Any BHP determination under subsection (1) of this section is subject to the enrollee appeal provisions in chapter 182-22 WAC.

(3) When a decision under subsection (1)(a) of this section is final, BHP may establish a payment schedule and, for enrollees who remain enrolled in BHP, will collect the amount owed through future premium statements. Enrollees who disenroll prior to paying the full amount of the subsidy overpayment may continue the payment plan previously approved by BHP or may be billed for the entire amount due. BHP may charge interest for the amount past due, at the rate specified under RCW 43.17.230 and rules promulgated under that section. The payment schedule will be for a period of no more than six months, unless BHP approves an alternative payment schedule requested by the enrollee. When a payment schedule is established, BHP will send the enrollee advance written notice of the schedule and the total amount due. The total amount due each month will include the regular monthly premium plus charges for subsidy overpayment. If an enrollee does not pay the amount due, including charges for subsidy overpayment, the enrollee and all family members enrolled on the account will be disenrolled for nonpayment under WAC 182-24-070 (2)(b).

(4) When a final decision is made under subsection (1)(b) of this section, BHP will send the enrollee notice that payment of the civil penalty is due in full within thirty days after the decision becomes final, unless BHP approves a different due date at the enrollee's request. If the enrollee does not pay the civil penalty by the due date, the enrollee and all family members on the account will be disenrolled for nonpayment under WAC 182-24-070 (2)(b).

(5) Individuals who are disenrolled from BHP may not reenroll until charges for subsidy overpayments or civil penalties imposed under subsection (1) of this section have been paid or BHP has approved a payment schedule and all other requirements for enrollment have been met.

(6) BHP will take all necessary and appropriate administrative and legal actions to collect the unpaid amount of any subsidy overpayment or civil penalty, including recovery from the enrollee's estate.

(7) Enrollees under employer group or financial sponsor group coverage who do not follow the income reporting procedures established by BHP and their employer or financial sponsor may be billed directly by BHP for subsidy overpayments or civil penalties assessed under subsection (1) of this section. Enrollees who do not pay the amount due will be disenrolled under WAC 182-24-070 (2)(b) or (c). Enrollees who are disenrolled for nonpayment of a subsidy overpayment or civil penalties will be excluded from the minimum participation calculation for employer groups under WAC 182-22-210(2).

#### NEW SECTION

**WAC 182-24-040 BHP benefits.** (1) The administrator shall design and from time to time may revise BHP benefits, according to the requirements of chapter 70.47 RCW, as amended. These benefits will include physician services, prescription drugs and medications, and inpatient and outpatient hospital services, mental health care services, limited

chemical dependency services, limited organ transplant services, and all services necessary for prenatal, postnatal and well-child care, and will emphasize proven preventive and primary care services. The medicaid scope of benefits may be provided by BHP as the BHP Plus program through coordination with DSHS for children under the age of nineteen, who are found to be medicaid eligible. BHP benefits may include copayments, waiting periods, and limitations and exclusions which the administrator determines are appropriate and consistent with the goals and objectives of the plan. BHP benefits will be subject to a nine-month waiting period for preexisting conditions. Exceptions (for example, maternity, prescription drugs, services for a newborn or newly adopted child, dependent children up to age nineteen) are outlined in the schedule of benefits. Credit toward the waiting period will be given for any continuous period of time for which an enrollee was covered under similar health coverage if that coverage was in effect at any time during the three-month period immediately preceding the date of reservation or application for coverage under BHP. Similar coverage includes BHP, WHP, all DSHS programs administered by the medical assistance administration which have the medicaid scope of benefits, the DSHS program for the medically indigent, Indian health services, most coverages offered by health carriers, and most self-insured health plans. A list of BHP benefits, including copayments, waiting periods, and limitations and exclusions will be provided to the subscriber.

(2) In designing and revising BHP benefits, the administrator will consider the effects of particular benefits, copayments, limitations and exclusions on access to necessary health care services, as well as the cost to the enrollees and to the state, and will also consider generally accepted practices of the health insurance and managed health care industries.

(3) Prior to enrolling in BHP, each applicant will be given a written description of covered benefits, including all copayments, waiting periods, limitations and exclusions, and be advised how to access information on the services, providers, facilities, hours of operation, and other information descriptive of the managed health care system(s) available to enrollees in a given service area.

(4) BHP will provide to all subscribers written notice of any changes in the scope of benefits provided under BHP, or program changes that will affect premiums and copayments at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect. This subsection does not apply to premium changes that are the result of changes in income or family size. The administrator may make available a separate schedule of benefits for children, eighteen years of age and younger, for those dependent children in the plan.

#### NEW SECTION

**WAC 182-24-050 Premiums and copayments.** (1) Subscribers or their employer or financial sponsor are responsible for paying the full monthly premium to BHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule. A third party may, with the approval of the administrator, become a financial

sponsor and pay all or a designated portion of the premium on behalf of a subscriber and dependents, if any.

(2) The amount of premium due from or on behalf of a subsidized enrollee will be based upon the subscriber's gross family income, the managed health care system selected by the subscriber, rates payable to managed health care systems, and the number and ages of individuals in the subscriber's family.

(3) Once BHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by BHP unless the premium has been paid by the due date given. Thereafter, BHP will bill each subscriber or employer or financial sponsor monthly.

(4) Full payment for premiums due must be received by BHP by the date specified on the premium statement. If BHP does not receive full payment of a premium by the date specified on the premium statement, BHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with BHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the subscriber and enrolled family members will be disenrolled for nonpayment under the provisions of WAC 182-24-060(2). Partial payment of premiums due, payment which for any reason cannot be applied to the correct BHP enrollee's account, or payment by check which is not signed, cannot be processed, or is returned due to insufficient funds, will be regarded as nonpayment.

(5) Enrollees shall be responsible for paying any required copayment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS.

(6) Monthly premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level will be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Monthly premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level will not exceed one hundred dollars per month.

#### NEW SECTION

**WAC 182-24-060 Enrollment in the plan.** (1) Any individual applying for enrollment must submit a signed, completed application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation

to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for BHP Plus enrollment on behalf of children under the age of nineteen will be referred to the department of social and health services for medicaid eligibility determination.

(2) Each BHP or BHP Plus applicant must list all eligible dependents, regardless of whether the dependents will be enrolled, and must supply other information and documentation as required and where applicable by BHP and DSHS medical assistance.

(a) Applicants for BHP enrollment must provide documentation showing the amount and sources of their gross family income. Income documentation must include a copy of the applicant's most recently filed federal income tax form or verification of nonfiling status, and copies of pay stubs or other documents showing income for the most recent thirty days or complete calendar month as of the date of application. Applicants who were not required to file a federal income tax return may be required to provide other documentation showing year-to-date income. As described in WAC 182-22-210(5), BHP may use an average of documented income when determining eligibility.

(b) Applicants for BHP enrollment must provide documentation of Washington state residence, displaying the applicant's name and current address, for example, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility, or MHCS selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information will result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate an MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for BHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of an MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the BHP member handbook. Generally, enrollees may change from one MHCS to another only during open enrollment or if they are able to show good cause for the transfer, for example, when enrollees move to an area served by a different MHCS or where they would be billed a higher premium for their current MHCS.

(4) When an MHCS assists BHP applicants in the enrollment process, it must provide them with the toll-free number for BHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(5) Except as otherwise provided in this chapter, applications for enrollment will be reviewed by BHP within thirty



business days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(6)(a) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that:

(i) At least one MHCS is accepting new enrollment in the program for which the applicant is applying and from the geographic area where the applicant lives; and

(ii) The applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP.

(b) In the event a waiting list is implemented, eligible applicants will be enrolled in accordance with WAC 182-24-020.

(7) An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

(8) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period, unless the subscriber has experienced a "qualifying change in family status." "Qualifying changes in family status" include:

(a) The loss of other health care coverage, for a family member who has previously waived coverage, provided BHP receives the family member's application within thirty days of the loss of other coverage, along with proof of the family member's continuous medical coverage from the date the subscriber enrolled in BHP;

(b) Marriage or assuming custody or dependency of a child or adult dependent (other than newborn or newly adopted children), provided BHP receives the new family member's application within thirty days of the change in family status;

(c) Addition of an eligible newborn child or a child newly placed for adoption provided BHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption; or

(d) Addition of a family member who was not previously eligible for coverage, and who has become eligible.

(9) Subscribers must notify BHP of any changes that could affect their eligibility or subsidy or their dependents' eligibility or subsidy:

(a) Within thirty days of the end of the first month of receiving an increased income; or

(b) Within thirty days of a change other than an income change (for example, a change in family size or address).

(10) BHP will verify the continuing eligibility of BHP enrollees through the recertification process at least once every twelve months. The twelve-month period begins upon

completion of the previous recertification process. Upon request of BHP, subsidized enrollees must submit evidence satisfactory to BHP, proving their continued eligibility for enrollment and for the premium subsidy they are receiving.

(a) BHP will verify enrollees' income through comparison with other state and federal agency records or other third-party sources.

(b) If the enrollee's income on record with other agencies or third-party source differs from the income the enrollee has reported to BHP, or if questions arise concerning the documentation submitted, BHP will require updated documentation from the enrollee to prove continued eligibility for the subsidy they are receiving. At that time, BHP may also require updated documentation of residence to complete the recertification process.

(c) Enrollees who have been enrolled in BHP six months or more and have not provided updated income documentation for at least six months will be required to submit new income documentation if their wage or salary income cannot be compared to an independent source for verification. The six-month period begins upon completion of the previous recertification process.

(d) Enrollees who have documented that they are not required to file a federal income tax return for previous years will not be required to provide additional verification of non-filing unless their circumstances appear to have changed or other information received indicates they have filed a federal income tax return.

(11) In addition to verification of income, BHP enrollees must annually submit documentation satisfactory to BHP of the following:

(a) Washington state residence;

(b) Full-time student status for dependent students age nineteen through twenty-five attending school out-of-state; and

(c) Medicare ineligibility for enrollees age sixty-five or over and for enrollees who have been receiving Social Security disability benefits for twenty-four consecutive months or more.

(12) When determining eligibility for BHP enrollment, noncitizens may be required to provide proof of immigration status, to verify whether they are here on a temporary visa to study in the United States.

(13) For good cause such as, but not limited to, when information received indicates a change in income or a source of income the enrollee has not reported, BHP may require enrollees to provide verification required in subsections (10) and (11) of this section more frequently, regardless of the length of time since their last recertification.

(14) Enrollees who fail to comply with a recertification request will be disenrolled, according to the provisions of WAC 182-24-070 (2)(d).

(15) If, as a result of recertification, BHP determines that an enrollee has not reported income or income changes accurately, the enrollee will be subject to the provisions of WAC 182-24-030.

NEW SECTION

**WAC 182-24-070 Disenrollment from BHP.** (1) An enrollee or employer group may disenroll effective the first day of any month by giving BHP at least ten days prior notice of the intention to disenroll.

(2) BHP may disenroll any enrollee or group from BHP for good cause, which includes:

- (a) Failure to meet the BHP eligibility requirements;
- (b) Nonpayment of premium under the provisions of subsection (7) of this section;
- (c) Changes in MHCS or program availability when the enrollee's MHCS will no longer be available to him or her and no other MHCS in the area where the enrollee lives is accepting new enrollment in the enrollee's program;
- (d) Fraud, intentional misrepresentation of information, or withholding information that the enrollee knew or should have known was material or necessary to accurately determine their eligibility or premium responsibility, failure to provide requested verification of eligibility or income, or knowingly providing false information;
- (e) Abuse or intentional misconduct;
- (f) Danger or threat to the safety or property of the MHCS or the health care authority or their staff, providers, patients or visitors; and
- (g) Refusal to accept or follow procedures or treatment determined by an MHCS to be essential to the health of the enrollee, when the MHCS has advised the enrollee and demonstrated to the satisfaction of BHP that no professionally acceptable alternative form of treatment is available from the MHCS.

(3) In addition to being disenrolled, any enrollee who knowingly provides false information to BHP or to a participating managed health care system may be held financially responsible for any covered services fraudulently obtained through BHP.

(4) At least ten days before the effective date of disenrollment under subsection (2)(a) and (c) through (g) of this section, BHP will send the enrollee written notice of disenrollment.

- (a) The notice of disenrollment will:
  - (i) State the reason for the disenrollment;
  - (ii) State the effective date of the disenrollment;
  - (iii) Describe the procedures for disenrollment; and
  - (iv) Inform the enrollee of his or her right to appeal the disenrollment decision as set forth in chapter 182-22 WAC.

(b) The notice of disenrollment will be sent to both the employer or sponsor and to all members of an employer group, home care agency group or financial sponsor group that is disenrolled under these provisions. Enrollees affected by the disenrollment of a group account will be offered coverage under individual accounts. Coverage under individual accounts will not begin unless the premium for individual coverage is paid by the due date for the coverage month. A one-month break in coverage may occur for enrollees who choose to transfer to individual accounts.

(5) Enrollees covered under BHP Plus or receiving maternity benefits through medical assistance will not be disenrolled from those programs when other family members lose BHP coverage, as long as they remain eligible for those programs.

(6) Enrollees who are notified that they will be disenrolled due to incomplete recertification documents shall not be disenrolled if they submit complete documents within thirty days after the disenrollment letter is mailed.

(7) Under the provisions of this subsection, BHP will suspend or disenroll enrollees and groups who do not pay their premiums when due, including amounts owed for subsidy overpayment, if any. Partial payment or payment by check which cannot be processed or is returned due to non-sufficient funds will be regarded as nonpayment.

(a) At least ten days before coverage will lapse, BHP will send a delinquency notice to each subscriber whose premium payment has not been received by the due date. The delinquency notice will include a final due date and a notice that BHP coverage will lapse unless payment is received by the final due date.

(b) Except as provided in (c) of this subsection, coverage will be suspended for one month if an enrollee's premium payment is not received by the final due date, as shown on the delinquency notice. BHP will send written notice of suspension to the subscriber, which will include:

- (i) The effective date of the suspension;
- (ii) The due date by which payment must be received to restore coverage after the one-month suspension;
- (iii) Notification that the subscriber and any enrolled dependents will be disenrolled if payment is not received by the final due date; and
- (iv) Instructions for filing an appeal under WAC 182-22-310.

(c) Enrollees whose premium payment has not been received by the delinquency due date, and who have been suspended twice within the previous twelve months will be disenrolled for nonpayment as of the effective date of the third suspension.

(d) Enrollees who are suspended and do not pay the premium for the next coverage month by the due date on the notice of suspension will be immediately disenrolled and issued a notice of disenrollment, which will include:

- (i) The effective date of the disenrollment; and
- (ii) Instructions for filing an appeal under WAC 182-22-310.

(8)(a) Unless otherwise specified in this chapter, and subject to the provisions of WAC 182-22-430, enrollees who voluntarily disenroll or are disenrolled from BHP may not reenroll for a period of twelve months from the date their coverage ended and until all other requirements for enrollment have been satisfied. An exception to this provision may be made for:

(i) Enrollees who left BHP for other health insurance, who are able to provide proof of continuous coverage from the date of disenrollment, and who apply to reenroll in BHP within thirty days of losing the other coverage;

(ii) Enrollees who left BHP because they lost eligibility and who subsequently become eligible to reenroll;

(iii) Persons enrolling in BHP, who had enrolled and subsequently disenrolled from WHP under subsection (1) or (2)(b) of this section while on a waiting list for BHP, if otherwise eligible;

(iv) Enrollees who were disenrolled by BHP because no MHCS was contracted to serve the program in which they

were enrolled in the geographic area where they live; these enrollees may reenroll, provided all enrollment requirements are met, if an MHCS begins accepting enrollment for their program in their area or if they become eligible and apply for another HCA program; and

(v) Enrollees who were disenrolled for failing to provide requested documentation of income or eligibility for recertification or as otherwise requested by BHP, who provide all required documentation within six months of disenrollment and are eligible to reenroll. Reenrollment in the plan will not be retroactive and shall take place within forty-five days of BHP receiving complete reenrollment documents that verify eligibility; subject to the provisions of WAC 182-24-050.

(b) An enrollee who is required to wait twelve months for reenrollment under (a) of this subsection may not reenroll before the end of the required twelve-month wait. If an enrollee satisfies the required twelve-month wait after applying for BHP and while waiting to be offered coverage, enrollment will not be completed until funding is available to enroll him or her.

AMENDATORY SECTION (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

**WAC 182-25-120 Basic health plan coverage for health coverage tax credit eligible enrollees.** (1) "Health coverage tax credit eligible enrollee" or "HCTC enrollee" means an individual or qualified dependent determined by the federal Department of the Treasury to be eligible for a tax credit, as defined under RCW 70.47.020 (3) and (4). In the event that the federal health coverage tax credit program is no longer available, HCTC enrollment in BHP will end.

(2) Eligibility for HCTC enrollment, as subscriber or dependent, is determined by the federal Health Coverage Tax Credit program. HCTC enrollees must provide proof of eligibility for HCTC enrollment, but are not required to also meet the eligibility criteria in WAC ~~((182-25-030))~~ 182-23-020 or 182-24-020.

(3) Unless the enrollee has applied for, is eligible, and has enrolled as a ~~((subsidized))~~ BHP enrollee, the monthly premium due from or on behalf of an HCTC enrollee will be the full cost charged by the MHCS for coverage, plus the administrative cost of providing BHP coverage and the premium tax under RCW 48.14.0201.

(4) HCTC enrollees may pay the full premium for coverage to BHP or, if they are claiming the HCTC advance tax credit, may pay their portion of the premium to the federal HCTC program of the Internal Revenue Service (IRS) by the date required by the IRS.

(5) With the exception of subsections (3) and (7) of this section, ~~((subsidized))~~ BHP enrollees who are HCTC eligible will be subject to the rules for ~~((subsidized))~~ BHP enrollees.

(6) Notice of disenrollment will be sent to the HCTC enrollees for whom the premium has not been paid. This notice will be sent ~~((prior to))~~ before the month of coverage, but will not be subject to the notification requirements in WAC ~~((182-25-090(6)))~~ 182-24-070(7). If payment is received no later than the first day of the month of coverage, the enrollee's coverage for that month will be reinstated.

(7) The nine-month waiting period for treatment of pre-existing conditions will be waived for HCTC enrollees who have had three months or more of creditable coverage, as defined under Public Law 104-191, without a break in coverage of more than sixty-two consecutive days at the time of application. Subsidized enrollees who are HCTC eligible, who provide proof of that eligibility to their MHCS, will be treated as HCTC enrollees for purposes of determining whether the preexisting condition waiting period can be waived.

(8) HCTC enrollees who disenroll may return to HCTC enrollment without being subject to the provisions of WAC ~~((182-25-090(7)))~~ 182-24-070(8).

(9) Because eligibility for the HCTC program is determined by the federal HCTC program at the Internal Revenue Service, BHP will not review appeals of eligibility for the HCTC program. Instructions on appealing an HCTC eligibility determination are available through the HCTC customer contact center.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-25-001	Authority.
WAC 182-25-010	Definitions.
WAC 182-25-020	BHP benefits.
WAC 182-25-030	Eligibility.
WAC 182-25-040	Enrollment in the plan.
WAC 182-25-050	Employer groups.
WAC 182-25-060	Home care agencies.
WAC 182-25-070	Financial sponsors.
WAC 182-25-080	Premiums and copayments.
WAC 182-25-085	Enrollees' failure to report correct income.
WAC 182-25-090	Disenrollment from BHP.
WAC 182-25-100	Where to find instructions for filing an appeal.
WAC 182-25-105	How to appeal health care authority (HCA) decisions.
WAC 182-25-110	How to appeal a managed health care system (MHCS) decision.

#### **WSR 10-21-081**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

(Veterinary Board of Governors)

[Filed October 19, 2010, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-095.

Title of Rule and Other Identifying Information: WAC 246-933-460 Courses approved by the veterinary board.

Hearing Location(s): Department of Health, Creekside Three at Center Point, 20435 72nd Avenue South, Conference Room Two, Kent, WA 98032, on December 6, 2010, at 10:00 a.m.

Date of Intended Adoption: December 6, 2010.

Submit Written Comments to: Judy Haenke, Program Manager, 310 Israel Road S.E., Tumwater, WA 98310 [98502], web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by December 2, 2010.

Assistance for Persons with Disabilities: Contact Judy Haenke by November 26, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 246-933-460 to include courses that are presented by a veterinarian who is a board certified specialist or on faculty at an accredited veterinary college, the United States Animal Health Association, the American Association of Veterinary Laboratory Diagnosticians and the Washington state department of agriculture. The entities identified in WAC 246-933-460 qualify to provide courses without prior approval resulting in a time saving for both the course presenter and the veterinary board.

Reasons Supporting Proposal: The board received a rule petition to approve continuing education courses sponsored by chapters of the Washington State Veterinary Medical Association, when the speaker is board certified, or on the faculty of an accredited veterinary college. During the rule-making process, the board also considered requests to include the United States Animal Health Association, the American Association of Veterinary Laboratory Diagnosticians, and the Washington state department of agriculture. The board determined that all would qualify.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, 310 Israel Road S.E., Tumwater, WA 98502, (360) 236-4947.

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 Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4947, fax (360) 236-4947 [586-4359], e-mail [judy.haenke@doh.wa.gov](mailto:judy.haenke@doh.wa.gov). The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules

that relate only to internal governmental operations that are not subject to violation by a nongovernment party.

October 19, 2010

Timothy D. Gintz, DVM, Chair  
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 07-19-130, filed 9/19/07, effective 10/20/07)

**WAC 246-933-460 (~~Courses~~) Organizations, institutions or individuals approved by the veterinary board to provide continuing education courses.** (1) Courses offered by the following organizations, institutions or individuals are (~~presumed to qualify as~~) approved by the veterinary board to provide continuing veterinary medical education courses (~~without specific prior approval of the board~~).

~~((+))~~ (a) The American Association of Veterinary State Boards (AAVSB).

~~((2))~~ (b) The American Veterinary Medical Association (AVMA).

~~((3))~~ (c) The Washington State Veterinary Medical Association.

~~((4))~~ (d) Any board approved college or school of veterinary medicine.

~~((5))~~ (e) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.

~~((6))~~ (f) The American Animal Hospital Association.

~~((7))~~ (g) Veterinary specialty boards recognized by the American Veterinary Medical Association.

~~((8))~~ (h) Regional veterinary conferences and allied organizations recognized by AAVSB.

~~((9))~~ (i) The Registry of Approved Continuing Education (RACE).

~~((10) Other)~~ (j) The United States Animal Health Association.

(k) The American Association of Veterinary Laboratory Diagnosticians.

(l) The Washington state department of agriculture.

(m) A board certified veterinarian who is certified by a veterinary specialty board recognized by the American Veterinary Medical Association.

(n) A veterinarian who is a faculty member of an accredited college or school of veterinary medicine.

(2) Individual courses (~~as~~) offered by other organizations, institutions or individuals may be approved by the board to offer designated continuing veterinary medical education courses.

## WSR 10-21-085

### PROPOSED RULES

### DEPARTMENT OF COMMERCE

[Filed October 19, 2010, 2:12 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4), adopts federal rule.

Title of Rule and Other Identifying Information: Washington state lead-based paint—Renovation activities, the department proposes to amend the lead-based paint activities rules, chapter 365-230 WAC, to include the accreditation of training, certification of individuals and firms, work practice standards, information distribution requirements, and record-keeping requirements adopted from federal regulatory code, 40 C.F.R., Part 745 Subpart E, and enacted by the legislature of the state of Washington, amending RCW 70.103.10 [70.103.010], 70.103.20 [70.103.020], 70.103.30 [70.103.030], 70.103.40 [70.103.040], 70.103.50 [70.103.050], 70.10.80 [70.103.080], and 70.103.90 [70.103.090].

Hearing Location(s): Department of Commerce, 1011 Plum Street S.E., Conference Room 207, Olympia, WA 98504, on December 14, 2010, at 10:00 a.m.; and at the Spokane Neighborhood Action Programs, 212 West 2nd Avenue, Training Room, Spokane, WA, on December 15, 2010, at 10:00 a.m.

Date of Intended Adoption: No earlier than December 16, 2010.

Submit Written Comments to: Cynthia Sanderson, Lead-Based Paint Program Manager, P.O. Box 42525, 1011 Plum Street S.E., Olympia, WA 98504-2525, e-mail [cynthia.sanderson@commerce.wa.gov](mailto:cynthia.sanderson@commerce.wa.gov), fax (360) 586-0489, by December 15, 2010.

Assistance for Persons with Disabilities: Contact Cynthia Sanderson, e-mail [cynthia.sanderson@commerce.wa.gov](mailto:cynthia.sanderson@commerce.wa.gov), TTY (360) 586-4623.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will provide the department of commerce federal authorization to administer the lead-based paint renovation activities rules for Washington state. This will provide for accreditation of training firms, certification of individuals, certification of firms, and enforcement of renovation and lead-based paint activities throughout Washington.

A large remodel, repair, and painting contractor workforce will be trained and certified to provide lead safe work practices in all pre-1978 built residential properties and child-occupied facilities when they're done for compensation. Families with children under the age of six will benefit from work performed in their homes that does not leave behind a lead-dust hazard from renovation activities.

Reasons Supporting Proposal: Local enforcement is ensured by record-keeping inspections that can be performed up to three years after a project has been completed.

State fees for firms and individuals will be lower than federal fees.

Commerce staff is acquainted with the regulated community via two years of lead-based paint training audits, and has worked cooperatively with firms to promote the lead-based paint industry. Commerce focuses both on compliance assistance and enforcement.

Statutory Authority for Adoption: RCW 70.103.10 [70.103.010], 70.103.20 [70.103.020], 70.103.30 [70.103.030], 70.103.40 [70.103.040], 70.103.50 [70.103.050], 70.10.80 [70.103.080], and 70.103.90 [70.103.090].

Statute Being Implemented: RCW 70.103.10 [70.103.010], 70.103.20 [70.103.020], 70.103.30 [70.103.030],

70.103.40 [70.103.040], 70.103.50 [70.103.050], 70.10.80 [70.103.080], and 70.103.90 [70.103.090].

Rule is necessary because of federal law, [no further information supplied by agency.]

Name of Proponent: Department of commerce, lead-based paint program, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Bob Angeline, 1011 Plum Street S.E., Olympia, WA 98504-42525 [98504-2525], (360) 725-2929; Implementation: Cynthia Sanderson, 1011 Plum Street S.E., Olympia, WA 98504-42525 [98504-2525], (360) 725-2941.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Economic impacts were conducted in federal rule making.

A cost-benefit analysis is not required under RCW 34.05.328. Cost-benefit analysis was conducted in federal rule making.

October 19, 2010

Nick Demerice

Director of

Government Affairs

### Chapter 365-230 WAC

#### ACCREDITATION OF LEAD-BASED PAINT TRAINING PROGRAMS AND THE CERTIFICATION OF FIRMS AND INDIVIDUALS CONDUCTING LEAD-BASED PAINT ACTIVITIES AND RENOVATION

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

#### WAC 365-230-010 Authority, purpose and scope. (1)

The authority for these regulations is chapter 70.103 RCW.

#### (2) Purpose.

(a) These regulations address Washington's need for a qualified and properly trained work force to perform ~~((inspection, risk assessment and abatement of hazards associated with lead-based paint,))~~ lead-based paint activities, and lead-based paint renovation work, as defined in these rules, to safeguard the environment and protect human health, especially for children under six years of age and other high-risk groups from lead-based paint hazards.

(b) These regulations prescribe the accreditation requirements for training providers offering lead-based paint activities and lead-based paint renovation training courses to qualify individuals for lead-based paint certification and will require that all lead-based paint training courses be offered or provided only by accredited training providers.

(c) These regulations prescribe the certification requirements of individuals and firms engaged in lead-based paint activities and renovation in target housing and child occupied facilities.

(d) These regulations establish work practice standards for the performance of lead-based paint abatement, inspection, risk assessment, ~~((and abatement activities for))~~ renovation, dust sampling by individuals and firms, and will require that only certified individuals and the certified firms employing such individuals perform these lead-based paint activities and lead-based paint renovations.

## (3) Scope.

(a) These rules apply to all individuals and firms that are engaged in lead-based paint activities and lead-based paint renovation as defined in these regulations, (WAC 365-230-200 and 365-230-330) except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities and renovation be performed only by certified individuals and the certified firms employing such individuals.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of lead-based paint inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker, and of legally registered firms employing such individuals.

(d) These rules prescribe work practice standards for ~~((the))~~ lead-based paint abatement and renovation, and for the performance of lead-based paint ~~((hazards and for the performance of lead-based paint))~~ inspection ~~((and))~~, risk assessment, renovation, dust sampling, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke, or modify certification.

(e) These rules establish application fees for certification and accreditation.

(f) These rules establish a procedure by which training providers may apply for and obtain accreditation to offer initial and refresher lead-based paint ~~((activity))~~ courses in any of the following disciplines: Inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker.

(g) These rules prescribe the requirements for training programs to provide, offer, or claim to provide accredited lead-based paint activities and renovation courses.

(h) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke or modify accreditation.

(i) These rules describe the actions or failures to act that constitute violations of these rules and for which the department may issue fines.

(j) These rules establish a schedule of penalties for failure to comply with these rules.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-016 Contact information for accreditation and certification matters.** Application materials and information concerning lead-based paint accreditation and certification as described in these rules can be obtained from

the lead-based paint program via the following contact information:

(1) Mailing address: Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

(2) Telephone number: 360-586-LEAD (5323)

(3) ~~((Fax number: 360-586-5880~~

~~(4)))~~ Web site: ~~((www.cted.wa.gov/lead))~~ www.commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-020 Definitions.** As used in these rules unless otherwise required by context:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or the encapsulation of lead-based paint with an EPA-approved encapsulant, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in (a) and (b) of this subsection.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under (c) of this subsection.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through ~~((the))~~ their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under (c) of this subsection.

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accreditation" means the process whereby the department has reviewed and approved a training provider's written application with associated materials for accredita-

tion, and has conducted an on-site audit finding the training program is in compliance as specified in these rules.

(3) "Accredited training program" means a training program accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, to provide training for individuals engaged in lead-based paint activities, renovation, or dust sampling.

(4) "Accredited training course" means either an initial or a refresher training course accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, that provides training for individuals engaged in lead-based paint activities and renovation.

(5) "Accredited training provider" means an individual, corporation, partnership or other unincorporated association or public entity to which the department has approved accreditation to offer one or more lead-based paint courses.

(6) "Approved" means approved in writing by the department.

(7) "Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(8) "Business day" means Monday through Friday with the exception of legal Washington state holidays.

(9) "Certified" means issued a certificate by the department based on meeting requirements for the appropriate discipline. Those requirements include, but are not limited to, the following:

(a) Successful completion of a training program accredited by the department; and

(b) Receiving a passing score on a certification examination administered by the department, or by the training firm in the certification of lead-based paint workers, renovators, and dust sampling technicians; and

(c) Satisfaction of any other requirements for the appropriate discipline; and

(d) Submittal and approval of the appropriate application by the department for inspection, risk assessment or abatement activities in target housing and child-occupied facilities; and

(e) Submittal and approval of the appropriate renovator or dust sampling technician application by the department.

Note: Guidance policy is written to grandfather in all Washington state residents previously certified by EPA as renovators, dust sampling technicians, or Washington renovation firms into the department. Out-of-state residents are required to submit appropriate renovator, dust sampling technician, or renovation firm application and fee to the department.

(10) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a certificate under these rules.

(11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under the age of six, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day care

centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(12) "Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(13) "Clearance examination standards" means a maximum of 40 micrograms of lead in dust per square foot on floors, 250 micrograms of lead in dust per square foot on interior window sills, and 400 micrograms of lead in dust on window troughs.

(14) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(15) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

(16) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(17) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(18) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement or renovation.

(19) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

(20) "Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(21) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.

(22) "Course completion certificate" means documentation issued by an accredited training provider to an individual as proof of successful completion of a department-approved lead-based paint course or initial training course. All course completion certificates are valid for six months from the course completion date.

(23) "Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

(24) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during an initial or refresher training course.

(25) "Department" means the ~~((Washington))~~ department of ~~((community, trade, and economic development))~~ commerce.

(26) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(27) "Director" means the director of the ~~((Washington))~~ department of ~~((community, trade, and economic development))~~ commerce.

(28) "Discipline" means one of the specific types or categories of lead-based paint activities or renovation identified in these rules for which individuals may receive training from accredited programs and become certified by the department. For example, "abatement worker" is a discipline.

(29) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(30) "Documented methodologies" are the methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(31) "Dripline" means the area within three feet surrounding the perimeter of a building.

(32) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft<sup>2</sup> on floors or 250 µg/ft<sup>2</sup> on interior window sills based on wipe samples.

(33) "Elevated blood lead level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

(34) "Encapsulant" means ~~((a))~~ an EPA-approved substance that forms a barrier between lead-based paint and the environment using a liquid applied coating (with or without

reinforcement materials) or an adhesively bonded covering material.

(35) "Encapsulation" means the application of an encapsulant.

(36) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(37) "EPA" means the Environmental Protection Agency.

(38) "Firm" means a sole proprietorship, corporation, association, firm, partnership, or joint stock company legally registered with the Washington department of licensing to conduct business in the state of Washington.

(39) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(40) "Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(41) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(42) "Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in WAC 365-230-200 or 365-230-330 as well as any other skill taught in a training course.

(43) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(44) "Initial training course" means a full, accredited lead-based paint training course required for certification. It is different than a refresher course.

(45) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(46) "Inspector" means an individual who is certified by the department to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with WAC 365-230-200. An inspector may also collect dust and soil samples ~~((and))~~ to perform clearance testing. An inspector may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

(47) "Interim controls" mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(48) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(49) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milli-



gram per square centimeter, 5000 parts per million, or 0.5 percent by weight.

(50) "Lead-based paint activities" mean, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in these rules.

(51) "Lead-based paint activities courses" mean training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training providers.

(52) "Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

(53) "Lead-hazard screen" is a limited risk assessment activity that involves limited paint and dust sampling as described in WAC 365-230-200.

(54) "Licensed" means a person who has been certified by the department in one or more disciplines.

(55) "Living area" means any area of a residential dwelling used by one or more children under the age of six, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

(56) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

(57) "Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(58) "Multifamily housing" means a housing property consisting of more than four dwelling units.

(59) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(60) "Permanent" means having an expected design life of twenty years.

(61) "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian tribe, state, or political subdepartment thereof; any interstate body; and any department, agency, or instrumentality of the federal government.

(62) "Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, such factors including the following: The presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, obser-

vations of play patterns, or information provided by parents, residents, care givers, or property owners.

(63) "Preliminary clearance" means clearance of interior living areas according to which an inspector or risk assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance levels.

(64) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

(65) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a manual disability is an example of a proficiency test.

(66) "Project designer" means an individual who is certified by the department to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for large lead abatement projects in target housing and child-occupied facilities, including occupant notification and protection, cleanup and clearance, and abatement reports.

(67) "Refresher training course" means a minimum ~~((seven-hour training course))~~ of eight training hours, or four training hours for project designer~~((s))~~, renovator, or dust sampling technician accredited by the department to update an individual's knowledge and skills in the discipline in which training is offered.

(68) "Renovator courses" means certified renovator or certified dust sampling technician courses accredited by the department.

(69) "Residential dwelling" means:

(a) A detached single-family dwelling unit, including attached structures such as porches and stoops; or

(b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

~~((69))~~ (70) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

~~((70))~~ (71) "Risk assessor" means an individual who is certified by the department to conduct in target housing and child-occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with WAC 365-230-200.

~~((71))~~ (72) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or

cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room.

~~((72))~~ (73) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

~~((73))~~ (74) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

~~((74))~~ (75) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 250 parts per million (~~(mg/g)~~) or, (mg/kg) based on soil samples.

~~((75))~~ (76) "Soil sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method. ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at [www.astm.org](http://www.astm.org)

~~((76))~~ (77) "Supervisor" means an individual who is certified by the department to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child-occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with WAC 365-230-200.

~~((77))~~ (78) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

~~((78))~~ (79) "These rules" means Washington Administrative Code (WAC) 365-230-010 through ~~(365-230-270)~~ 365-230-385.

~~((79))~~ (80) "Train-the-trainer course" means a course that includes, but is not limited to, instruction in the planning and teaching of adult education, adult learning principles, designing training objectives, selecting and designing training activities, creating an effective learning environment, facilitating group involvement and discussions, and strategies for dealing with difficult training situations and difficult learners.

~~((80))~~ (81) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

~~((81))~~ (82) "Training hour" means at least fifty minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

~~((82))~~ (83) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

~~((83))~~ (84) "Training provider" means any business entity accredited under WAC 365-230-035 and 365-230-040 that offers lead-based paint activities and renovation courses.

~~((84))~~ (85) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing 60 µg/ft<sup>2</sup>, a composite sample (three subsamples) containing 100 µg/ft<sup>2</sup>, and a composite sample (four subsamples) containing 110 mg/ft<sup>2</sup> is 100 µg/ft<sup>2</sup>. This result is based on the equation  $[60+(3*100)+(4*110)]/(1+3+4)$ .

~~((85))~~ (86) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool), and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

~~((86))~~ (87) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at [www.astm.org](http://www.astm.org)

~~((87))~~ (88) "Worker" means an individual who is certified by the department and licensed by the construction contractors' board to conduct lead-based paint abatement activities in target housing and child-occupied facilities in accordance with WAC 365-230-200.

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

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-030 Accreditation required.** (1) No firm, individual or other entity shall provide, offer, or claim to provide a department-accredited lead-based paint training course without applying for and receiving accreditation from the department as required by these rules.

(2) A training provider may be accredited for the initial inspector, risk assessor, renovator, dust sampling technician, abatement worker, supervisor, and project designer training courses or for refresher training courses within the same disciplines.

(3) Only accredited training providers are eligible to offer initial and refresher lead-based paint training courses.

(4) To qualify for and maintain accreditation, a training provider shall:

(a) Propose and offer at least one accredited lead-based paint training course.

(b) Conform to personnel, operational and curriculum requirements.

(c) Comply with accreditation application and procedural requirements.

**AMENDATORY SECTION** (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-035 Application process.** The following are procedures a training program must follow to receive accreditation by the department to offer lead-based paint activities training courses, or renovation and dust sampling technician courses:

(1) A training program seeking accreditation shall submit a complete written application to the department. To be considered complete, the application must be on the appropriate departmental form and include all required documentation and attachments.

(2) Information that must be provided with the application is as follows:

(a) Name, address, and phone number of training provider and training program manager.

(b) A list of course(s) for which accreditation is being applied. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(c) The name and documentation of the qualifications of the training manager.

(d) The name(s) and documentation of qualifications of any principal instructor(s).

(e) A statement signed by the training program manager certifying that the training program meets the requirements under WAC 365-230-040.

~~((f))~~ (f) If a training program uses EPA-recommended model training materials, or training materials approved by an EPA-authorized state or Indian tribe, the training manager shall include a statement certifying that. If the training program makes any changes or additions to the model curriculum, the training manager shall submit a statement indicating the changes or additions and shall submit a copy of the new or changed curriculum. It is not necessary to submit unchanged model training curriculum materials.

~~((g))~~ (g) If a training program does not use model training materials as described in ~~((f))~~ (f) of this subsection, the training manager shall include: A copy of the entire course instruction curriculum, including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, and any other materials to be used for the course.

~~((h))~~ (h) All applications for accreditation shall include:

(i) A copy of the course test blueprint describing the portion of test questions devoted to each major course topic.

(ii) A description of the facilities and equipment to be used for lecture and hands-on training, respectively.

(iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(iv) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

(A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.

(B) Procedures for the training manager's annual review of principal instructor competency.

(v) Documentation of accreditation by other state or federal agencies, if applicable.

(vi) A check or money order made out to the department of ~~((community, trade, and economic development))~~ commerce in the amount as described in WAC 365-230-120.

**AMENDATORY SECTION** (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-040 Requirements for the accreditation of training programs.** For a training program to obtain accreditation from the department to offer lead-based paint activities courses, lead-based paint renovation courses or dust sampling technician courses, the program shall meet the following requirements:

(1) The training program shall employ a training manager who has:

(a) At least two years of experience, education, or training in teaching workers or adults; or

(b) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(c) Two years of experience in managing a training program specializing in environmental hazards; and

(d) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(a) Demonstrated experience, education, or training in teaching workers or adults; and

(b) Successfully completed at least sixteen hours of any department-accredited, EPA-accredited or tribal-accredited lead-specific training; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) The following documents shall be recognized by the department as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in subsections (1), (2), and (3) of this section. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by WAC 365-230-090. Those documents include the following:

(a) Official academic transcripts or diploma as evidence of meeting education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(c) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(a) The inspector course shall last a minimum of twenty-four training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in WAC 365-230-050.

(b) The risk assessor course shall last a minimum of sixteen training hours, with a minimum of four hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in WAC 365-230-050.

(c) The supervisor course shall last a minimum of thirty-two training hours, with a minimum of eight hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in WAC 365-230-050.

(d) The project designer course shall last a minimum of eight training hours. The minimum curriculum requirements for the project designer course are contained in WAC 365-230-050.

(e) The abatement worker course shall last a minimum of sixteen training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in WAC 365-230-050.

(f) The renovator course must last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in WAC 365-230-050(6).

(g) The dust sampling technician course must last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in WAC 365-230-050(7).

(7) For each course offered, the training program shall conduct (~~either~~) a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(a) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in WAC 365-230-050.

(b) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(c) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(a) The name, a unique identification number, and address of the individual.

(b) The name of the particular course that the individual completed.

(c) Dates of course completion/test passage.

(d) The name, address, and telephone number of the training program.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of principal instructor competency.

(10) The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in WAC 365-230-200(7); and shall offer the renovator or dust sampling technician courses that teach the applicable work practice standards contained in WAC 365-230-200 and 365-233-330, as well as other standards developed by EPA pursuant to Title IV of TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities and renovation or dust sampling they are responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) A course audit shall include, but not be limited to, a review of: Instructional curriculum; examination design, administration and security procedures, and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; coverage; and teaching facilities.

(13) An accredited training provider may not implement changes in method or content that affects one half-hour or

more of contact instruction without ten business days advance notice of the changes to department.

(14) The training provider is responsible for ensuring that the training manager and principal instructor comply with the requirements of this rule.

(15) Whenever there is a change in either the training manager or principal instructor for an accredited training course, the training provider shall notify the department of this change within thirty days, along with documentation demonstrating the appropriate qualifications as described in this section.

(16) The training provider shall use a system for verifying the positive identification of all trainees. Trainees without proper identification may not take the course exam.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

**WAC 365-230-050 Minimum training curriculum requirements.** To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course.

- (1) Inspector.
  - (a) Role and responsibilities of an inspector.
  - (b) Background information on lead and its adverse health effects.
  - (c) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.
  - (d) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.\*
  - (e) Paint, dust, and soil sampling methodologies.\*
  - (f) Clearance standards and testing, including random sampling.\*
  - (g) Preparation of the final inspection report.\*
  - (h) Recordkeeping.
- (2) Risk assessor.
  - (a) Role and responsibilities of a risk assessor.
  - (b) Collection of background information to perform a risk assessment.
  - (c) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.
  - (d) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.\*
  - (e) Lead hazard screen protocol.
  - (f) Sampling for other sources of lead exposure.\*
  - (g) Interpretation of lead-based paint and other lead sampling results, including all applicable state or federal guidance or regulations pertaining to lead-based paint hazards.\*
  - (h) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.
  - (i) Preparation of a final risk assessment report.
- (3) Supervisor.
  - (a) Role and responsibilities of a supervisor.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(d) Liability and insurance issues relating to lead-based paint abatement.

(e) Risk assessment and inspection report interpretation.\*

(f) Development and implementation of an occupant protection plan and abatement report.

(g) Lead-based paint hazard recognition and control.\*

(h) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.\*

(i) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.\*

(j) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.\*

(k) Clearance standards and testing.

(l) Cleanup and waste disposal.

(m) Recordkeeping.

(4) Project designer.

(a) Role and responsibilities of a project designer.

(b) Development and implementation of an occupant protection plan for large scale abatement projects.

(c) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(d) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(e) Clearance standards and testing for large scale abatement projects.

(f) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) Abatement worker.

(a) Role and responsibilities of an abatement worker.

(b) Background information on lead and its adverse health effects.

(c) Background information on federal, state and local regulations and guidance that pertain to lead-based paint abatement.

(d) Lead-based paint hazard recognition and control.\*

(e) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.\*

(f) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.\*

(g) Soil and exterior dust abatement methods or lead-based paint hazard reduction.\*

(6) Renovator.

(a) Role and responsibilities of a renovator.

(b) Background information on lead and its adverse health effects.

(c) Background information on EPA, HUD, OSHA, and other local regulations and guidance that pertains to lead-based paint and renovation activities.

(d) Procedures for using acceptable test kits to determine whether paint is lead-based paint.\*

(e) Renovation methods to minimize the creation of dust and lead-based paint hazards.\*

(f) Interior and exterior containment and clean-up methods.\*

(g) Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.\*

(h) Waste handling and disposal.

(i) Providing on-the-job training to other workers.

(j) Record preparation.

(7) Dust sampling technician.

(a) Role and responsibilities of a dust sampling technician.

(b) Background information on lead and its adverse health effects.

(c) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(d) Dust sampling methodologies.\*

(e) Clearance standards and testing.

(f) Report preparation.\*

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-060 Requirements for the accreditation of refresher training courses.** A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, ~~((and))~~ abatement worker, renovator, and dust sampling technician. A training program may apply for accreditation of a refresher training course concurrently with its application for accreditation of an initial training course. All applications for accreditation of a refresher training course must follow the application process as described in WAC 365-230-035. To obtain department accreditation to offer refresher training, a training program must meet the requirements for accreditation of a training program as described in WAC 365-230-040, except for the minimum training-hour requirements in WAC 365-230-040 (6)(a) through ~~((e))~~ (g). In addition, applicants for accreditation of a refresher training course must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed in WAC 365-230-050, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(a) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(b) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(c) Current technologies relating to lead-based paint ~~((activities))~~ in general, as well as specific information pertaining to the appropriate discipline.

(2) Each refresher course, except for the project designer, renovator, and dust sampling technician course, shall last a minimum of eight training hours. ~~((The))~~ Project

designer, renovator, and dust sampling technician refresher courses shall last a minimum of four training hours.

(3) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-100 Notification of lead-based paint training activity.** (1) The training manager shall provide notification of lead-based paint activities courses or renovator and dust sampling technician courses offered.

(a) ~~((The training manager shall provide the department with notice of all lead-based paint activities courses offered.))~~ The original notice must be received by the department at least ~~((ten))~~ seven business days prior to offering any lead-based paint activities or renovator and dust sampling technician courses.

(b) The training manager shall provide the department updated notice when lead-based paint activities or renovator and dust sampling technician courses will begin on a date other than the one specified in the original notification, as follows:

(i) For lead-based paint activities or renovator and dust sampling technician courses beginning prior to the original start date an updated notice must be received by the department at least ~~((ten))~~ seven business days before the revised start date.

(ii) For lead-based paint activities or renovator and dust sampling technician courses beginning after the original start date an updated notice must be received by the department at least two business days before the original start date.

(c) The training manager shall update the department of any change in location of lead-based paint activities or renovator and dust sampling technician courses at least ~~((ten))~~ seven business days prior to the scheduled course start date.

(d) The training manager shall also update the department regarding any course cancellations, or any other change to the original notice. Updated notices must be received by the department at least two business days prior to the scheduled course start date.

(e) Each notice, including updates, shall include the following:

(i) Notification type (original, update, cancellation).

(ii) Training program name, department accreditation number, address, and phone number.

(iii) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(iv) Date(s) and time(s) of training.

(v) Training location(s) phone number, and street address.

(vi) Principal instructor's name.

(vii) Training manager's name and signature.

(f) Notification shall be accomplished using ~~((any))~~ one of the following methods: Written ~~((notice, or by e-mail))~~ or electronic. ~~((All notices submitted by e-mail must be followed with written notice within twenty-four hours of submission. Written))~~ Notification of lead-based paint activities, renovator, or dust sampling technician course schedules can

be accomplished by using either the sample form titled "~~(Lead-Based Paint Activities Training Course Schedule)~~ Pre-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department at 360-586-5323, or on the internet at (~~(http://www.cted-wa.gov/lead)~~) http://www.commerce.wa.gov/lead.

(g) Lead-based paint activities or renovator and dust sampling technician courses shall not begin on a date, or at a location other than that specified in the original notice unless an updated notice identifying a new date or location is submitted, in which case the course must begin on the date and location specified in the updated notice.

(h) No training program shall provide lead-based paint activities or renovator and dust sampling technician courses without first notifying the agency of such activities in accordance with the requirements of this (~~(paragraph)~~) subsection (1)(h).

(2) The training manager shall provide notification following completion of lead-based paint activities or renovator and dust sampling technician courses.

(a) The training manager shall provide the department with notice after the completion of any lead-based paint activities or renovator and dust sampling technician course that shall be received by the department no later than (~~(twenty)~~) ten business days following course completion.

(b) The notice shall include the following:

(i) Training program name, department accreditation number, address, and phone number.

(ii) Course discipline and type (initial/refresher).

(iii) Date(s) of training.

(iv) The following information for each student who took the course:

(A) Name.

(B) Address.

(C) Course completion certificate number.

(D) Student test score.

(v) Training manager's name and signature.

(c) Notification shall be accomplished using (~~(any)~~) one of the following methods: Written (~~(notice, or by e-mail)~~) or electronic. (~~(All notices submitted by e-mail must be followed with written notice within twenty-four hours of submission. Written)~~) Notification following lead-based paint activities (~~(training)~~) renovator, or dust sampling technician courses can be accomplished by using either the sample form titled "~~(Lead-Based Paint Activities Training Course Follow-up)~~ Post-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions

and sample forms can be obtained from department at 360-586-5323, or on the internet at (~~(http://www.cted.gov/lead)~~) http://www.commerce.gov/lead.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

**WAC 365-230-120 Accreditation fees.** The following fees are established for accreditation:

(1) A nonrefundable application fee of two hundred dollars for accreditation of an initial or refresher lead-based paint training course.

(2) A nonrefundable application fee of two hundred dollars for reaccreditation of an initial or a refresher lead-based paint training course.

(3) If an initial or refresher course provides instruction for more than one discipline, a separate application fee of two hundred dollars for each discipline is required.

(4) All fees shall be in the form of a check or money order made out to the department of (~~(community, trade, and economic development)~~) commerce.

**CERTIFICATION OF INDIVIDUALS AND FIRMS ENGAGED IN LEAD-BASED PAINT ACTIVITIES: TARGET HOUSING AND CHILD-OCCUPIED FACILITIES**

**Note:** Renovation firms, renovator, and dust sampling technician certification requirements are found under WAC 365-230-360 and 365-230-380.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-130 Certification of individuals.** (1) No individual shall perform any lead-based paint activity as described in WAC 365-230-200 without first becoming certified by the department. Certified individuals may perform only specific lead-based paint activities for which they are certified. Individuals seeking certification by the department to engage in lead-based paint activities must:

(~~((A))~~) Submit a complete application as described in WAC (~~(365-230-170)~~) 365-230-150 and must provide documentation that the applicant has either:

(~~((i))~~) (a) Met the certification requirements as described in WAC 365-230-132 for the inspector, risk assessor, or supervisor disciplines; or WAC 365-230-134 for the project designer or worker disciplines; or

(~~((ii))~~) (b) Holds a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 CFR 745.324.

(~~((A))~~) (i) Applicants for certification based on certification from another state or tribal program must document to the department that they have read and understand the certification and work practice standards as described in these rules.

(~~((B))~~) (ii) Certification based on a valid lead-based paint certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(2) Individuals may first apply to the department for certification to engage in lead-based paint activities pursuant to this section on or after the effective date of these rules.

(3) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving the department certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in the Work practice standards section (WAC 365-230-200).

(5) It shall be a violation of these rules for an individual to conduct any of the lead-based paint activities described in the Work practice standards section (WAC 365-230-200) that has not been certified by the department.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-132 Inspector, risk assessor, or supervisor.** (1) To become certified by the department as an inspector, risk assessor, supervisor, pursuant to WAC 365-230-130, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Pass the certification exam in the appropriate discipline offered by the department; and

(c) Meet or exceed the following experience and/or education requirements:

(i) Inspectors. No additional experience and/or education requirements.

(ii) Risk assessors.

(A) Successful completion of an accredited training course for inspectors; and

(B) Bachelor's degree and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an associates degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(C) Certification as an industrial hygienist, an engineer, a registered architect, certified safety professional, registered sanitarian, or registered environmental specialist; or

(D) A high school diploma (or equivalent), and at least three years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(iii) Supervisor:

(A) One year of experience as a certified lead-based paint abatement worker; or

(B) At least two years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(2) In order to be eligible to take the certification examination for a particular discipline, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Meet or exceed the education and experience requirements described in this section.

(c) Submit a completed application as described in WAC 365-230-150.

(3) An individual may take the certification exam no more than three times within six months of receiving a course completion certificate.

(4) If an individual does not pass the certification exam and receive a certificate within six months of receiving his/her course completion certificate, the individual must successfully complete the appropriate lead-based paint course from an accredited training program before reapplying for certification from the department.

(5) A passing score on third-party, qualifying examination administered by the department is seventy or above.

(6) After successfully completing the appropriate training and application requirements as described in these rules, an individual shall be certified by the department.

(7) To maintain certification, an individual must be recertified as described in WAC (~~365-230-170~~) 365-230-160.

(8) Certification shall be nontransferable.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-150 Application requirements for an individual.** (1) Applications for an individual shall be submitted on forms prescribed by the department and shall be accompanied, as appropriate, by either:

(a) Documentation that the applicant has met the required training, experience, and education requirements as described in WAC 365-230-132 (~~(or)~~), 365-230-134, and 365-230-380. Acceptable documentation includes the following:

(i) As proof of meeting the training requirements, a valid lead-based paint training course completion certificate issued by a department-accredited training provider.

(ii) As proof of meeting the work experience requirements, documentation must include name and address of employer, name and telephone number of supervisor; employment dates, description of specific duties performed. The supervisor or employer must sign the documentation verifying that the information is true and correct. A self-employed individual must provide the name, address and Uniform Business Identifier of business, dates of self-employment, and a description of specific duties. Documentation of work experience must be provided on the appropriate departmental form.

(iii) As proof of meeting the educational requirements, documentation such as an official transcript or diploma; or

(b) Documentation that the applicant holds a valid certification in the appropriate discipline issued by EPA or by an EPA-authorized state or tribe.

(i) Applicants seeking certification based on an EPA or EPA-authorized state or tribal certification must document to the department that they have read and will comply with the certification and work practice standards of these rules.

(ii) Certification based on an EPA or EPA-authorized state or tribal certification shall be issued with an expiration



date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(2) All applications for certification shall be accompanied by:

- (a) Two current passport-size photos.
- (b) Applicant's name, signature and date.
- (c) A check or money order made out to the department

of ~~((community, trade, and economic development))~~ commerce in the amount as described in the certification fees section of these rules.

(3) Application materials can be obtained by mail from Department of ~~((Community, Trade, and Economic Development))~~ Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at ~~((http://www.eted.wa.gov/lead))~~ <http://commerce.wa.gov/lead>.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-160 Recertification.** (1) To maintain certification in a particular discipline, a certified individual shall apply to and be recertified by the department in that discipline either:

(a) Every three years after the original date of issue if the individual completed a training course with a course test and hands-on assessment; or

(b) Every five years if the individual completed a training course with a proficiency test.

(2) An individual shall be recertified if the individual:

(a) Successfully completes the appropriate accredited refresher training course; and

(b) Submits a valid copy of the appropriate refresher course completion certificate; and

(c) Complies with the following application requirements established by the department:

(i) Submit a complete and signed application; and

(ii) Submit two recent passport-size photographs; and

(iii) Submit a check or money order made out to the department of community, trade, and economic development in the amount as described in WAC 365-230-260.

(3) Application materials can be obtained by mail from Department of ~~((Community, Trade, and Economic Development))~~ Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at ~~((http://www.eted.wa.gov/lead))~~ <http://commerce.wa.gov/lead>.

(4) An individual whose certification expires may obtain certification by completing the requirements described in WAC 365-230-150 and 365-230-130.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

**WAC 365-230-180 Application requirements for a firm.** (1) Applications for a firm shall be submitted on forms prescribed by the department and shall be accompanied, by the following:

A letter of compliance, signed by an officer of the firm, or an individual authorized to sign on the firm's behalf, certifying the following:

(a) The firm will employ only certified employees of the appropriate discipline to conduct lead-based paint activities as prescribed in these rules.

(b) The firm will follow the standards for conducting lead-based paint activities as prescribed in these rules.

(c) The firm shall maintain all records pursuant to these rules.

(2) A check or money order made out to the department of ~~((community, trade, and economic development))~~ commerce in the amount as described in WAC 365-230-260.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-200 Work practice standards.** (1) Only certified individuals and the certified firms employing such individuals shall perform or offer to perform lead-based paint activities.

(2) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Revised, October, 1997); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by this department; any other equivalent methods and guidelines.

(3) Clearance levels appropriate for the purposes of this section may be found in subsection (8)~~((e))~~(g)(i) and (v) of this section or other equivalent guidelines.

(4) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations described in this section, and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart R.

(a) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(i) Two square feet of deteriorated lead-based paint per room or equivalent;

(ii) Twenty square feet of deteriorated paint on the exterior building; or

(iii) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) When performing any lead-based paint activity described as a lead-based paint inspection, lead hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with these rules, documented methodologies, work practice requirements, and the work practice standards described in this section.

(5) Inspection. Only a person certified by the department as an inspector or risk assessor may conduct an inspection.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead-based paint as follows:

(i) In target housing and child-occupied facilities, each interior and exterior component with a distinct painting his-

tory shall be tested for lead-based paint, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint; and

(ii) In a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

- (i) Inspection date;
- (ii) Building address;
- (iii) Date of construction;
- (iv) Apartment identification (numbers, letters, names if applicable);
- (v) Name, address and telephone number of owner or owners of each unit;
- (vi) Name, signature, and certification number of each inspector or risk assessor conducting testing;
- (vii) Name, address and telephone number of the certified firm employing each inspector or risk assessor;
- (viii) Each testing method and device or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and
- (ix) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(6) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined using documented methodologies, and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multifamily dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified for conducting lead hazard screens in residential dwellings in the Work Practice Standard section of these rules. In addition, composite dust samples shall be col-

lected in common areas where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(i) Information in a risk assessment report as specified in subsection (7) including (i)(i) through (xiv) and excluding (i)(xv) through (xviii). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(ii) Any recommendations for follow-up risk assessment and other further actions.

(7) Risk assessment. Only an individual certified by the department as a risk assessor may conduct a risk assessment of target housing or child-occupied facility. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint.

(ii) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) For multifamily dwellings and child-occupied facilities, the samples required in "residential dwellings" as described in (b) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to sampled target house or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., nonplay areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include as a minimum the following information:

(i) Assessment date.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment identification (numbers, letters, names if applicable).

(v) Name, address and telephone number of each owner of each building.

(vi) Name, signature, and certification number of each risk assessor conducting the assessment.

(vii) Name, address and telephone number of the certified firm employing each risk assessor.

(viii) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure employed for paint analysis.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to subsection background information portion of the risk assessment work practice standard of this section.

(xvi) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(8) Abatement. An abatement project shall be conducted only by certified individuals and the certified firms employing such individuals. Abatement shall be conducted as follows:

(a) A certified supervisor or project designer is required for each abatement project and shall be on-site during all worksite preparation and during postabatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be on-site or available by telephone, pager,

or answering service, and be able to be present at the worksite in no more than two hours.

(b) The certified supervisor or project designer, as well as the certified firm employing that individual shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) A certified project designer may replace and assume the responsibilities of a certified supervisor required for an abatement project. If a certified project designer provides supervision on an abatement project, the project designer shall be responsible for preparing the occupant protection plan and the abatement report.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(e) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(f) These work practices shall be restricted during abatement and paint removal:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(iii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with high efficiency particulate air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iv) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than twenty square feet on exterior surfaces; and

(v) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100°F.

(g) When soil abatement is conducted, if the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but (~~not greater~~) less than 250 parts per million (≤250 ppm).

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(iii) If the soil is not removed, the soil shall be permanently covered so as to be separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement, asphalt or concrete.

(h) Soil interim controls:

(i) Grass, mulch, shrubbery and other landscaping materials are not considered permanent covering, but may be used as interim controls that eliminate contact with bare soils.

(ii) Interim control measures are acceptable in areas where bare soils contain less than the current HUD abatement standard for lead in soils, except in:

(A) A child's play area, or any bare soil area where a child under six years of age regularly plays. Interim control measures are not acceptable in these areas where soil lead levels exceed 250 ppm.

(B) A garden area, or any other area where bare soils produce edibles intended for human consumption. Interim controls are not acceptable in these areas where soil lead levels exceed 250 ppm.

(iii) On-going monitoring and evaluation of interim soil control measures must follow HUD Guidelines - Table 6.1, Standard Reevaluation Schedule Number 6, under the column header entitled, "Visual Survey," as a requirement for interim soils control. This requirement must be included in a written report provided to the owner and occupants of the property.

~~((h))~~ (i) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(i) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor or designer may apply in writing to the department for authorization of a preliminary clearance. The application must include the following:

(A) The project address.

(B) The name and certification number of the abatement project supervisor or project designer.

(C) A description of the conditions that justify issuance of a waiver.

(D) A description of the abatement work that remains to be done on the project.

(E) A schedule for completion of the abatement work that remains to be done.

(F) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(G) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor or designer shall present the department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(iii) Following the visual inspection and any postabatement cleanup required in subsection (8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iv) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(v) Postabatement clearance activities shall be conducted based upon the extent or manner of work activities conducted

in or on the target housing or child-occupied facility as follows:

~~((h))~~ (j) After conducting an abatement with containment between containment and noncontainment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(i) After conducting ~~((h))~~ abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(ii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(iii) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(iv) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination refresher or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination refresher divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested until clearance examination standards are met.

(v) The clearance levels for lead in dust are less than 40 µg/ft<sup>2</sup> for floors, less than 250 µg/ft<sup>2</sup> for interior window sills, and less than 400 µg/ft<sup>2</sup> for window troughs.

~~((h))~~ (k) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (8)(i) of this section.

(iii) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five percent level of confidence that no more than five percent or fifty of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

~~((k))~~ (l) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(i) Start and completion dates of abatement.

(ii) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor or project designer assigned to the abatement project.

(iii) The occupant protection plan.

(iv) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(v) The results of clearance sampling and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(vi) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

~~((h))~~ (m) A clearance report shall be prepared by a certified inspector or risk assessor. The clearance report shall include the following information:

(i) The property address where the clearance sampling occurred.

(ii) The abatement clean-up completion date and time.

(iii) The date and time of clearance sampling.

(iv) Name and certification number of each inspector or risk assessor conducting the clearance.

(v) The signature of the inspector or risk assessor conducting the clearance.

(vi) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor.

(vii) Results of the visual inspection.

(viii) Identification of containment or noncontainment applications.

(ix) Identification of location(s) where clearance samples were collected.

(x) Name, address, and telephone number of the laboratory analyzing the collected samples.

(xi) All results of laboratory analysis on collected samples, including quality control results.

(xii) Documented methodology used for sampling.

(9) Sampling. Any paint chip, dust, or soil samples collected pursuant to this section shall be collected by a certified inspector or risk assessor. Such sampling shall incorporate sample quality control procedures and the samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(10) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or postabatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(11) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months.

(a) The following reports must be submitted to the department as specified in WAC 365-230-100 and 365-230-220:

(i) Notification of lead-based paint activities course to take place.

(ii) Notification of lead-based paint activities course that has taken place.

(iii) Notice of abatement.

(b) All reports required by these rules may be submitted on forms available from the department. The exhibit referred to in this rule is not printed in this WAC. Copies are available as follows from department of ~~((community, trade, and economic development))~~ commerce:

Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

Telephone number: ~~((360-586-5373))~~ 360-586-5323

~~((Fax number: 360-586-5880))~~

Web site: ~~((www.cted.wa.gov/lead))~~ www.commerce.wa.gov/lead

**AMENDATORY SECTION** (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-210 Determinations of lead-based paint and lead-based paint hazards.** (1) Lead-based paint is present:

(a) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter, equal to or in excess of 5,000 parts per million, or equal to or in excess of 0.5 percent by weight; and

(b) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(2) A paint-lead hazard is present:

(a) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the "clearance examination standards" definition of these rules;

(b) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(c) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against a door frame); and

(d) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(a) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills is equal to or greater than 40 µg/ft<sup>2</sup> for floors and 250 µg/ft<sup>2</sup> for interior window sills, respectively;

(b) On floors or interior window sills in an unsampled residential dwelling in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(c) On floors or interior window sills in an unsampled common area in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present in a residential dwelling or child-occupied facility when the soil-lead concentration from a composite sample of bare soil is equal to or greater than 250 ppm.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

**WAC 365-230-220 Notice of abatement.** A certified firm shall notify the department of lead-based paint abatement activities as follows:

(1) Except as provided in subsection (2) of this section, the department must be notified prior to conducting lead-based paint abatement activities. The original notice must be received by the department at least five business days before lead-based paint abatement activities begin.

(2) Notice for abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order must be received by the department as early as possible before, but not later than the day lead-based paint abatement activities begin. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the notification to take advantage of this abbreviated notification period.

(3) Updated notice of a new start date must be provided to the department for lead-based paint abatement activities that will begin on a date other than the date specified in the original notification notice, as follows:

(a) For lead-based paint abatement activities beginning prior to the original start date, an updated notice must be received by the department at least five business days before the revised start date.

(b) For lead-based paint abatement activities beginning after the original start date, an updated notice must be received by the department on or before the original start date.

(4) The certified firm shall update the department of any change in location of lead-based paint abatement activities at least five business days prior to the project start date.

(5) The certified firm shall also update the department regarding the cancellation of any lead-based paint abatement activities, or other significant changes including, but not lim-

ited to, when the square footage or acreage to be abated changes by at least twenty percent. This updated notice must be received by the department on or before the start date provided to the department, or if work has already begun, within twenty-four hours of the change.

(6) The following shall be included in each notice:

(a) Notification type (original, updated, cancellation).

(b) Date when lead-based paint abatement activities will commence.

(c) Date when lead-based paint abatement activities will end (approximation using best professional judgment).

(d) Firm's name, the department certification number, address, phone number.

(e) Type of building (e.g., single-family dwelling, multifamily dwelling, child-occupied facilities) on/in which abatement work will be performed.

(f) Property name (if applicable).

(g) Property address including apartment or unit number (if applicable) for abatement work.

(h) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if applicable.

(i) Name and department certification number of the certified supervisor or project designer.

(j) Approximate square footage/acreage to be abated.

(k) Brief description of abatement activities to be performed.

(l) Name, title, and signature of the representative of the certified firm who prepared the notification.

(7) Notification shall be accomplished using ~~((any))~~ one of the following methods: Written ~~((notice, or by e-mail))~~ or electronic. ~~((All notices submitted by e-mail must be followed by written notice within twenty-four hours of submission. Written))~~ Notification can be accomplished using either the sample form titled "Notice of Abatement" or similar form. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow sufficient time for delivery to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department via phone 360-586-5323 ~~((or fax 360-588-5880))~~, or on the internet at ~~((http://www.cted.gov/lead))~~ http://www.commerce.gov/lead.

(8) In the event of changes to the information provided in the original notification, lead-based paint abatement activities shall not begin on a date, or at a location, other than that specified in either an original or updated notice.

(9) No firm or individual shall engage in lead-based paint abatement activities, as defined in WAC 365-230-200 prior to notifying the department of such activities according to requirements of this section. No lead-based paint abatement activities described in the notice of abatement may begin until the notice has been approved by the department.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

**WAC 365-230-240 Suspension, revocation and modification of accredited training course or lead-based paint**

**certification.** (1) The department may suspend, revoke or modify accreditation of a training course, or the lead-based paint certification of an individual or firm, and may assess a civil penalty, if the individual, entity, or responsible party under these rules has:

(a) Failed to comply with a requirement of chapter 70.103 RCW or the rules adopted thereunder; or

(b) Obtained or retained accreditation or certification by error, misrepresentation, or fraud.

(2) The department may assess a civil penalty against any person who engages in lead-based paint (~~(activity)~~) activities or renovation without certification from the department or who offers to provide or provides lead-based paint training courses without accreditation from the department.

(3) Prior to denying, suspending, revoking, or modifying an accreditation or certification, or imposing a civil penalty, the department in writing shall notify the affected entity of:

(a) The factual and legal basis for the alleged violation;

(b) The penalty assessed for the alleged violation;

(c) The date on which the penalties take effect; and

(d) The opportunity to contest the action by requesting an adjudicative proceeding within twenty days of notice of the action.

(4) Whenever an affected entity does not timely request an adjudicative proceeding to contest the department's action, the action becomes final and binding on the day specified in the notification of action. Except as provided in subsection (3) of this section, the filing of a timely request for an adjudicative proceeding stays any action against the affected entity until completion of the adjudicative proceeding.

(5) Whenever the department determines that the public health, safety, or welfare warrants immediate action, the department may summarily suspend accreditation or certification prior to the opportunity for an adjudicative proceeding, as provided in RCW 34.05.479.

(6) Any request for adjudicative proceeding shall be conducted by the department under chapters 34.05 RCW and 10-08 WAC.

(7) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(8) Department shall maintain a list, available to the public, of entities whose accreditation has been suspended, revoked, or modified.

**AMENDATORY SECTION** (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

**WAC 365-230-250 Schedule of penalties.** (1) The standard penalty for each violation shall be a maximum:

First violation of any section, five hundred dollars and/or ten days suspension.

Second violation of any section, one thousand dollars and/or twenty days suspension.

Third violation of any section, one thousand five hundred dollars and/or thirty days suspension.

Fourth violation of any section, two thousand dollars and/or one year suspension or revocation.

Fifth violation of any section, five thousand dollars and/or one year suspension (or more) or revocation.

(2) The department may aggravate the maximum standard penalty in an amount not to exceed (~~(five))~~ ten thousand dollars per violation and/or revocation, based on the following factors:

(a) The violation caused or had the potential to cause injury to humans or significant property damage;

(b) The violation involved fraud or intentional misrepresentation;

(c) The violation was similar to a previous violation; or

(d) The violator obstructed or failed to cooperate with the department's investigation of the violation.

(3) The department may mitigate the maximum standard penalty if the violator has cooperated with the department's investigation and has voluntarily undertaken steps to prevent reoccurrence of the same violation.

(4) Any person or entity whose accreditation or certification has been revoked shall not be eligible to reapply for one year from the effective date of the final order of revocation.

**AMENDATORY SECTION** (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

**WAC 365-230-260 Certification fees.** The following fees are established for certification:

(1) Firms, inspectors, risk assessors, renovators, dust wipe sampling technicians, supervisors, project designers and workers shall pay a nonrefundable certification or recertification fee of twenty-five dollars.

(2) All fees shall be in the form of a check or money order made out to the department of (~~(community, trade, and economic development))~~ commerce.

## LEAD-BASED PAINT RENOVATION

### Renovation Definitions, Work Practices, Renovator and Dust Wipe Sampling Technician Certification, Renovation Firm Certification, Information Distribution Requirements, etc.

Residential property renovation rules.

This part contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) cite RCW statutory authority here and applies to all renovations performed for compensation in target housing and child-occupied facilities.

## NEW SECTION

**WAC 365-230-280 Purpose.** (1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with WAC 365-230-300 are properly trained; renovators and firms performing these renovations are certified; and the work practices in WAC 365-230-330 are followed during these renovations.

## NEW SECTION

**WAC 365-230-290 Effective dates.** (1) Training, certification and accreditation requirements, and work practice

standards. The training, certification and accreditation requirements, and work practice standards in this section are applicable in Washington state. The training, certification and accreditation requirements, and work practice standards in this section will become effective as follows:

(a) Training programs. Effective January 1, 2011, no training program may provide, offer, or claim to provide training or refresher training for department certification as a renovator or a dust sampling technician without accreditation from the department under WAC 365-230-030. Training programs may apply for accreditation under WAC 365-230-030 beginning December 1, 2011.

(b) Firms.

(i) Firms may apply for certification under WAC 365-230-360 beginning March 1, 2011.

(ii) On or after January 1, 2011, no firm may perform, offer, or claim to perform renovations for compensation without certification from the department under WAC 365-230-360 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in WAC 365-230-300(1).

(c) Individuals. On or after January 1, 2011, all renovations must be directed by renovators certified in accordance with WAC 365-230-380(1) and performed by certified renovators or individuals trained in accordance with WAC 365-230-340 (2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in WAC 365-230-300(1).

(d) Work practices. On or after January 1, 2011, all renovations must be performed in accordance with the work practice standards in WAC 365-230-330 and the recordkeeping requirements in WAC 365-230-340 (2)(a) and (f) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in WAC 365-230-300(1).

(e) Suspension and revocation provisions in WAC 365-230-390 are effective January 1, 2011.

(2) Renovation-specific pamphlet. Renovators or firms performing renovations in Washington state must provide owners and occupants with "*The Lead-Safe Certified Guide To Renovate Right*."

(3) Prerenovation education rule. With the exception of the requirement to use the pamphlet entitled "*The Lead-Safe Certified Guide To Renovate Right*" the provisions of the pre-renovation education rule have been in effect since June 1999, Toxic Substance Control Act (TSCA 406b).

#### NEW SECTION

**WAC 365-230-300 Applicability.** This section applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to WAC 365-230-130) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter (mg/cm<sup>2</sup>) or 0.5 percent by weight, where the firm performing the renovation has obtained a copy of the determination.

(2)(a) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in WAC 365-230-350 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5 percent by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in WAC 365-230-320 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as nonroutine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood-lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in WAC 365-230-330, 365-230-360, and 365-230-380 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of WAC 365-230-330 (1)(e), which must be performed by certified renovators or individuals trained in accordance with WAC 365-230-385 (1)(b), the cleaning verification requirements of WAC 365-230-330(2), which must be performed by certified renovators, and the recordkeeping requirements of WAC 365-230-340 (2)(f).

#### NEW SECTION

**WAC 365-230-310 Definitions.** For purposes of this chapter, the definitions in WAC 365-230-020 and the following definitions apply:

"Cleaning verification card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether postrenovation cleaning has been properly completed.

"Department" means the Washington department of commerce lead-based paint program.

"Dry disposable cleaning cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

"Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization.

"HEPA vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.



"Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or twenty square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by WAC 365-230-330 (1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same thirty days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Pamphlet" means the EPA pamphlet titled "*The Lead-Safe Certified Guide to Renovate Right*" developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet.

"Recognized test kit" means a commercially available kit recognized by EPA under §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligram per square centimeter, or more than 0.5 percent lead by weight, in a paint chip, paint powder, or painted surface.

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined under WAC 365-230-200. The term renovation includes, but is not limited to: The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weatherstripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this section. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized state or tribal program.

"Wet disposable cleaning cloth" means a commercially available, premoistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet mopping system" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing

or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Work area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

#### NEW SECTION

**WAC 365-230-320 Information distribution requirements.** (1) Renovations in dwelling units. No more than sixty days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) In addition to the requirements in subsection (1)(a) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

(ii) Obtain a certificate of mailing at least seven days prior to the renovation.

(2) Renovations in common areas. No more than sixty days before beginning renovation activities in common areas of multiunit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required under WAC 365-230-340 at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the reno-

vation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can receive a copy of the records required by WAC 365-230-340 (3) and (4) or obtain a copy from the renovation firm at no cost to the occupants.

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than sixty days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least seven days prior to the renovation.

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required under WAC 365-230-340 (3) and (4) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required under WAC 365-230-340 (3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by subsection (1)(a)(i) and (b)(i) of this section, subsection (2)(a)(i) of this section, subsection (3)(a)(i)(A) and (a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(b) Be either a separate sheet or part of any written contractor service agreement for the renovation.

(c) Be written in the same language as the text of the contractor agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

#### NEW SECTION

**WAC 365-230-330 Work practice standards.** (1) Standards for renovation activities. Renovations must be performed by certified firms using certified renovators as directed under WAC 365-230-370. The responsibilities of certified firms are set forth under WAC 365-230-360 and the responsibilities of certified renovators are set forth under WAC 365-230-380.

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the postrenovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345 (b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or

debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within twenty feet of the renovation. On multistory buildings, close all doors and windows within twenty feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering.

(D) In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(c) Prohibited and restricted practices. The work practices listed below shall be prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited.

(ii) The use of machines designed to remove paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with a HEPA exhaust control.

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100°F.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from noncontaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within two feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

(2) Standards for postrenovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by recleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure:

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, reclean the windowsill as directed in this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for postrenovation cleaning verification. If the surface within the work area is greater than forty square feet, the surface within the work area must be divided into roughly equal sections that are each less than forty square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, reclean that section of the surface as directed in this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been recleaned, wait for one hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved postrenovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the postrenovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal or local law requires dust wipe sampling.

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this section.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to reclean the work area until the dust clearance sample results are below the clearance standards in WAC 365-230-020 or any applicable local standard.

(4) Activities conducted after postrenovation cleaning verification. Activities that do not disturb paint such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after postrenovation cleaning verification has been performed.

#### NEW SECTION

**WAC 365-230-340 Recordkeeping and reporting requirements.** (1) Firms performing renovations must retain and, if requested, make available to the department all records necessary to demonstrate compliance with this section for a period of three years following completion of the renovation. This three-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable state or tribal laws or regulations.

(2) Records that must be retained pursuant to subsection (a) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described under WAC 365-230-300. These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to this chapter).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(b) Signed and dated acknowledgments of receipt as described under WAC 365-230-320 (1)(a)(i) and (b)(i), (2)(a)(i), (3)(a)(i)(A) and (a)(ii)(A).

(c) Certifications of attempted delivery as described under WAC 365-230-320 (1)(a)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described under WAC 365-230-320 (1)(a)(ii) and (b)(ii), (2)(a)(ii), (3)(a)(i)(B) and (a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described under WAC 365-230-320 (2)(c) and (d), and renovations in child-occupied facilities, as described under WAC 365-230-320 (3)(b).

(f) Documentation of compliance with the requirements under WAC 365-230-330, including documentation that a certified renovator was assigned to the project, that the certi-

fied renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described under WAC 365-230-330(1), and that the certified renovator performed the postrenovation cleaning verification described under WAC 365-230-330(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined under WAC 365-230-330, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within twenty feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within twenty feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(v) Waste was contained on-site and while being transported off-site.

(vi) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(vii) The certified renovator performed the postrenovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within thirty days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this section to the following persons.

(i) The owner of the building; and, if different;

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multiunit target housing, renovation firms must post the information required by this section or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by this subsection may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required under subsection (2)(a)(ii) of this section and the training and work practice compliance information required under subsection (2)(f) of this section.

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted under WAC 365-230-330(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within thirty days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different;

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility;

(c) When performing renovations in common areas of multiunit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all the affected units.

#### NEW SECTION

**WAC 365-230-350 Recognized test kits.** (1) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in subsection (3)(a) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in subsection (3) of this section.

(2) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA-approved testing program.

(a) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the follow-

ing web site for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

(b) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(c) Before September 1, 2010, test kits must meet only the negative response criteria in subsection (3)(a) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meet both of the criteria in subsection (3) of this section.

(d) After September 1, 2010, test kits must meet both of the criteria in subsection (3) of this section.

(e) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's web site.

(f) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(3) Response criteria.

(a) Negative response criteria. For paint containing lead at or above the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5 percent by weight, a demonstrated probability (with 95 percent confidence) of a negative response less than or equal to 5 percent of the time.

(b) Positive response criteria. For paint containing lead below the regulated level, 1.0 mg/cm<sup>2</sup> or 0.5 percent by weight, a demonstrated probability (with 95 percent confidence) of a positive response less than or equal to 10 percent of the time.

#### NEW SECTION

##### **WAC 365-230-360 Certification of renovation firms.**

(1) No firm shall offer to perform for compensation any of the lead-based paint renovation activities described in WAC 365-230-330 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint renovation activities. The firm is responsible for ensuring that its employees follow the work practice requirements for renovation as described in WAC 365-230-330.

(2) A firm seeking certification shall submit to the department a completed application as described in this section.

(3) A firm seeking certification must provide documentation that it either:

(a) Meets the current minimum requirements of the department of labor and industries regarding a surety bond and insurance; or

(b) Has in force a business, e.g., liability, errors and omissions, insurance policy in the minimum amount of five hundred thousand dollars.

(4) A certified firm may not conduct lead-based paint renovation activities as described in WAC 365-230-330, if, at any time, it does not have in force the minimum bonding or insurance coverage described in this section.

(5) The firm shall maintain all records pursuant to WAC 365-230-340.

(6) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within thirty days of the change of ownership, and of any changes to information submitted on the original application.

(7) The certification period for renovation firms is five years from the date certification is issued. To maintain its renovation firm certification, a firm must be recertified by the department every five years.

(8) To retain certification, a firm shall submit to the department an application and documentation as described above prior to the expiration date listed on the firm's certification.

#### NEW SECTION

**WAC 365-230-370 Application requirements for renovation firms.** (1) Applications for a firm shall be submitted on forms prescribed by the department and shall be accompanied by the following:

A letter of compliance, signed by an officer of the firm, or an individual authorized to sign on the firm's behalf, certifying the following:

(a) The firm will employ only certified renovators, or other workers trained by certified renovators to conduct lead-based paint renovation activities as prescribed in these rules.

(b) The firm will follow the standards for conducting lead-based paint renovation activities as prescribed in these rules.

(c) The firm shall maintain all records pursuant to these rules.

(2) A check or money order made out to the department of commerce in the amount as described under WAC 365-230-260.

#### NEW SECTION

**WAC 365-230-375 Approval or disapproval of renovation firm certification.** (1) The department may disapprove an application for certification for the following reasons including, but not limited to:

(a) Failure to complete application in accordance with these rules, or department policy or instructions;

(b) Failure to satisfy eligibility requirements for certification;

(c) Failure to provide required documentation or information requested by the department;

(d) History of citations or violations of existing regulations or these rules, regulations including execution of a consent agreement in settlement of an enforcement action;

(e) History of revocation of a certificate;

(f) Making false or misleading statements in the application;

(g) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under the department.

(2) In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for certification. The department may also request additional

materials under the recordkeeping requirements of WAC 365-230-340. If a firm's application for certification has been disapproved, the program may reapply for certification at any time.

#### NEW SECTION

**WAC 365-230-380 Renovator certification and dust sampling technician certification.** (1) No individual shall perform lead-based paint renovation or dust sampling technician activities as described in this section unless they are certified by the department. Individuals seeking initial certification by the department to engage in lead-based paint renovation activities must successfully complete a dust sampling technician or renovator course accredited by the department. The course completion certificate serves as proof of training. Certified individuals may perform only lead-based paint renovation activities for which they are certified. To become certified as a renovator or dust sampling technician, an individual must:

(a) Submit a completed application to the department as described under WAC 365-230-150 and must provide documentation that the applicant has either:

(i) Met the certification requirements as described in this subsection for renovator or dust sampling technician.

(ii) Hold a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 CFR 745.324.

(A) Applicants for certification based on certification from another state or tribal program must document to the department that they have read and understand the certification and work practice standards as described in these rules.

(B) Certification based on a valid lead-based paint renovator or renovation dust sampling technician certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(b) Submit two passport-size photos.

(c) A signed and dated renovator or dust sampling technician application.

(d) A check or money order made out to the department in the amount as described in the certification fees section of these rules.

(e) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by telephone, 360-586-5323, electronically at <http://www.commerce.wa.gov/lead>.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/ HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust wipe sampling technician course in lieu of the initial training to become a certified dust sampling technician.

(4) Individuals may first apply to the department for certification to engage in lead-based paint renovation or dust sampling pursuant to this section on or after the effective date of these rules.

(5) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as renovator, or dust sampling technician.

(6) Upon receiving the department certification, individuals conducting lead-based paint renovator or dust sampling technician activities shall comply with the work practice standards for performing the appropriate lead-based paint renovation activities as established in the work practice standards, WAC 365-230-330.

(7) It shall be a violation of these rules for an individual to conduct any of the lead-based paint renovator or dust sampling technician activities described in the work practice standards under WAC 365-230-330 who has not been certified by the department.

#### NEW SECTION

**WAC 365-230-385 Renovator and dust sampling technician responsibilities.** (1) Renovator responsibilities. Certified renovators are responsible for ensuring compliance under WAC 365-230-330 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described under 365-230-330(2) and must either perform or direct workers who perform all of the tasks described under WAC 365-230-330(1).

(b) Must provide training to uncertified workers on the work practices that they will be using in performing their assigned tasks.

(c) Must be physically present at the worksite when signs required by WAC 365-230-330 (1)(a) are posted, while the work area containment required by WAC 365-230-330 (1)(b) is being established, and while the work area cleaning required by WAC 365-230-330 (1)(e) is performed.

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by WAC 365-230-330(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(g) Must have with them at the worksite copies of their initial course completion certificate and their most recent refresher course completion certificate.

(h) Must prepare the records required by WAC 365-230-340(2).

(2) Dust sampling technician responsibilities. When performing optional dust clearance sampling under WAC 365-230-330, a certified dust sampling technician:

(a) Must collect dust samples in accordance with WAC 365-230-200 (8)(f)(i) through (iv), must send the collected

samples to a laboratory recognized under TSCA section 405(b) (National Lead Laboratory Accreditation Program (NLLAP)) as found under WAC 365-230-200 (7)(h), and must compare the results to the clearance levels in dust less than 40 µg/ft<sup>2</sup> on floors, less than 250 µg/ft<sup>2</sup> on windowsills, and less than 400 µg/ft<sup>2</sup> on troughs.

(b) Must have with them at the worksite copies of their initial course completion certificate and their most recent refresher course completion certificate.

**WSR 10-21-090**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Purchasing Administration)

[Filed October 20, 2010, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-129.

Title of Rule and Other Identifying Information: WAC 388-416-0015 Certification periods for categorically needy (CN) scope of care medical assistance programs, 388-450-0215 How does the department estimate my income to determine my eligibility and benefits?, 388-505-0210 Apple health for kids programs, 388-505-0211 Premium requirements for premium-based healthcare coverage under apple health for kids, and 388-542-0020 Other rules that apply to premium-based healthcare coverage under apple health for kids.

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-2\\_directions.html](http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2_directions.html) or by calling (360) 664-6094), on November 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 23, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The recent passage of the federal Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 requires the department to amend its rules regarding newborn eligibility for medical assistance. Per clarification from the federal Centers for Medicare and Medicaid Services (CMS), CHIPRA also requires the elimination of the three-month sanction for non-payment of the children's health insurance program (CHIP) premium, and allow for medical coverage to be reinstated for all months within the certification period when payment of

the delinquent premium is made prior to the end of the certification period. This change to Washington's CHIP program will meet "continuous eligibility" as an enrollment and retention strategy as defined in CHIPRA, which will qualify Washington for the performance bonus described in CHIPRA, section 104. Recently enacted state law (ESHB 2128) changed the name of children's healthcare programs to apple health for kids.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090; Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009).

Statute Being Implemented: Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009).

Rule is necessary because of federal law, 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009).

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: Kevin Cornell, P.O. Box 45534, Olympia, WA 98504-5504 [98504-5534], (360) 725-1423.

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.

October 13, 2010

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-416-0015 Certification periods for categorically needy (CN) scope of care medical assistance programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in



circumstances other than aging out of the program, moving out-of-state, failing to pay a required premium(s), incarceration or death.

(6) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

(7) For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

(10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);

(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through ~~((4))~~ (5) and ~~((6))~~ (7) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

(11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

(12) Coverage under premium-based programs included in apple health for kids as described in WAC 388-505-0210 and chapter 388-542 WAC begins no sooner than the month after creditable coverage ends.

**AMENDATORY SECTION** (Amending WSR 08-02-054, filed 12/28/07, effective 2/1/08)

**WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?** (1) We decide if your assistance unit (AU) is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's gross monthly income and expenses. This is known as prospective budgeting.

(2) We use your current, past, and future circumstances for a representative estimate of your monthly income.

(3) We may need proof of your circumstances to ensure our estimate is reasonable. This may include documents, statements from other people, or other proof as explained in WAC 388-490-0005.

(4) We use one of two methods to estimate income:

(a) **Anticipating monthly income (AM):** With this method, we base the estimate on the actual income we expect your AU to receive in the month (see subsection (5)); and

(b) **Averaging income (CA):** With this method, we add the total income we expect your AU to receive for a period of time and divide by the number of months in the period (see subsection (6)).

(5) Anticipating monthly income: We must use the anticipating monthly method:

(a) For the month you apply for benefits unless:

(i) We are determining eligibility for ~~((children's medical))~~ apple health for kids programs as listed in WAC 388-505-0210 ~~((3) through (6))~~, or pregnancy medical as listed in WAC 388-462-0015. For ~~((children's))~~ apple health for kids and pregnancy medical we can use either method; or

(ii) You are paid less often than monthly (for example: you are paid quarterly or annually). If you are paid less often than monthly, we average your income for the month you apply. Section (6) explains how we average your income.

(b) When we estimate income for anyone in your AU, if you or anyone in your AU receive SSI-related medical benefits under chapter 388-475 WAC.

(c) When we must allocate income to someone who is receiving SSI-related medical benefits under chapter 388-475 WAC.

(d) When you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021. In this situation, we must use anticipating monthly (AM) for all your AU's income.

(e) To budget SSI or Social Security benefits even if we average other sources of income your AU receives.

(6) Averaging income: When we average your income, we consider changes we expect for your AU's income. We determine a monthly amount of your income based on how often you are paid:

(a) If you are paid weekly, we multiply your expected income by 4.3;

(b) If you are paid every other week, we multiply your expected income by 2.15;

(c) In most cases if you receive your income other than weekly or every other week, we estimate your income over your certification period by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(d) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(7) If we used the anticipating monthly income method for the month you applied for benefits, we may average your

income for the rest of your certification period if we do not have to use this method for any other reason in section (5).

(8) If you report a change in your AU's income, and we expect the change to last through the end of the next month after you reported it, we update the estimate of your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we don't make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless you meet one of the following conditions:

- (a) You provided incomplete or false information; or
- (b) We made an error in calculating your benefits.

AMENDATORY SECTION (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-505-0210 ((~~Children's healthcare~~)) Apple health for kids and other children's medical assistance programs. Funding for ((~~children's healthcare~~)) coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI ((~~SCHIP~~)) CHIP, or through state-funded programs. There are no resource limits for ((~~children's healthcare~~)) the apple health for kids programs. ((~~Children's healthcare programs that fall under the apple health for kids umbrella are described in subsections (1) through (4) below~~)) Apple health for kids coverage is free to children in households with incomes of no more than two-hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three-hundred percent FPL.**

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) ((~~The child's mother was eligible for and receiving medical assistance at the time of the child's birth; and~~)) The newborn is a resident of the state of Washington.

(b) ((~~The child remains with the mother and resides in the state~~)) The newborn's mother is eligible for medical assistance:

(i) On the date of the newborn's birth, including a retro-active eligibility determination; or

(ii) Based on meeting a medically needy (MN) spend-down liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or ((~~qualified~~)) lawfully present aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eli-

gible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for ((~~SSI-related CN or MN coverage~~)) SSI.

(3) Noncitizen children under the age of nineteen, who ((~~do not meet qualified alien status~~)) are not lawfully present as described in WAC ((~~388-424-0006~~)) 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded ((~~CN~~)) coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally-matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A social security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three-hundred percent FPL at each application or review;

((~~e~~)) (e) They do not have other creditable health insurance as described in WAC 388-542-0050; and

((~~f~~)) (f) They pay the required monthly premiums as described in WAC 388-505-0211

(5) Noncitizen children under the age of nineteen, who are not lawfully present as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two-hundred percent FPL, as described in WAC 388-478-0075, but not over three-hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premium as described in WAC 388-505-0211.

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c);

(b) Are ineligible for other ((~~federal medicaid~~)) federally-matched CN programs; ((~~and~~))

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described

in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown (~~(obligation)~~) liability as described in WAC 388-519-0100 and 388-519-0110.

~~((6))~~ (7) Children under the age of ~~((twenty-one))~~ nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids healthcare coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for healthcare coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care(-)" for more information.

~~((7))~~ (8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, social security number, and citizenship as described in subsection (2)(a), (b) and (c) are eligible for federally-matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

~~((8))~~ (9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally-recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally-matched CN (~~(medicaid)~~) coverage.

~~((9))~~ (11) Children under the age of nineteen not eligible for apple health for kids programs listed above may ~~((also))~~ be eligible for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; ~~((or))~~

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

~~((10))~~ Children who are ineligible for other programs included in apple health for kids may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) ~~They have a documented emergent medical condition as defined in WAC 388-500-0005;~~

(b) ~~They meet the other AEM program requirements as described in WAC 388-438-0110; and~~

~~(e) They have income that exceeds three hundred percent FPL; or~~

~~(d) They are disqualified from receiving premium-based coverage as described in subsection (4) of this section because of creditable coverage or nonpayment of premiums.~~

~~((11))~~ (d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL;  
or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.

(12) Except for a ~~((client))~~ child described in subsection ~~((6))~~ (7), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any ~~((children's healthcare))~~ apple health for kids program.

**AMENDATORY SECTION** (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-505-0211 Premium requirements for premium-based healthcare coverage under programs included in apple health for kids.** (1) For the purposes of this chapter, "**premium**" means an amount paid for healthcare coverage under programs included in apple health for kids.

(2) Payment of a premium is required as a condition of eligibility for premium-based coverage under programs included in apple health for kids, as described in WAC 388-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

(4) The premium amount for the assistance unit is based on the net countable income as described in WAC 388-450-0210 and the number of children in the assistance unit. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.

(5) The premium amount for each eligible child shall be:

(a) Twenty dollars per month per child for households with income above two hundred percent FPL, but not above two hundred and fifty percent FPL;

(b) Thirty dollars per month per child for households with income above two hundred and fifty percent FPL, but not above three hundred percent FPL; and

(c) Limited to a monthly maximum of two premiums for households with two or more children.

(6) All children in an assistance unit are ineligible for healthcare coverage when the head of household fails to pay required premium payments for three consecutive months.

(7) When the department terminates the medical coverage of a child due to nonpayment of premiums, the ~~((child has a three-month period of ineligibility beginning the first of the following month. The three-month period of ineligibility is rescinded))~~ child's eligibility is restored only when the:

(a) Past due premiums are paid in full prior to the ~~((begin date of the period of ineligibility))~~ end of the certification period; or

(b) The child becomes eligible for coverage under a non-premium-based CN healthcare program. ~~((The department will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.))~~

(8) The department writes off past-due premiums after twelve months.

(9) ~~((When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for premium-based coverage under a program included in apple health for kids))~~ If all past due premiums are paid after the certification period is over:

(a) Eligibility for prior months is not restored; and

(b) Children are not eligible for premium-based coverage under apple health for kids until:

(i) The month the premiums are paid or the department writes off the debt; or

(ii) The family reapplies and is found eligible.

(10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full premium amount is the obligation of the head of household of the assistance unit. A family can decide to request healthcare coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

(11) A change that affects the premium amount is effective the month after the change is reported and processed.

(12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the(~~(~~

~~(a) Establishment of the period of ineligibility described in subsection (7) of this section; or~~

~~(b) Obligation of the head of household to pay past due premiums))~~ obligation of the head of household to pay past due premiums.

AMENDATORY SECTION (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-542-0020 Other rules that apply to premium-based healthcare coverage under programs included in apple health for kids.** In addition to the rules of this chapter, children receiving premium-based coverage under ~~((programs included in))~~ apple health for kids are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065) if the child is covered under federally matched CN coverage;

(2) WAC 388-505-0210 (4) and (5), ((Children's health-care)) apple health for kids program eligibility;

(3) WAC 388-505-0211, Premium requirements for premium-based coverage under programs included in apple health for kids;

(4) WAC 388-416-0015(12), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(5) WAC 388-418-0025, Effect of changes on medical program eligibility.

## WSR 10-21-091

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 20, 2010, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-106.

Title of Rule and Other Identifying Information: The department is amending WAC 388-406-0040 What happens if the processing of my application is delayed?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington Street S.E., Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on November 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on November 23, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 9, 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 proposed amendment to subsection (6) of this rule will clarify the start date for Basic Food.

Reasons Supporting Proposal: The amendment will provide clarity and be consistent with other sections of chapter 388-406 WAC.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.-010.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010.

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: Kim Chea, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4653.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses. The proposed amendment clarifies the start date of Basic Food benefits.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 12, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-13-019, filed 6/11/07, effective 7/12/07)

**WAC 388-406-0040 What happens if the processing of my application is delayed?** (1) We process your application for benefits as soon as possible. We do not intentionally delay processing your application for benefits for any reason. If we have enough information to decide eligibility for:

(a) Basic Food, we promptly process your request for benefits even if we need more information to determine eligibility for cash or medical;

(b) Medical assistance, we promptly process your request for medical even if we need more information to determine eligibility for cash or Basic Food.

(2) If you have completed your required interview under WAC 388-452-0005 and we have enough information to determine eligibility, then we promptly process your application even if it is after thirty days from the date of your application.

(3) If additional information is needed to determine eligibility, we give you:

(a) A written request for the additional information; and

(b) An additional thirty days to provide the information.

(4) If you fail to keep or reschedule your interview in the first thirty calendar days after filing your application, your application will be denied on the thirtieth day, or the first business day after the thirtieth day. If you are still interested in Basic Food benefits, you will need to reapply. Benefits will be based on your second application date.

(5) If we have not processed your application for Basic Food by the sixtieth day and:

(a) You are responsible for the delay, we deny your request for benefits.

(b) If we are responsible for the delay, we:

(i) Promptly process your request if we have the information needed to determine eligibility; or

(ii) Deny your request if we don't have enough information to determine eligibility. If we deny your request we notify you of your right to file a new application and that you may be entitled to benefits lost.

(6) If you reapply for Basic Food by the sixtieth day of your first application, met your interview requirements under

WAC 388-452-0005, and are eligible, we (~~(give you))~~ start your benefits ((lost)) from:

(a) The date of your first application, if we caused the delay in the first thirty days; or

(b) (~~The month following the month of your first application~~) The date we have enough information to make an eligibility decision, if you caused the delay in the first thirty days.

## WSR 10-21-096

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed October 20, 2010, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-047.

Title of Rule and Other Identifying Information: Chapter 308-107 WAC, Ignition interlock driver's licenses.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on November 23, 2010, at 3:00 p.m.

Date of Intended Adoption: November 24, 2010.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by November 22, 2010.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by November 22, 2010, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules to conform to recent legislative changes and to streamline procedures. Rules amended are:

WAC 308-107-010, amended to include company contractors in definition of "authorized service provider" or "ignition interlock vendor."

WAC 308-107-020, amended to delete provision pertaining to ignition interlock requirement for alcohol-related deferred prosecutions in order to conform to statute change.

WAC 308-107-040, amended to streamline procedure.

WAC 308-107-050, amended to clarify and to extend maximum term of agreements with ignition interlock device manufacturers for collection of required fees.

WAC 308-107-070, amended to clarify procedures and to conform to statute change.

Reasons Supporting Proposal: Necessary to conform to legislative changes made in chapter 269, Laws of 2010.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.385.

Statute Being Implemented: RCW 46.20.385.

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: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforce-

ment: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 20, 2010

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

**WAC 308-107-010 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

(1) "Authorized service provider" or "ignition interlock vendor" means a person, company, or contractor to a company meeting all qualifications set out in chapter 204-50 WAC and approved and trained by a manufacturer to service, install, monitor, calibrate, and provide information on manufacturer's devices currently certified for use in Washington state.

(2) "Breath or blood alcohol concentration (BAC)" means the amount of alcohol in a person's blood or breath determined by chemical analysis, which shall be measured by grams of alcohol per:

(a) One hundred milliliters of blood; or

(b) Two hundred ten liters of breath.

(3) "Commission" means the Washington traffic safety commission.

(4) "Device" means an ignition interlock device as defined under RCW 46.04.215 and WAC 204-50-030.

(5) "Department" means the department of licensing.

(6) "Event log report" means a compilation of the data downloaded from a device under the provisions of WAC 204-50-080.

(7) "Functioning device" means a device that is properly installed, maintained, and meets the requirements specified in chapter 204-50 WAC.

(8) "Manufacturer" or "ignition interlock company" means the person, company, or corporation who produces an ignition interlock device, and certifies to the Washington state patrol that an authorized service provider is qualified to service, install, monitor, calibrate, and provide information on devices.

AMENDATORY SECTION (Amending WSR 09-19-086, filed 9/18/09)

**WAC 308-107-020 Ignition interlock driver's license—Application—License term.** (1) A person applying for an ignition interlock driver's license must meet the requirements of RCW 46.20.380 and 46.20.385, and submit the following:

(a) A nonrefundable application fee of one hundred dollars;

(b) An application on a form provided by the department;

(c) Satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Proof from an installer approved by the department that a functioning ignition interlock device has been installed.

If all the requirements for an ignition interlock driver's license are not met within thirty days after the application has been accepted by the department, the license will be denied.

~~(2) ((In the event of an alcohol-related deferred prosecution, the ignition interlock driver's license requirement shall extend for a two-year term from the date the deferral was granted.~~

~~(3))~~ Reapplication for the ignition interlock driver's license may be required whenever a new administrative suspension or revocation is imposed.

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

**WAC 308-107-040 Functioning device—Evidence that device is no longer installed or functioning.** (1) For purposes of RCW 46.20.311, 46.20.385, and 46.20.740, the department may determine that a device is no longer installed or functioning in the vehicle(s) driven by a person based on:

(a) An ignition interlock status verification form submitted by a manufacturer, or by an authorized service provider associated with such manufacturer, indicating that a device is no longer installed or functioning;

(b) Notice from the commission that a report received under WAC 308-107-080 indicates that a device is no longer installed or functioning or that the driver has failed to appear for scheduled maintenance;

(c) The termination or expiration without renewal of an agreement entered into between the department and the manufacturer of the device(s) installed in the vehicle(s) driven by the person;

(d) ~~((A statement))~~ Notice from a law enforcement officer or agency ~~((made under RCW 9A.72.085))~~ indicating that a device has been disabled, ~~((or))~~ removed, or is not functioning from a motor vehicle operated by the person; or

(e) A conviction under RCW 46.20.740(2) for operating a motor vehicle that is not equipped with a functioning device.

(2) Before making a determination under this section, the department may consider evidence from the person indicating that:

(a) The person is no longer operating the vehicle in which a device is no longer installed or functioning and that another vehicle driven by the person is so equipped; or

(b) The device has been replaced with a functioning device installed by another manufacturer or authorized service provider.

(3) Once the department has determined under this section that a device is no longer installed or functioning, the person must re-establish that a functioning device has been installed before a license may be reinstated or reissued during the remainder of an applicable period of restriction.

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

**WAC 308-107-050 Ignition interlock device revolving account.** (1) As required under RCW 46.20.385 (6)(a), unless determined by the department to be indigent under WAC 308-107-060, a person who is applying for or has been issued an ignition interlock driver's license must pay an additional fee of twenty dollars per month or partial month for which the ignition interlock driver's license is valid to the manufacturer of the device(s) installed in the motor vehicle(s) driven by the person. Payment may be made directly to the manufacturer, or through the authorized service provider, depending upon the manufacturer's business practices.

(2) A manufacturer providing devices to persons who are applying for or have been issued an ignition interlock driver's license, either directly or through an authorized service provider, must enter into an agreement with the department for the collection and transmittal of the twenty dollar monthly fee required under RCW 46.20.385 (6)(a). Any agreement made under this section must include appropriate reporting requirements and accounting practices to permit the department to audit the handling of the fees that must be remitted to the department. The department may terminate an agreement with a manufacturer upon a showing of good cause. Good cause ~~(shall)~~ may include, but not be limited to~~(:)~~:

(a) ~~Violation of the agreement(:);~~

(b) ~~Violation of the laws and rules governing the installation of devices(-and); or~~

(c) ~~Violation of this chapter.~~

An agreement between the department and a manufacturer will be valid for no more than ~~((two))~~ four years, provided that the department may extend an agreement for up to an additional ~~((two))~~ four years at its discretion.

(3) As provided by RCW 46.20.385 (6)(b), the department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account.

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

**WAC 308-107-070 Ignition interlock driver's license—Hearing.** (1) Upon notification by the department that an ignition interlock driver's license has been denied ~~((or cancelled))~~ under RCW 46.20.385 the aggrieved person may request a formal hearing to contest the department's decision. No hearing need be granted where the department is prevented from issuing an ignition interlock driver's license by rule or law. A request for a hearing must be submitted in writing.

(2) Upon notification by the department that a determination has been made under WAC 308-107-060 that a person is not indigent, the person may request a formal hearing to contest the department's determination. A request for a hearing must be submitted in writing.

(3) Within ten days of receipt of a request for a hearing, the department shall notify the requester in writing of the time and location of the hearing. The hearing may be held either in the person's county of residence or in any county adjoining the person's county of residence, except that all or

part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means.

(4) The hearing shall be conducted by a hearing officer appointed by the director. The director may delegate the authority to render final decisions to the hearing officer.

(5) For a hearing requested under subsection (1) of this section, the scope of the hearing shall be limited to the following issues:

(a) Whether the person had previously been issued a valid Washington state driver's license, or is in the military, stationed in Washington state, and has a valid home state license;

(b) Whether the suspension or revocation giving rise to the application for an ignition interlock driver's license is one for which an ignition interlock driver's license may be issued under RCW 46.20.385;

~~((c))~~ ~~(Whether the person has committed an offense of vehicular assault or vehicular homicide within the seven years immediately preceding the conviction or incident for which the ignition interlock driver's license is requested or, if there are multiple suspensions or revocations in effect, within the seven years immediately preceding the latest conviction or incident for which the ignition interlock driver's license is requested;~~

~~((d))~~ Whether a device was installed and functioning; and

~~((e))~~ (d) Whether the person is currently suspended or revoked for any reason for which an ignition interlock driver's license is not available.

(6) The person's official driving record provided to the hearing officer by the department shall be prima facie evidence of the issues contained in subsection (5) of this section unless the person presents clear and convincing evidence to the contrary.

(7) For a hearing requested under subsection (2) of this section, the person shall have the burden of proving by a preponderance of the evidence that the department's determination is in error.

(8) In the event that the person fails to appear for the hearing, no hearing shall be held. The case shall be remanded to the department and the department's previous decision denying ~~((or cancelling))~~ the ignition interlock driver's license, or decision determining that the person is not indigent, shall be affirmed.

## WSR 10-21-097

### PROPOSED RULES

### DEPARTMENT OF FISH AND WILDLIFE

[Filed October 20, 2010, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-093 on September 1, 2010.

Title of Rule and Other Identifying Information: WAC 232-28-294 Multiple season big game permits.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after December 3, 2010.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by November 10, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 29, 2010, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal increases the number of permits drawn and awarded.

Reasons Supporting Proposal: Each year, approximately 16,000 applications are received for these permits, and in recent years, 2,600 are awarded. However, in 2010, only about fifty-five percent of those people who were awarded deer permits and eighty-five percent of those awarded elk permits ended up purchasing the permits. We are proposing to draw more names, although the number of hunters who will purchase the permits in 2011 is expected to be the same number (2,600) allocated in 2010.

Statutory Authority for Adoption: RCW 77.12.047, 77.32.450, and 77.32.370.

Statute Being Implemented: RCW 77.12.047, 77.32.-450, and 77.32.370.

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

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Pulliam, Natural Resources Building, Olympia, (360) 902-2506; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not related to hydraulics regulations.

October 20, 2010  
Lori Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 09-53, filed 4/15/09, effective 5/16/09)

**WAC 232-28-294 Multiple season big game permits.** The commission may, by rule, offer permits for hunters to hunt deer or elk during more than one general season.

An annual drawing will be conducted by the department for multiple season permits.

(1) Multiple season big game hunting permit applications:

(a) To apply for multiple season big game hunting season permits for deer or elk, applicants must purchase a permit application.

(b) No refunds or exchanges for applications will be made for persons applying for multiple season big game hunting season permits after the ~~((drawing))~~ application has been ~~((held))~~ submitted.

(c) An applicant may purchase only one application for a multiple season big game hunting season permit for each species.

(d) Permits will be randomly drawn by computer selection.

(e) Incomplete applications will not be accepted.

(f) The department will establish application and drawing dates.

(2) The bag limit for this permit is one deer or elk.

(3) Multiple season permits:

(a) Hunters who are drawn will be required to purchase their original deer or elk license, corresponding to their permit, and the multiple season big game permit.

(b) Successful applicants will be allowed to purchase their permit ~~((on a first come, first served basis until the quota has been reached. Once the quota is reached, permit sales will be curtailed))~~ at any time prior to September 1st.

(c) The permits are not transferable.

(4) Permit holders are required to follow all rules and restrictions for general season hunters within the game management unit or area hunted.

Number of Permits	Dates	Game Management Units (GMUs)	Legal Animal	Eligible Hunters
<del>((2000))</del> <u>4000</u>	Sept. 1 - December 31 within established general seasons and regulations for deer by the commission	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal deer consistent with the game management unit or area restrictions	Any licensed deer hunter



Number of Permits	Dates	Game Management Units (GMUs)	Legal Animal	Eligible Hunters
50	Sept. 1 - December 31 within established general seasons and regulations for deer by the commission	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal deer consistent with the game management unit or area restrictions	Hunter education instructors, meeting qualifications and selection criteria established by the department
<b>Multiple Season Elk Permits</b>				
<del>((600))</del> 850	Sept. 1 - December 31 within established general seasons and regulations for elk by the commission	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal elk consistent with the game management unit or area restrictions	Any licensed elk hunter
25	Sept. 1 - December 31 within established general seasons and regulations for elk by the commission	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal elk consistent with the game management unit or area restrictions	Hunter education instructors, meeting qualifications and selection criteria established by the department

**WSR 10-21-098**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Medical Quality Assurance Commission)  
[Filed October 20, 2010, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-114.

Title of Rule and Other Identifying Information: WAC 246-919-430 (physicians) general requirements and 246-918-172 (physician assistants) creating a new section for renewal general requirements.

Hearing Location(s): Department of Health, Point Plaza East, Room 153, 310 Israel Road S.E., Tumwater, WA 98501, on November 23, 2010, at 9:00 a.m.

Date of Intended Adoption: November 23, 2010.

Submit Written Comments to: Julie Kitten, P.O. Box 47866, Olympia, WA 98504-7866, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2795, by November 10, 2010.

Assistance for Persons with Disabilities: Contact Julie Kitten by November 10, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The medical quality assurance commission is proposing amending the physician rules and creating a new section in the physician assistant rules to obtain additional information at the time of renewal. This may include board certification and type, current practice setting (i.e., group, solo, hospital), and current practice specialty or interest (i.e., cosmetic surgery, orthopedic, family practice).

Reasons Supporting Proposal: This information may be needed to identify underserved areas and medical trends, to

assess provider resources for emergency planning, and to develop rules and policies promoting quality health care.

Statutory Authority for Adoption: RCW 18.71.017, 18.71A.020.

Statute Being Implemented: RCW 18.71.050(2), 18.71A.020.

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

Name of Proponent: Department of health, medical quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Julie Kitten, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2757; Implementation and Enforcement: Maryella Jansen, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2755.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules would not impose any 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 Julie Kitten, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2757, fax (360) 236-2795, e-mail [julie.kitten@doh.wa.gov](mailto:julie.kitten@doh.wa.gov).

October 20, 2010  
Maryella E. Jansen  
Executive Director

NEW SECTION

**WAC 246-918-172 Renewal general requirements.** Licensed physician assistants shall submit information about their current professional practice at the time of renewal. This information may include practice setting, medical specialty, or other relevant data. The commission will imple-

ment this requirement when resources become available and will notify licensees at the time of renewal.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

**WAC 246-919-430 Renewal general requirements.**

(1) Licensed physicians must complete two hundred hours of continuing education every four years as required in chapter 246-12 WAC, Part 7.

(2) In lieu of the two hundred hours of continuing medical education, the commission will accept a current Physician's Recognition Award from the American Medical Association or a current certificate from any specialty board approved by the American Board of Medical Specialties (ABMS) which is considered by the specialty board as equivalent to the two hundred hours of continuing medical education required under WAC 246-919-430(1). The commission will also accept certification or recertification by a specialty board as the equivalent of two hundred hours of continuing medical education. A list of the approved specialty boards are designated in the *1995 Official American Boards of Medical Specialty Director of Board Certified Medical Specialist* and will be maintained by the commission. The list shall be made available upon request. The certification or recertification must be obtained in the four years preceding application for renewal.

(3) Licensed physicians shall submit information about their current professional practice at the time of renewal. This information may include practice setting, medical specialty, board certification, or other relevant data. The commission will implement this requirement when resources become available and will notify licensees at the time of renewal.

**WSR 10-21-100**

**WITHDRAWAL OF PROPOSED RULES  
HORSE RACING COMMISSION**

[Filed October 20, 2010, 9:57 a.m.]

The Washington horse racing commission would like to withdraw from publication our proposed rule making (CR-102), WSR 10-13-062, filed on June 10, 2010.

Contact Douglas L. Moore if you have any questions.

Douglas L. Moore  
Deputy Secretary

**WSR 10-21-102**

**PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed October 20, 2010, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-121 on June 22, 2010.

Title of Rule and Other Identifying Information: WAC 220-56-330 Crab—Areas and seasons.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after February 4, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by December 4, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 25, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes the opening days for recreational crab in Puget Sound waters (Marine Areas 4-13) from Wednesday through Saturday to Thursday through Sunday, and opens the recreational fishery in Marine Areas 4-13 seven days per week beginning the second Saturday in October through December 31.

Reasons Supporting Proposal: To align the recreational crab rules with the Washington fish and wildlife commission's new policy allowing more recreational crabbing opportunity in Puget Sound.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.12.045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Rich Childers, 1111 Washington Street, Olympia, (360) 586-1498; Implementation: James Scott, 1111 Washington Street, Olympia, (360) 902-2736; and Enforcement: Chief Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposals modify only recreational fishing regulations.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

October 20, 2010

Lori Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

**WAC 220-56-330 Crab—Areas and seasons.** (1) It is unlawful to fish for or possess crab taken for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 8-1, 8-2, 9, 10, 11, 12, and 13(—); Open 7:00 a.m., ((June 18 through the last day in February)) July 1 through Labor Day, Thursday through Monday of each week; and open the second Saturday in October through December 31, seven days per week.

(b) ~~Those waters of ((Area 6, those waters of)) Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence due west to the international boundary (westerly of a straight line from the northernmost tip of Sinclair Island through Lummi Rocks to Lummi Island; and west of a line projected from the southeast point of Sinclair Island to the ferry dock at Shannon Point, and waters of Areas 8-1, 8-2, 9, 10, 11 and 12—)) and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island.~~ Open 7:00 a.m. ~~((July 1 through September 3, open only Wednesday through Saturday of each week and open Sunday, September 5 and Monday, September 6.~~

~~(c) Those contiguous waters of Marine Area 7 north, south and east of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island, and a line that extends from the Anacortes ferry dock at Shannon Point, northward to the southeastern tip of Sinclair Island, thence from the northernmost tip of Sinclair Island through Lummi Rocks to Lummi Island (southeast Hale Pass, Bellingham Bay, Samish Bay, Padilla Bay, eastern waters of Bellingham Channel, Guemes Channel and Fidalgo Bay)— Open 7:00 a.m. July 16 through September 30, and open only Wednesday through Saturday except also open Sunday, September (5) and Monday, September (6)), July 15 through September 30, Thursday through Monday of each week; and open the second Saturday in October through December 31, seven days per week.~~

~~((c)) (c) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island(—); Open 7:00 a.m. August ((47)) 15 through September 30, ((and open only Wednesday)) Thursday through ((Saturday)) Monday of each week ((except also open Sunday, September 5 and Monday, September 6)); and open the second Saturday in October through December 31, seven days per week.~~

(2) It is unlawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Areas 1, 2, 3, and Area 4 west of the Bonilla-Tatoosh line except during the period from December 1 through September 15. Open to gear other than shellfish pot gear year-round.

(3) The Columbia River upstream from a line projected from the outermost end of the north jetty to the exposed end of the south jetty is open to crab fishing for personal use year-round.

**WSR 10-21-103****PROPOSED RULES****DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed October 20, 2010, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-075 and 10-14-107.

Title of Rule and Other Identifying Information: WAC 246-919-480 Retired active credential, 246-919-010 Definitions, and 246-919-421 (repealing subsection (4)) Renewal and continuing medical education cycle revision, amending the requirements for the retired active physician license.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on December 9, 2010, at 6:00 p.m.

Date of Intended Adoption: December 9, 2010.

Submit Written Comments to: Julie Kitten, P.O. Box 47866, Olympia, WA 98506-7866 [98504-7866], web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2795, by December 2, 2010.

Assistance for Persons with Disabilities: Contact Julie Kitten by December 2, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes amending the licensing and continuing education rules regarding retired active physicians to improve access to health care services for the citizens of this state without compromising public safety. The proposed amendments include removing the restriction of primary care services only, and the restriction to practicing only in community clinics.

Reasons Supporting Proposal: 2SHB 1899 (section 4(1), chapter 403, Laws of 2009) directed the commission to consider amending the requirements for retired active physicians. The commission is considering removing financial and practical barriers for the health care services the retired active physicians provide. This should increase the availability of services that retired active physicians could provide to all practice settings.

Statutory Authority for Adoption: RCW 18.71.017, 18.130.250, 18.71.440.

Statute Being Implemented: RCW 18.71.080, 18.71.-440.

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

Name of Proponent: Department of health, medical quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Julie Kitten, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2757; Implementation and Enforcement: Maryella Jansen, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2755.

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 Julie Kitten, P.O. Box 47866, Olympia, WA

98504-7866, phone (360) 236-2755, fax (360) 236-2795, e-mail julie.kitten@doh.wa.gov.

October 20, 2010  
Maryella E. Jansen  
Executive Director

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-010 Definitions.** ~~((1) "Commission" means the Washington state medical quality assurance commission.~~

~~(2) "Applicant" is an individual who has completed the application form and has paid the application fee.~~

~~(3) "Physician" means a physician licensed pursuant to chapter 18.71 RCW.~~

~~(4) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described in RCW 18.130.180 for conduct occurring on or after June 11, 1986.~~

~~(5) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.~~

~~(6) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(7) "Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.)~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" is an individual who has completed the application form and has paid the application fee.

(2) "Commission" means the Washington state medical quality assurance commission.

(3) "Emergent" means a circumstance calling for immediate action.

(4) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(5) "Intermittent" means providing services on a part-time or full-time nonpermanent basis.

(6) "Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.

(7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(8) "Physician" means a physician licensed pursuant to chapter 18.71 RCW.

(9) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

**WAC 246-919-421 Renewal and continuing medical education cycle revision.** Beginning January 1, 2000, the one-year renewal cycle for physicians will transition to a two-year cycle and a four-year continuing medical education reporting cycle. The renewal and continuing medical education reporting cycle will be as follows:

(1) Effective January 1, 2000, any physician whose birth year is an even number will renew their credential for twenty-four months and every two years thereafter. Those physicians must obtain two hundred hours of continuing medical education within the next forty-eight months from the date of the initial two-year license and every four years thereafter.

(2) Effective January 1, 2001, any physician whose birth year is an odd number will renew their credential for twenty-four months and every two years thereafter. Those physicians must obtain two hundred hours of continuing medical education within the next forty-eight months from the date of the initial two-year license and every four years thereafter.

(3) Effective January 1, 2000, in order to attain full license status, individuals with a post-graduate limited license will pay the fee difference between the limited license application and the full license application. This license will expire on their second ~~((birthdate))~~ birth date after issuance and every two years thereafter.

~~((4) Effective January 1, 2000, those physicians on a retired active status will remain on the annual renewal cycle and a four-year continuing medical education reporting cycle. Those retired active physicians must report two hundred hours of continuing medical education within the next forty-eight months and every four years thereafter.))~~

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

**WAC 246-919-480 Retired active ~~((credential))~~ license.** ~~(1) ((A practitioner may)) To obtain a retired active ((credential. Refer to the requirements of)) license a physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).~~

~~(2) ((The practitioner's practice is limited to providing health care services without compensation;~~

~~(3) Services are provided in community clinics located in the state of Washington that are operated by public or private tax exempt corporations; and~~

~~(4) Services must be limited to primary care.)) A physician with a retired active license may not receive compensation for health care services;~~

(3) A physician with a retired active license may practice only in emergent or intermittent circumstances; and

(4) Physicians with a retired active license must renew every two years and must report one hundred hours of continuing medical education at every renewal.

**WSR 10-21-104**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Optometry)  
 [Filed October 20, 2010, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-060.

Title of Rule and Other Identifying Information: WAC 246-851-235 Credits for cultural competency in clinical care.

Hearing Location(s): Creekside Three at Center Point, 20435 72nd Avenue South, Conference Room One, Kent, WA 98032, on December 3, 2010, at 10:30 a.m.

Date of Intended Adoption: December 3, 2010.

Submit Written Comments to: Judy Haenke, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by December 2, 2010.

Assistance for Persons with Disabilities: Contact Judy Haenke, program manager, by November 24, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule provides an optional credit for educational courses which increase cultural competency in health care. The rule addresses the increasing demand for health care practitioners to provide effective care for patients of diverse cultural and social origins. All health [health] care providers should be encouraged to increase their knowledge and practice skills to provide effective care to all patients regardless of race, ethnicity, gender, or primary language. The rule does not change the total number of continuing education credits required for optometrists.

Reasons Supporting Proposal: In 2006, ESB 6194 (chapter 237, Laws of 2006), now codified as RCW 43.70.-615, suggests health care providers licensed by the department of health would benefit from multicultural health awareness education and training. Completion of multicultural awareness programs may increase the knowledge, understanding and skill of health care providers to effectively provide health care in cross-cultural situations.

Statutory Authority for Adoption: RCW 18.54.070.

Statute Being Implemented: RCW 18.54.070.

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

Name of Proponent: Department of health, board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program Manager, 310 Israel Road S.E., Tumwater, WA 98502, (360) 236-4947.

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 not required under RCW 34.05.328. The agency did not complete a cost-benefit anal-

ysis under RCW 34.05.328. RCW 34.05.328 (5)(a) exempts rules that, by definition, are not significant legislative rules.

October 20, 2010

Bart Eggen

Executive Director

Board of Optometry

NEW SECTION

**WAC 246-851-235 Credits for cultural competency in clinical care.** (1) This section addresses the increasing demand for health care practitioners to provide effective care for patients of diverse cultural and social origins. All optometrists are encouraged to increase their knowledge and practice skills to provide effective care to all patients regardless of race, ethnicity, gender, or primary language.

(2) Continuing education credit will be granted for courses or materials related to the awareness of health disparities among different populations and the ability to effectively provide health services in cross cultural situations.

(3) No more than two credit hours will be granted under this section to any licensee in any two-year reporting period.

**WSR 10-21-105**  
**WITHDRAWAL OF PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed October 20, 2010, 10:06 a.m.]

The Washington horse racing commission would like to withdraw from publication our proposed rule making (CR-102), WSR 09-02-063, filed on January 6, 2009.

Contact Douglas L. Moore if you have any questions.

Douglas L. Moore

Deputy Secretary

**WSR 10-21-115**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 20, 2010, 11:04 a.m.]

Supplemental Notice to WSR 10-04-107.

Preproposal statement of inquiry was filed as WSR 09-19-124.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-478-0030 Payment standard for GA-U (disability life-line) and ADATSA.

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://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on November 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 23, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division is proposing amendments to WAC 388-478-0030 to decrease the grant payment standards to disability lifeline (DL) and ADATSA recipients. The department will be able to continue providing grants for all current recipients at a lower rate.

Reasons Supporting Proposal: These amendments are necessary to contain costs and maintain the DL program within budget appropriations plus an additional 6.3 percent across-the-board reduction imposed by the governor executive order dated September 2010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, 74.04.005, and 74.04.770.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.08.090, 74.04.005, and 74.04.770.

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: Melissa Mathson, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4563.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by clarifying the description of medical evidence requirements to determine incapacity.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 15, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-478-0030 Payment standards for ~~((GA-U))~~ disability lifeline and ADATSA.** (1) The payment standards for ~~((general assistance-unemployable (GA-U)))~~ disability lifeline (DL) and alcohol and drug addiction treatment and support act (ADATSA) program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	\$ <del>((339))</del> <u>258</u>
2	<del>((428))</del> <u>326</u>

(2) The payment standards for ~~((GA-U))~~ DL and ADATSA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$ <del>((206))</del> <u>157</u>
2	<del>((261))</del> <u>198</u>

**WSR 10-21-116**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Purchasing Administration)  
[Filed October 20, 2010, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-070.

Title of Rule and Other Identifying Information: Chapter 388-534 WAC, Early and periodic screening, diagnosis, and treatment (EPSDT) and WAC 388-865-0350 Mental health screening for children.

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 November 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 23, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating and clarifying EPSDT policy for all healthcare services, including medical, dental, and behavioral health services.

Reasons Supporting Proposal: This will make the EPSDT policy more transparent to clients, providers, and agency staff.

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

Statute Being Implemented: 42 C.F.R., Part 441, Subpart B.

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: Sharon Reddick, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1656.

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. Exempt per RCW 34.05.328 (5)(b)(v) because content of the rule is dictated by federal statute.

October 14, 2010  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-07-016, filed 3/8/02, effective 4/8/02)

**WAC 388-534-0100 EPSDT.** (1) ~~(Persons who are eligible for medicaid are eligible for coverage through the early and periodic screening, diagnosis, and treatment (EPSDT) program up through the day before their twenty-first birthday.~~

~~(2) Access and services for EPSDT are governed by federal rules at 42 CFR, Part 441, Subpart B which were in effect as of January 1, 1998.~~

~~(a) The standard for coverage for EPSDT is that the services, treatment or other measures are:~~

- ~~(i) Medically necessary;~~
- ~~(ii) Safe and effective; and~~
- ~~(iii) Not experimental.~~

~~(b) EPSDT services are exempt from specific coverage or service limitations which are imposed on the rest of the CN and MN program. Examples of service limits which do not apply to the EPSDT program are the specific numerical limits in WAC 388-545-300, 388-545-500, and 388-545-700.~~

~~(c) Services not otherwise covered under the medicaid program are available to children under EPSDT. The services, treatments and other measures which are available include but are not limited to:~~

- ~~(i) Nutritional counseling;~~
- ~~(ii) Chiropractic care;~~
- ~~(iii) Orthodontics; and~~
- ~~(iv) Occupational therapy (not otherwise covered under the MN program).~~

~~(d) Prior authorization and referral requirements are imposed on medical service providers under EPSDT. Such requirements are designed as tools for determining that a service, treatment or other measure meets the standards in subsection (2)(a) of this section.~~

~~(3) Transportation requirements of 42 CFR 441, Subpart B are met through a contract with transportation brokers throughout the state)) The early and periodic screening, diagnosis and treatment (EPSDT) program is a federal preventive health care benefit for children and youth. The purpose of this program is to provide comprehensive, periodic, preventive health screenings to clients under age twenty-one in order to identify potential physical and/or behavioral health~~

conditions and to provide diagnosis and medically necessary treatment to correct or ameliorate defects and physical and mental illnesses and conditions. EPSDT is designed to encourage early and continuing access to health care for children and youth. Social Security Act 1905(r) (42 U.S.C. 1396d(r)).

(2) The EPSDT program is defined by federal rules at 42 C.F.R., Part 441, Subpart B. EPSDT services and treatment must be medically necessary, as defined in WAC 388-500-0005.

(3) It is the department's intent that all eligible children receive EPSDT screenings to thoroughly and comprehensively assess each child's health and wellness.

#### NEW SECTION

**WAC 388-534-0110 EPSDT—Definitions.** The following definitions and those found in WAC 388-500-0005 apply to this chapter:

- **"Behavioral health"** - A continuum of health and/or clinical services for individuals at risk for, or suffering from, emotional, mental, substance abuse, chemical dependency and/or other behavioral conditions.

- **"Periodicity schedule"** - The schedule for periodic health and wellness screenings provided at age appropriate intervals as determined by the department after consultation with recognized children's medical and dental care professional organizations.

#### NEW SECTION

**WAC 388-534-0120 EPSDT—Eligible clients.** All clients under age twenty-one who are covered by the department's medical assistance programs are eligible for services under the early and periodic screening, diagnosis and treatment (EPSDT) program.

#### NEW SECTION

**WAC 388-534-0125 EPSDT—Components.** The early and periodic screening, diagnosis and treatment (EPSDT) program components include:

(1) **Screening** - Upon request and according to the department's periodicity schedule, the department pays for screenings to include regularly scheduled examinations and evaluations of general physical and behavioral health, growth, development, and nutritional status of infants, children, and youth to detect potential health conditions.

(a) To be considered an EPSDT screening, all of the following elements must be performed:

- (i) Comprehensive health history and assessment;
- (ii) Comprehensive developmental history and age-appropriate assessment;
- (iii) Comprehensive unclothed physical examination;
- (iv) Appropriate behavioral health and substance abuse screening;
- (v) Health education and counseling (including anticipatory guidance according to age and health history);
- (vi) Appropriate vision testing;
- (vii) Appropriate hearing testing;
- (viii) Appropriate laboratory testing;

- (ix) Dental screening services; and
- (x) Immunizations.

(b) An EPSDT screening must be provided in accordance with reasonable standards of practice determined by the department after consultation with recognized organizations involved in child healthcare.

(c) The provider performing the screening may order components of the EPSDT screening from other licensed providers acting within their scope of practice. The department encourages the provider to perform as many of the components as possible to provide a fuller understanding of the client's health.

(2) **Diagnosis** - When a healthcare risk is identified in an EPSDT screening, additional diagnostic procedures may be performed by a qualified provider to determine if further evaluation or treatment is required.

(3) **Treatment** - Medically necessary services that are not excluded by federal law are provided to address healthcare conditions identified as the result of an EPSDT screening. When a healthcare condition is identified, the provider(s) will:

- (a) Treat the client (only if it is within the provider's scope of practice); or
- (b) Refer the client to an appropriate provider for treatment.
- (i) This may include additional testing or specialty evaluations, such as developmental assessment, comprehensive mental health, substance abuse evaluation, or nutritional counseling.
- (ii) Treating providers are required to communicate the results of their services to the EPSDT screening provider(s).

(4) The department or its designee considers requests for authorization of treatment that include services not listed as covered in WAC 388-501-0060, WAC 388-106-0200, and other specific program WAC, or that are listed as noncovered in WAC 388-501-0070 and specific program WAC, only when determined to be medically necessary and recommended by a provider after a current EPSDT screening. If a child's EPSDT screening is current according to the periodicity schedule, a new screening is not required before the non-covered service may be requested and authorized.

(5) If any of the elements of an EPSDT screening indicate there is a need for a more complete evaluation of the client's health or some specific condition, that evaluation, diagnosis, and medically necessary treatment must be provided to the client.

#### NEW SECTION

**WAC 388-534-0130 EPSDT—Covered services and authorization of payment.** (1) The early and periodic screening, diagnosis and treatment (EPSDT) program services are exempt from specific coverage or service limitations that apply to other department healthcare programs (except for services excluded under federal law). This means that services not listed as covered in WAC 388-501-0060, WAC 388-106-0200, and other specific program WAC provisions, or listed as noncovered in WAC 388-501-0070 and specific program WAC, may be paid for as EPSDT services if:

(a) They are among the services listed in 42 U.S.C. 1396d(a) that state medicaid programs may cover;

(b) They are determined by the provider to be medically necessary;

(c) They are determined medically necessary and are prior authorized by the department or its designee in accordance with the process described in WAC 388-501-0165; and

(d) The client's EPSDT screening is current according to the periodicity schedule.

(2) Eligible clients may receive medically necessary covered healthcare services with or without an EPSDT screening or referral. Certain covered healthcare services may require prior authorization by the department or its designee.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0350 ((Mental)) EPSDT health ((screening)) services for children.** ~~((The mental health pre-paid health plan is responsible for conducting mental health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:~~

~~(1) Providing resource management services for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program as specified in contract with the mental health division;~~

~~(2) Developing and maintaining an oversight committee for the coordination of the early and periodic screening, diagnosis and treatment program. The oversight committee must include representation from parents of medicaid-eligible children)) Persons under the age of twenty-one who are eligible for department medical assistance programs may also receive mental health services through the early and periodic screening, diagnosis, and treatment (EPSDT) program in accordance with chapter 388-534 WAC.~~

#### **WSR 10-21-117**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Filed October 20, 2010, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-01 [10-18-001] on August 18, 2010, and WSR 10-13-121 on June 22, 2010.

Title of Rule and Other Identifying Information: WAC 220-16-890 through 220-16-950 (new sections), 220-20-100 General provisions—Marine protected areas, and 220-56-235 Possession limits—Bottomfish.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after February 4, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091,



e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by December 4, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 15, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **The WAC sections relevant to this proposal are:** WAC 220-56-235 Possession limits—Bottomfish, 220-20-100 General provisions—Marine protected areas, and chapter 220-16 WAC (new sections WAC 220-16-890 - 220-16-950).

**Revisions to these WACs are proposed under three distinct alternatives.**

**Alternative 1:** This alternative implements more restrictive sport and commercial bottomfish regulations in order to enhance the quality of consumptive and nonconsumptive recreational opportunities and to protect bottomfish resources in Marine Area 4 east of the Bonilla-Tatoosh line. Four species of bottomfish were recently added to the federal endangered species list.

- WAC 220-56-235 would be revised to reduce the aggregate bottomfish limit in Marine Area 4 east of the Bonilla-Tatoosh line from 15 to either 12 (Alternative 1/Option A) or 10 (Alternative 1/Option B).

**Alternative 2:** This alternative would close one or more areas to recreational and commercial bottomfishing in order to provide additional protection to bottomfish stocks, four species of which were recently added to the federal Endangered Species Act (ESA), and to increased nonconsumptive recreational opportunities in Marine Area 4 east of the Bonilla-Tatoosh line.

- New sections are added to chapter 220-16 WAC that legally define six individual areas in Marine Area 4 east of the Bonilla-Tatoosh line as marine conservation areas.
- WAC 220-20-100, this rule would be amended to close newly defined marine conservation areas to recreational and commercial bottomfish fishing.

**Alternative 3:** This alternative considers closing one or more areas in Marine Area 4 east of the Bonilla-Tatoosh line to the harvest of all fish, shellfish and other invertebrates in order to provide protection to all marine resources, including the four species of bottomfish recently added to the federal endangered species list; to promote biodiversity; and to maximize nonconsumptive recreational opportunities.

- New sections are added to chapter 220-16 WAC that legally define seven individual areas in Marine Area 4 east of the Bonilla-Tatoosh line as marine preserves.
- WAC 220-20-100, this rule would be amended to close newly defined marine preserves to the harvest of all fish, shellfish, and other invertebrates in order to provide protection to all marine resources, promote biodiversity, and maximize nonconsumptive recreational opportunities.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.12.-045, and 77.12.047.

Rule is necessary because of federal law, 50 C.F.R., Parts 223 and 224.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Reed, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1202; Implementation: James Scott, 1111 Washington Street, Olympia, (360) 902-2736; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: There are no reporting or record-keeping requirements in the proposed rule.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: None.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The rule is not expected to result in a loss of revenue for any commercial fishing operations in the area. The establishment of marine preserves or conservation areas is focused in the area shoreward of twenty fathoms, where there is little, if any, commercial fishing activity due to the rocky habitat. Historical commercial landing data shows no recent commercial landings in the area for the majority of the commercial fishing gear types. Some recent commercial landings were reported for the set-line fishery in this area, but this fishery targets dog fish and sablefish, both of which occur in commercial quantities in waters deeper than twenty fathoms.

5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

There is no cost of compliance, as explained in number 4 above.

Now Compare the Largest Businesses' Cost of Compliance with the Cost of Compliance for Small Businesses. Will this Rule Have a Disproportionate Impact on Small Businesses? All businesses in these particular fisheries are considered small businesses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: There are no costs associated with this rule.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The Washington department of fish and wildlife (WDFW) held three public meetings to discuss the proposed closed areas: In **Seattle**, on

August 23, 2010, at 5:30 - 8:30 p.m.; in **Port Angeles**, on August 24, 2010, at 7:00 - 9:00 p.m.; and in **Olympia**, on August 26, 2010, at 7:00 - 9:00 p.m.

In addition, WDFW has posted the proposals on the agency web page at <http://wdfw.wa.gov/conservation/fisheries/marinearea4/> and is accepting written comments through December 4, 2010.

Public testimony will be taken at the commission's December 3-4, 2010, meeting as part of the WDFW rule adoption process.

8. A List of Industries That Will Be Required to Comply with the Rule: All state commercial fishers must comply.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: No jobs will be created or lost.

A copy of the statement may be obtained by contacting Heather Reed, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-1202, e-mail [Heather.Reed@dfw.wa.gov](mailto:Heather.Reed@dfw.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. The proposal does not involve hydraulics.

October 20, 2010

Lori Preuss

Rules Coordinator

**ALTERNATIVE 1 - OPTION 1**

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

**WAC 220-56-235 Possession limits—Bottomfish.** It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4) - 15 fish in the aggregate, except east of the Bonilla-Tatoosh line - 12 fish in the aggregate, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod - 2 fish:

(i) Minimum length 22 inches in Catch Record Card Areas 1 through 3.

(ii) Minimum length 24 inches in Catch Record Card Area 4.

(b) Rockfish - 10 fish. Release all canary and yelloweye rockfish. In Marine Area 4 east of the Bonilla Tatoosh Line: 6 fish. Only black or blue rockfish may be retained.

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolfeel - 0 fish from Catch Record Card Area 4.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5  
except

1 fish May 1 through  
September 30 only black  
or blue rockfish may be  
retained.

in Marine Area 5 west of Slip Point 3 fish only black or blue rockfish may be retained.

in Marine Area 6.  
Surfperch 10 fish  
Pacific cod 2 fish  
Pollock 2 fish  
Flatfish (except halibut) 15 fish  
Lingcod 1 fish  
Wolf-eel 0 fish  
Cabezon 2 fish  
Pacific hake 2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish 0 fish  
Surfperch 10 fish  
Pacific cod 2 fish  
Flatfish (except halibut) 15 fish  
Lingcod 1 fish  
Wolf-eel 0 fish  
Cabezon 2 fish  
Pollock 2 fish  
Pacific hake 2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish 0 fish  
Surfperch 10 fish  
Pacific cod 0 fish  
Pollock 0 fish  
Flatfish (except halibut) 15 fish  
Lingcod 1 fish  
Wolf-eel 0 fish  
Cabezon 2 fish  
Pacific hake 0 fish

(d) Catch Area 12: Closed.

(e) It is unlawful to possess lingcod taken by angling or by spear fishing less than 26 inches in length or greater than 36 inches in length.

(f) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(g) It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.

(h) In Catch Record Area 5, the daily limit for rockfish is the first legal rockfish caught, except west of Slip Point the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

**ALTERNATIVE 1 - OPTION 2**

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

**WAC 220-56-235 Possession limits—Bottomfish.** It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4) - 15 fish in the aggregate, except east of the Bonilla-Tatoosh line - 10 fish in the aggregate, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod - 2 fish:

(i) Minimum length 22 inches in Catch Record Card Areas 1 through 3.

(ii) Minimum length 24 inches in Catch Record Card Area 4.

(b) Rockfish - 10 fish. Release all canary and yelloweye rockfish. In Marine Area 4 east of the Bonilla Tatoosh Line: 6 fish. Only black or blue rockfish may be retained.

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolf-eel - 0 fish from Catch Record Card Area 4.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30 only black or blue rockfish may be retained.
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in Marine Area 5 west of Slip Point	3 fish only black or blue rockfish may be retained.
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in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish

Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pollock	2 fish
Pacific hake	2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	0 fish

(d) Catch Area 12: Closed.

(e) It is unlawful to possess lingcod taken by angling or by spear fishing less than 26 inches in length or greater than 36 inches in length.

(f) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(g) It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.

(h) In Catch Record Area 5, the daily limit for rockfish is the first legal rockfish caught, except west of Slip Point the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

**ALTERNATIVE 2**

NEW SECTION

**WAC 220-16-890 Tatoosh Island Conservation Area.** "Tatoosh Island Conservation Area" is defined as all waters and tidal and submerged lands within a boundary created by connecting the following coordinates:

124°44.575'W long., 48°23.492'N lat.  
 124°44.575'W long., 48°23.800'N lat.  
 124°43.956'W long., 48°23.800'N lat.  
 124°44.956'W long., 48°23.492'N lat., and back to the point of origin.

NEW SECTION

**WAC 220-16-900 Waadah Island Conservation Area.** "Waadah Island Conservation Area" is described as all waters and tidal and submerged lands within a boundary created by connecting the following coordinates:

124°36.200'W long., 48°22.800'N lat.

124°36.200'W long., 48°23.513'N lat.

124°35.800'W long., 48°23.359'N lat.

124°35.800'W long., 48°22.954'N lat., and then following the shoreline back to the point of origin.

NEW SECTION

**WAC 220-16-910 Chibahdehl Rocks Conservation Area.** "Chibahdehl Rocks Conservation Area" is described as all waters and tidal and submerged lands within a line beginning at 124°41.100'W long., 48°23.366'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°41.100'W long., 48°24.048'N lat., then projected easterly to 124°40.000'W long., 48°24.100'N lat., then southeasterly to 124°39.500'W long., 48°24.031'N lat., then south to 124°39.500'W long., 48°23.458'N lat., then following the shoreline back to the point of origin.

NEW SECTION

**WAC 220-16-920 Third Beach Reef Conservation Area.** "Third Beach Reef Conservation Area" is described as all waters and tidal and submerged lands within a line beginning at 124°35.400'W long., 48°22.400'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°35.400'W long., 48°23.204'N lat., then southeasterly to 124°34.000'W long., 48°22.664'N lat., then south to 124°34.000'W long., 48°22.045'N lat., then following the shoreline northwesterly back to the point of origin.

NEW SECTION

**WAC 220-16-930 Rasmussen Creek to Shipwreck Point Conservation Area.** "Rasmussen Creek to Shipwreck Point Conservation Area" is described as all waters and tidal and submerged lands within a line beginning at 124°29.421'W long., 48°19.920'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°29.421'W long., 48°20.892'N lat., then southeasterly to 124°27.000'W long., 48°19.952'N lat., then south to 124°27.000'W long., 48°19.028'N lat., then following the shoreline northwesterly back to the point of origin.

**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.

NEW SECTION

**WAC 220-16-940 Shipwreck Point to Sekiu River Conservation Area.** "Shipwreck Point to Sekiu River Conservation Area" is described as all waters and tidal and submerged lands within a line beginning at 124°27.000'W long., 48°19.028'N lat., then projected north to the intersection with

the 20 fathom bottomfish closure line at 124°27.000'W long., 48°19.952'N lat., then southeasterly to 124°23.723'W long., 48°18.679'N lat., then south to 124°23.723'W long., 48°17.267'N lat., then following the shoreline northwesterly back to the point of origin.

**ALTERNATIVE 2**

AMENDATORY SECTION (Amending Order 09-27, filed 2/25/09, effective 5/1/09)

**WAC 220-20-100 General provisions—Marine protected areas.** (1) It is unlawful to fish for or possess fish, shellfish, or wildlife taken from any conservation area defined in chapter 220-16 WAC.

(2) The following marine preserves are closed to the taking of fish, shellfish, and wildlife as indicated:

(a) The Admiralty Head Marine Preserve is closed to the taking of fish and wildlife, and closed to the taking of shellfish except sea cucumbers and sea urchins.

(b) The Colvos Passage Marine Preserve is closed to the taking of shellfish and wildlife, closed to all commercial harvest of fish, and closed to recreational harvest of fish except it is lawful to take salmon for personal use by trolling, defined as fishing from a vessel under power and in gear making forward progress.

(c) The San Juan Island Marine Preserve is closed to the taking of shellfish except it is lawful to take crab from Parks Bay, and closed to the taking of food fish other than salmon except it is lawful to take herring and Yellow and Low Island Preserve is closed to the taking of food fish.

(d) The Titlow Beach Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon if taken with artificial lures from shore or from a nonmotorized vessel.

(e) The Z's Reef Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon with fly fishing gear as defined in WAC 220-56-210.

(f) The Seattle city park Marine Preserves (Golden Gardens, Carkeek, Lincoln, Discovery, Emma Schmitz, and Richey Viewpoint) are closed to removal of organisms from the intertidal areas, except that finfish may be harvested using hook and line gear, provided it is lawful under other WDFW fishing regulations. Any organism except finfish taken by hook and line in the intertidal area must be placed unharmed in the location it was found. Removal of organisms of unclassified marine invertebrates in numbers less than the daily limits is an infraction. All other penalties for larger numbers removed apply.

(g) The Saltwater State Park Marine Preserve is closed to all recreational harvest.

(h) The Tatoosh Island Conservation Area is closed at all times to the recreational and commercial harvest of all bottomfish.

(i) The Waadah Island Conservation Area is closed at all times to the recreational and commercial harvest of all bottomfish.

(j) The Chibahdehl Rocks Conservation Area is closed at all times to the recreational and commercial harvest of all bottomfish.

(k) The Third Beach Reef Conservation Area is closed at all times to the recreational and commercial harvest of all bottomfish.

(l) The Rasmussen Creek to Shipwreck Point Conservation Area is closed at all times to the recreational and commercial harvest of all bottomfish.

(m) The Shipwreck Point to Sekiu River Conservation Area is closed at all times to the recreational and commercial harvest of all bottomfish.

**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.

### ALTERNATIVE 3

#### NEW SECTION

**WAC 220-16-890 Tatoosh Island Marine Preserve.** "Tatoosh Island Marine Preserve" is defined as all waters and tidal and submerged lands within a boundary created by connecting the following coordinates:

124°44.575'W long., 48°23.492'N lat.

124°44.575'W long., 48°23.800'N lat.

124°43.956'W long., 48°23.800'N lat.

124°44.956'W long., 48°23.492'N lat., and back to the point of origin.

#### NEW SECTION

**WAC 220-16-900 Waadah Island Marine Preserve.** "Waadah Island Marine Preserve" is described as all waters and tidal and submerged lands within a boundary created by connecting the following coordinates:

124°36.200'W long., 48°22.800'N lat.

124°36.200'W long., 48°23.513'N lat.

124°35.800'W long., 48°23.359'N lat.

124°35.800'W long., 48°22.954'N lat., and then following the shoreline back to the point of origin.

#### NEW SECTION

**WAC 220-16-910 Chibahdehl Rocks Marine Preserve.** "Chibahdehl Rocks Marine Preserve" is described as all waters and tidal and submerged lands within a line beginning at 124°41.100'W long., 48°23.366'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°41.100'W long., 48°24.048'N lat., then projected easterly to 124°40.000'W long., 48°24.100'N lat., then southeasterly to 124°39.500'W long., 48°24.031'N lat., then south to 124°39.500'W long., 48°23.458'N lat., then following the shoreline back to the point of origin.

#### NEW SECTION

**WAC 220-16-920 Third Beach Reef Marine Preserve.** "Third Beach Reef Marine Preserve" is described as all waters and tidal and submerged lands within a line begin-

ning at 124°35.400'W long., 48°22.400'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°35.400'W long., 48°23.204'N lat., then south-easterly to 124°34.000'W long., 48°22.664'N lat., then south to 124°34.000'W long., 48°22.045'N lat., then following the shoreline northwesterly back to the point of origin.

#### NEW SECTION

**WAC 220-16-930 Rasmussen Creek to Shipwreck Point Marine Preserve.** "Rasmussen Creek to Shipwreck Point Marine Preserve" is described as all waters and tidal and submerged lands within a line beginning at 124°29.421'W long., 48°19.920'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°29.421'W long., 48°20.892'N lat., then southeasterly to 124°27.000'W long., 48°19.952'N lat., then south to 124°27.000'W long., 48°19.028'N lat., then following the shoreline northwesterly back to the point of origin.

**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.

#### NEW SECTION

**WAC 220-16-940 Shipwreck Point to Sekiu River Marine Preserve.** "Shipwreck Point to Sekiu River Marine Preserve" is described as all waters and tidal and submerged lands within a line beginning at 124°27.000'W long., 48°19.028'N lat., then projected north to the intersection with the 20 fathom bottomfish closure line at 124°27.000'W long., 48°19.952'N lat., then southeasterly to 124°23.723'W long., 48°18.679'N lat., then south to 124°23.723'W long., 48°17.267'N lat., then following the shoreline northwesterly back to the point of origin.

#### NEW SECTION

**WAC 220-16-950 Tatoosh Island to Koitlah Point Marine Preserve.** "Tatoosh Island to Koitlah Point Marine Preserve" is defined as all waters and tidal and submerged lands within a line beginning at Cape Flattery, 124°43.907'W long., 48°22.863'N lat., then projected northwest to 124°44.280'W long., 48°23.072'N lat., then connecting the following coordinates approximating the 20 fathom depth contour:

124°44.280'W long., 48°23.072'N lat.

124°44.282'W long., 48°23.283'N lat.

124°44.694'W long., 48°23.359'N lat.

124°44.944'W long., 48°23.571'N lat.

124°44.771'W long., 48°24.472'N lat.

124°44.587'W long., 48°24.583'N lat.

124°44.358'W long., 48°24.583'N lat.

124°44.138'W long., 48°24.175'N lat.

124°44.20'W long., 48°23.90'N lat.,

Then southeasterly to 124°40.00'W long., 48°24.10'N lat., then to 124°38.217'W long., 48°23.855'N lat., then south

to Koitlah Point at 124°38.217'W long., 48°23.276'N lat., and then following the shoreline back to the point of origin.

### ALTERNATIVE 3

**AMENDATORY SECTION** (Amending Order 09-27, filed 2/25/09, effective 5/1/09)

**WAC 220-20-100 General provisions—Marine protected areas.** (1) It is unlawful to fish for or possess fish, shellfish, or wildlife taken from any conservation area defined in chapter 220-16 WAC.

(2) The following marine preserves are closed to the taking of fish, shellfish, and wildlife as indicated:

(a) The Admiralty Head Marine Preserve is closed to the taking of fish and wildlife, and closed to the taking of shellfish except sea cucumbers and sea urchins.

(b) The Colvos Passage Marine Preserve is closed to the taking of shellfish and wildlife, closed to all commercial harvest of fish, and closed to recreational harvest of fish except it is lawful to take salmon for personal use by trolling, defined as fishing from a vessel under power and in gear making forward progress.

(c) The San Juan Island Marine Preserve is closed to the taking of shellfish except it is lawful to take crab from Parks Bay, and closed to the taking of food fish other than salmon except it is lawful to take herring and Yellow and Low Island Preserve is closed to the taking of food fish.

(d) The Titlow Beach Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon if taken with artificial lures from shore or from a nonmotorized vessel.

(e) The Z's Reef Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon with fly fishing gear as defined in WAC 220-56-210.

(f) The Seattle city park Marine Preserves (Golden Gardens, Carkeek, Lincoln, Discovery, Emma Schmitz, and Richey Viewpoint) are closed to removal of organisms from the intertidal areas, except that finfish may be harvested using hook and line gear, provided it is lawful under other WDFW fishing regulations. Any organism except finfish taken by hook and line in the intertidal area must be placed unharmed in the location it was found. Removal of organisms of unclassified marine invertebrates in numbers less than the daily limits is an infraction. All other penalties for larger numbers removed apply.

(g) The Saltwater State Park Marine Preserve is closed to all recreational harvest.

(h) The Tatoosh Island Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

(i) The Waadah Island Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

(j) The Chibahdehl Rocks Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

(k) The Third Beach Reef Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

(l) The Rassmussen Creek to Shipwreck Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

(m) The Shipwreck Point Sekiu River Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

(n) The Tatoosh Island to Koitlah Point Marine Preserve is closed at all times to the recreational and commercial harvest of all fish, shellfish, and invertebrates.

**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.

**WSR 10-21-118  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed October 20, 2010, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-085 on June 15, 2010.

Title of Rule and Other Identifying Information: WAC 220-48-005 Puget Sound bottomfish—General provisions, 220-48-011 Beam trawl and otter trawl—Gear, 220-48-013 Beam trawl and otter trawl logbooks, 220-48-015 Beam trawl and otter trawl—Seasons, 220-48-016 Pelagic trawl—Gear—Licensing, 220-48-017 Pelagic trawl—Seasons, 220-48-028 Set net—Dogfish—Gear, 220-48-029 Set net—Dogfish—Seasons, 220-48-031 Set line—Gear, 220-48-032 Set line—Seasons, 220-48-041 Commercial jig—Gear, 220-48-051 Troll lines—Bottomfish—Gear, 220-48-052 Bottomfish troll—Seasons, 220-48-062 Drag seines—Seasons, 220-48-071 Bottomfish pots—Gear and seasons, 220-49-012 Herring, anchovy and smelt fishing—Purse seine, 220-49-020 Herring and anchovy—Seasons—Lawful gear—Purposes, and 220-52-051 Shrimp fishery—Puget Sound.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after February 4, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by December 4, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 25, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-48-005 Puget Sound bottomfish—General provisions, this proposal prohibits the retention of rockfish in Puget Sound by any commercial fishing gear. This is needed to recover rockfish populations in Puget Sound. The proposal also changes the maximum size limit for lingcod to thirty-six inches. This

change to the lingcod maximum size limit is needed for conservation needs and matches regulations for recreational fisheries.

WAC 220-48-011 Beam trawl and otter trawl—Gear, this rule is being repealed. Beam trawl and otter trawl are proposed for closure in Puget Sound.

WAC 220-48-013 Beam trawl and otter trawl logbooks, this rule is being repealed. Beam trawl and otter trawl are proposed for closure in Puget Sound.

WAC 220-48-015 Beam trawl and otter trawl—Seasons, these fisheries are proposed for closure to protect rockfish stocks in Puget Sound.

WAC 220-48-016 Pelagic trawl—Gear—Licensing, this rule is being repealed. The department is proposing to close fishing by pelagic trawl to protect rockfish stocks.

WAC 220-48-017 Pelagic trawl—Seasons, this rule is being repealed. The department is proposing to close fishing by pelagic trawl to protect rockfish stocks.

WAC 220-48-028 Set net—Dogfish—Gear, this rule is being repealed. The department is proposing to close fishing by set net gear to protect rockfish stocks.

WAC 220-48-029 Set net—Dogfish—Seasons, this fishing gear is being closed to protect rockfish populations in Puget Sound.

WAC 220-48-031 Set line—Gear, this rule is being repealed. The department is proposing to close fishing by set line gear to protect rockfish stocks.

WAC 220-48-032 Set line—Seasons, this fishing gear is proposed for closure in Puget Sound to protect rockfish populations.

WAC 220-48-041 Commercial jig—Gear, existing regulations have closed this fishing gear, and the proposed change is intended to clarify the closure.

WAC 220-48-051 Troll lines—Bottomfish—Gear, this rule is being repealed. The department is proposing to close fishing by troll lines to protect rockfish stocks.

WAC 220-48-052 Bottomfish troll—Seasons, existing regulations have closed this fishing gear, and the proposed change eliminates unnecessary provisions.

WAC 220-48-062 Drag seines—Seasons, this proposal closes Marine Fish-Shellfish Management and Catch Reporting Area 29 to taking, fishing for, or possessing bottomfish with drag seine gear for commercial purposes.

WAC 220-48-071 Bottomfish pots—Gear and seasons, this proposal closes fishing with bottomfish pot fishing gear in Puget Sound to protect rockfish populations in Puget Sound, except that Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29 (waters between Cape Flattery and the Port Angeles vicinity) will be open to bottomfish pot fishing only by permit issued by the director. The permit will specify the gear as well as the times, areas, and manner of fishing.

WAC 220-49-012 Herring, anchovy and smelt fishing—Purse seine, this proposal prohibits the use of purse seine fishing gear to capture herring, smelt or anchovy. It is needed to protect rockfish populations in Puget Sound.

WAC 220-49-020 Herring and anchovy—Seasons—Lawful gear—Purposes, this proposal closes the use of purse seine fishing gear to capture herring or anchovy in Puget

Sound. The proposal is needed to protect rockfish populations in Puget Sound.

WAC 220-52-051 Shrimp fishery—Puget Sound, this proposal requires participants in the shrimp fishery using trawl gear to obtain and follow the conditions of a permit issued by the department. This proposal is needed to monitor the fishery for possible impact on rockfish populations.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.12.-045, and 77.12.047.

Rule is necessary because of federal law, 50 C.F.R., Parts 223 and 224.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Craig Burley, 1111 Washington Street, Olympia, (360) 902-2784; Implementation: James Scott, 1111 Washington Street, Olympia, (360) 902-2736; and Enforcement: Chief Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping and Other Compliance Requirements of the Proposed Rules: The proposed rule changes will affect the commercial fishing industry within Puget Sound. There are four distinct sections to the proposals as follows:

1. Prohibit the retention of rockfish caught by any commercial fishing gear.
2. Prohibit the use of bottom trawl, set net, and set line fishing gear.
3. Prohibit the use of forage fish purse seine and pelagic trawl gear. Prohibit the use of drag seines for bottomfish in Catch Reporting Area 29. Prohibit the use of bottomfish pot gear except by permit of the director in Catch Reporting Areas 23C and 29.
4. Require participants in the shrimp trawl fishery to obtain a special permit, and, when requested, carry an observer while fishing.

Throughout this statement, the proposals will be analyzed by each of the four sections. The analysis is based on performance during 2008 and 2009, the most recent years for which complete data are available.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: Proposed rules sections 1, 2 and 3 will not require any additional professional services. Section 4 will require participants to obtain the services of a trained fishery observer for some of their fishing trips.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:

Sections 1-3 will not increase costs.

Section 4 will require businesses participating in the Puget Sound shrimp trawl fishery to obtain and compensate a trained fishery observer when requested to do so by the

department. Informal cost estimates provided by the industry estimate the daily cost of such an observer to be \$200 to \$400. The agency anticipates that participants will be required to carry an observer on ten percent of their shrimp trawling trips in Puget Sound. This equates to an average additional cost of \$20 to \$40 for each day fished.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Sections 1 and 2 will cause loss of sales. Sections 3 and 4 will not.

5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per \$100 of sales.

The agency selected option (c) to compute costs of compliance.

Section 1 would result in an annual loss of sales of \$.002 per \$100 dollars of sales.

Section 2 would cost:

- (a) \$60.63 per \$100 in sales for the otter trawl fishery;
- (b) \$3.78 per \$100 in sales for the set line fishery; and
- (c) \$24.23 per \$100 in sales for the set net fishery.

Section 3 would not result in a loss of sales because these fisheries are not active, and there are no employees or sales involved.

Section 4 would increase the cost of compliance to between \$1.05 and \$2.10 per \$100 in sales for the shrimp trawl fishery.

Now Compare the Largest Businesses' Cost of Compliance with the Cost of Compliance for Small Businesses. Will this rule have a disproportionate impact on small businesses? No; all affected businesses fit the definition of "small businesses" under the Regulatory Fairness Act, chapter 19.85 RCW.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So:

A. Agency staff worked closely with staff of the National Marine Fisheries Service to minimize the impact on existing commercial fisheries while meeting federal requirements to protect Endangered Species Act (ESA) listed species of rockfish in Puget Sound.

B. The agency developed a conservation plan for the ESA-listed species of rockfish and has applied for a federal permit to allow commercial and recreational fishing to continue in most of Puget Sound. If the department failed to obtain the permit, it would be incumbent on each business to obtain an individual permit from the federal government. Absent a valid permit, capture of listed rockfish could be a violation of federal law.

C. The department designed the required monitoring programs to minimize the cost of compliance.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency sent a letter to known participants on June 9, 2010. On June 18, 2010, a meeting was held with all participants invited. An additional mailing will be sent to participants in October 2010, and an opportunity to provide written and oral com-

ments to the fish and wildlife commission will be provided in December 2010.

8. A List of Industries That Will Be Required to Comply with this Rule:

Section 1 - all participants in the state-managed commercial fisheries in Puget Sound will be required to comply.

Section 2 - all participants in the commercial fisheries in Puget Sound using bottom trawl, set line, or set net gears will be required to comply. During 2008 and 2009, a total of nine active businesses were participating in these fisheries.

Section 3 - these fisheries are currently inactive, so no existing businesses will be required to comply.

Section 4 - businesses participating in the Puget Sound shrimp trawl fishery will be required to comply. During 2008 and 2009, a total of six businesses participated in this fishery.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: An estimated one to three jobs may be lost if the proposed rules are adopted. The lost jobs would be associated with the closure of the bottom trawl fishery in Puget Sound. Some, but not all, of the current participants will have opportunities to shift activities to adjacent ocean areas where the fisheries remain open.

A copy of the statement may be obtained by contacting [no further information supplied by agency].

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

October 20, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 02-66, filed 3/27/02, effective 4/27/02)

**WAC 220-48-005 Puget Sound bottomfish—General provisions.** (1) It is unlawful to possess any English sole less than 12 inches in length taken by any commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(2) It is unlawful to possess any starry flounder less than 14 inches in length taken by any commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(3) It is unlawful to possess lingcod taken with any commercial gear the entire year in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 24A, 24B, 24C, 24D, 25B, 25C, 25D, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(4) It is unlawful to possess any lingcod less than 26 inches in length or greater than ((40)) 36 inches in length taken by any commercial gear in all state waters east of the Bonilla-Tatoosh line.

(5) It is unlawful to possess lingcod taken by any commercial gear from June 16 through April 30 in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 25A, 25E, and 29.

(6) It is unlawful to possess any species of shellfish taken with lawful bottomfish gear except as provided in WAC 220-52-063 and 220-52-066.



(7) Incidental catch.

(a) It is lawful to retain bottomfish taken incidental to any lawful salmon fishery, provided the bottomfish could be lawfully taken.

(b) It is unlawful to retain salmon or sturgeon taken incidental to any lawful bottomfish fishery in Puget Sound.

(c) It is unlawful to retain any species of shellfish taken incidental to any bottomfish fishery in Puget Sound, except that it is lawful to retain octopus and squid.

(d) It is unlawful to retain any whiting taken incidental to any bottomfish fishery in Catch Areas 24B, 24C or 26A except using pelagic trawl gear when these areas have been opened by the director for a directed whiting fishery.

(8) A vessel trip is defined as having occurred upon the initiation of transfer of catch from a fishing vessel.

(9) Pacific cod.

(a) It is unlawful to discard any Pacific cod taken by any commercial fishing gear.

(b) All Pacific cod taken by a commercial gear shall be landed at a licensed commercial dealer.

(10) Sablefish. It is unlawful to take more than 300 pounds of sablefish per vessel trip or more than 600 pounds of sablefish per two-month cumulative limit from open Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas. A two-month cumulative limit is the maximum amount of fish that may be taken and retained, possessed or landed per vessel per two-fixed calendar month period. The fixed two-month periods are January-February, March-April, May-June, July-August, September-October and November-December.

(11) Sixgill shark. It is unlawful to retain sixgill shark taken by commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(12) Rockfish. It is unlawful to retain any species of rockfish taken by commercial fishing gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

AMENDATORY SECTION (Amending Order 01-58, filed 4/18/01, effective 5/19/01)

**WAC 220-48-015 Beam trawl and ~~((bottom))~~ otter trawl—Seasons.** ~~((+))~~ It is ~~((lawful))~~ unlawful to fish for and possess bottomfish taken with ~~((bottom))~~ otter trawl and beam trawl gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas ~~((20A, 20B, 21A, 22A, 22B, 23A, 23B, 23C, 25A, and 25B the entire year with the following exceptions:~~

~~(a) Those waters of Area 20A east of a line projected from Point Whitehorn to Sandy Point are closed the entire year.~~

~~(b) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and from the southwest corner of Point Roberts to Point Whitehorn to where these two lines are intersected by a line south from Kwomais Point in British Columbia and a line from Lilly Point to the north Alden Bank buoy are closed April 15 through May 31.~~

~~(c) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and Lilly Point to the north Alden Bank buoy to where those lines are intersected~~

~~by a line projected approximately 230 degrees south from Birch Point to Alden Point on Patos Island are closed June 1 through June 30.~~

~~(d) Areas 20A, 20B, 21A, 22A and 22B are closed to all trawl fishing in waters less than 30 feet deep.~~

~~(e) Areas 20A, 20B, 21A, 22A and 22B are closed in waters deeper than 40 fathoms from 12:01 a.m. September 15 through December 31 except if the Pacific cod quota for these waters has not been taken by September 15, these waters may be opened by emergency rule for the taking of the Pacific cod quota.~~

~~(f) Area 23C is closed to otter trawl fishing the entire year in waters shallower than 50 fathoms and is closed to beam trawl fishing in waters less than 60 feet deep.~~

~~(g) Area 23C is closed to otter trawl Wednesday, Saturday and Sunday, January 1 through August 31, and closed to all otter trawl September 1 through December 31.~~

~~(2) It is lawful to fish for and possess bottomfish taken with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A and 25B the entire year with the following exceptions:~~

~~(a) All of Area 25A is closed February 1 through April 15 of each year.~~

~~(b) Those waters of Area 25A lying southerly and westerly of a line projected from Kiapot Point to Gibson Spit (Sequim Bay) are closed the entire year.~~

~~(c) Areas 23A, 25A and 25B are closed to beam trawl fishing in waters less than 60 feet deep.~~

~~(3) It is unlawful to fish for or possess bottomfish taken with otter trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A and 25B the entire year.~~

~~(4) It is unlawful to take, fish for or possess bottomfish taken with bottom trawl or beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 21B, 23D, 24A, 24B, 24C, 24D, 25C, 25D, 25E, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, 28D, and 29 the entire year.~~

~~(5) It is unlawful to take more than 500 pounds of rockfish with beam trawl and bottom trawl gear during any vessel trip in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas).~~

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

**WAC 220-48-029 Set net—Dogfish—Seasons.** ~~((+))~~ It is unlawful to take, fish for and possess dogfish and other species of bottomfish taken with dogfish set net gear for commercial purposes in ~~((the following))~~ all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas ~~((except during the seasons designated below:~~

~~(a) Areas 20A and 20B—November 1 through June 15.~~

~~(b) Area 21A—March 1 through June 15.~~

~~(c) Areas 21B, 22A, 22B, 23A, and 23B—Closed all year.~~

~~(d) Areas 23C and 23D—September 16 through June 15.~~

~~(e) Areas 24A, 24B, and 24D—September 16 through June 15.~~

~~(f) Area 24C—September 16 through June 15, except those waters south of a line projected due east of East Point on Whidbey Island are closed all year.~~

~~(g) Areas 25A, 25B and that portion of Area 25C west of a line from Twin Spits to the Port Gamble Millstaek—September 16 through June 15.~~

~~(h) Area 25D and that portion of 25C east of line from Twin Spits to the Port Gamble Millstaek—Closed all year.~~

~~(i) Area 25E—Closed all year.~~

~~(j) Area 26A—September 16 through June 15, except those waters southerly and westerly of a line between the ferry dock at Mukilteo and the ferry dock at Clinton are closed all year.~~

~~(k) Area 26B—September 16 through June 15, except those waters provided for in WAC 220-20-020(4) (Shilshole Bay) are closed at all times and those waters west of a line from Point Jefferson to Point Monroe are closed from January 1 to April 15. Those waters west of a line projected 178 degrees true from the end of the Indianola dock to the landfall on the south shore of Port Madison are closed at all times.~~

~~(l) Area 26C—Open April 16 through June 15 and September 16 through December 31, except those waters north of a line projected true east of Point Bolin and those waters west of a line projected 178 degrees true from the end of the Indianola dock to the landfall on the south shore of Port Madison are closed at all times.~~

~~(m) Area 26D—September 16 through June 15, except Quartermaster Harbor and those waters south of lines projected from Dash Point to Point Piner on Maury Island and from Point Daleo true west to the Kitsap Peninsula are closed all year.~~

~~(n) Areas 27A, 27B, and 27C—Closed all year.~~

~~(o) Area 28A—September 16 through June 15, except those waters north of a line projected true east of Fox Point on Fox Island, and east of a line projected due north from the northwest tip of Fox Island are closed all year.~~

~~(p) Areas 28B, 28C, and 28D—September 16 through June 15, except those waters provided for in WAC 220-20-010(6) (upper Carr Inlet).~~

~~(q) Area 29—September 16 through June 15.~~

~~(2) Incidental catch: It is unlawful to retain any shellfish or fish other than bottomfish).~~

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

**WAC 220-48-032 Set line—Seasons.** ~~((1) Set line fishing for dogfish and other bottomfish is open)) It is unlawful to take, fish for and possess any species of bottomfish taken with set line gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas ((year-round except as provided in this section.~~

~~(2) It is unlawful to take, fish for, and possess dogfish and other bottomfish taken with set lines in:~~

~~(a) All Marine Fish-Shellfish Management and Catch Reporting Areas June 16 through September 15.~~

~~(b) That portion of Area 26C north of a line projected due east from Point Bolin to Bainbridge Island is closed all year.~~

~~(e) That portion of Area 26D south of lines projected due west of Point Daleo on Vashon Island, and from Dash Point to Point Piner on Maury Island, is closed all year.~~

~~(d) That portion of Area 28A east of a line projected due north from the northwest tip of Fox Island, and north of a line projected due east from Fox Point on Fox Island is closed all year.~~

~~(e) Those waters provided for in WAC 220-20-010(6) and 220-20-020(4).~~

~~(f) Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C.~~

~~(3) Incidental catch: It is unlawful to retain any shellfish and any fish other than bottomfish, and the cumulative weight of rockfish and lingcod shall not exceed 30 pounds for any vessel trip in all open Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas).~~

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

**WAC 220-48-041 Commercial jig—Gear.** (1) It is ~~(lawful)~~ unlawful to fish for and possess bottomfish with commercial jig gear.

(2) Licensing: A bottomfish jig fishery license is the license required to operate commercial jig gear in Puget Sound.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-48-071 Bottomfish pots—Gear and seasons.** (1) It ~~(shall be)~~ is unlawful to take, fish for, and possess bottomfish for commercial purposes with bottomfish pot gear as described in WAC 220-16-145, except in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

~~((a) Areas 20A, 21A, 21B, 23A, and 23B—Open April 15 through November 30.~~

~~(b) Areas 23C and 23D—Open December 1 through April 14.~~

~~(c) All other areas are closed the entire year, except by permit from the director.)~~ Areas 23C and 29 open only by permit from the director.

(2) Licensing: A bottomfish pot fishery license is the license required to operate the gear provided for in this section.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-48-011	Beam trawl and otter trawl—Gear.
WAC 220-48-013	Beam trawl and otter trawl logbooks.
WAC 220-48-016	Pelagic trawl—Gear—Licensing.
WAC 220-48-017	Pelagic trawl—Seasons.

WAC 220-48-028	Set net—Dogfish—Gear.
WAC 220-48-031	Set line—Gear.
WAC 220-48-051	Troll lines—Bottomfish—Gear.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-48-052 Bottomfish troll—Seasons.** ~~((+))~~  
It is unlawful to fish for or possess bottomfish taken for commercial purposes with bottomfish troll gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

~~((2)) It is unlawful to fish for or possess salmon while fishing for bottomfish with troll line gear under authority of a bottomfish troll license.~~

~~(3) In any waters of Puget Sound it is lawful to retain for commercial purposes bottomfish taken with commercial salmon gear incidental to a lawful salmon fishery, except lingeod during closures provided in WAC 220-48-005.)~~

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

**WAC 220-48-062 Drag seines—Seasons.** It is unlawful to take, fish for, and possess bottomfish with drag seine gear for commercial purposes except in the following Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

- (1) Areas 28A, 28B, 28C, and 28D - Open January 1 through April 30.
- (2) All other areas - Open September 1 through April 30, except Areas 27A, 27B, ~~((and)) 27C, and 29~~ are closed year-round.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-49-012 Herring, anchovy and smelt fishing—Purse seine.** ~~((1)) Lawful purse seine gear in the Puget Sound herring and anchovy fisheries shall not exceed 600 feet in length or contain meshes less than 1/2-inch stretch measure unless otherwise authorized by permit from the director.~~

~~(2) Lawful purse seine gear in the Puget Sound smelt fishery shall not exceed 350 feet in length nor contain meshes less than 1/2-inch stretch measure.~~

~~(3) Licensing:~~

~~(a) A baitfish purse seine fishery license is a license required to operate the gear provided for in this section and allows the operator to retain smelt and anchovy.~~

~~(b) A herring purse seine fishery license is a license required to operate the gear provided for in this section and allows the operator to retain herring.)~~ It is unlawful to take fish for or possess herring, anchovy or smelt taken with purse seine gear in all Puget Sound Management and Catch Reporting Areas.

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

**WAC 220-49-020 Herring and anchovy—Seasons—Lawful gear—Purposes.** It ~~((shall be))~~ is unlawful to take, fish for or possess for commercial purposes herring or anchovy in Puget Sound except during lawful seasons, with lawful gear and for such purposes as provided for hereinafter in each respective fishing area:

(1) Area 20A.

(a) Closed September 1 through May 31 to all commercial fishing gear except for the spawn on kelp fishery as provided for in WAC 220-49-063.

(b) Closed June 1 through August 31 to all commercial fishing.

(2) It is unlawful to use purse seine gear in any Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area ~~((except 23A, 23B, 23C, 23D, and 29. Areas 23A, 23B, 23C, 23D and 29 are open to purse seine gear only during seasons set by emergency rule))~~.

(3) All other Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas - Open entire year with drag seine, lampara, and dip bag net for human consumption or bait only except for closures set out in subsections (4)~~((:))~~ and (5) ~~((and (6)))~~ of this section.

(4) The following areas are closed the entire year to all gear:

Areas 20B, 21A, 21B, 22A, 22B, 25A, and 25E.

(5) The following areas are closed from January 16 through April 15, except to dip bag net gear:

(a) Area 24A except for a year-round closure in Swinomish Channel in those waters between the bridge spanning the channel south of La Conner and a line perpendicular to the channel at the northeast end of the La Conner boat basin, 24B, and 24D.

(b) Waters of Area 25C south of a line from Tala Point to Foulweather Bluff.

(c) Area 25D.

(d) Waters of Area 26B west of a line from Point Monroe to Point Jefferson.

(e) Area 26C.

(f) Waters of Area 26D north of a line from Neill Point to Piner Point.

(g) Areas 27A, 27B and 27 C are closed year-round.

(h) Waters of Area 28A west of a line projected true north-south through Treble Point on Anderson Island, including Henderson Inlet.

(i) Waters of Area 28B west of a line projected true north from Penrose Point, including Mayo Cove and Von Geldern Cove.

(j) All contiguous waters of Area 28D north and east of a line projected from Dofflemeyer Point through Cooper Point to landfall on the west shore of Eld Inlet, including Totten Inlet, Hammersley Inlet and Oakland Bay.

AMENDATORY SECTION (Amending Order 05-275, filed 12/9/05, effective 1/9/06)

**WAC 220-52-051 Shrimp fishery—Puget Sound.** (1) A Puget Sound shrimp pot license or a Puget Sound shrimp trawl license will only be issued to an individual who is a nat-

ural person, and this person shall be the primary operator. Holders of Puget Sound shrimp pot licenses and Puget Sound shrimp trawl licenses may designate a single alternate operator per license.

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except during seasons opened by emergency rule:

(a) Gear restrictions -

(i) In all areas, maximum 100 pots per fisher except for dual licensees as provided for in RCW 77.70.410.

(ii) In all areas:

(A) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

(B) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

(C) The maximum perimeter of shrimp pots must not exceed ten feet and the maximum height must not exceed two feet.

(D) It is unlawful to set or pull shrimp pot gear from one hour after official sunset to one hour before official sunrise.

(b) Spot shrimp size restriction: It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1 and 3/16 inches. Carapace length is defined as the length between the posterior mid-dorsal margin to the posterior-most part of the eye-stalk orbit.

(c) Area restrictions:

(i) Pot gear closed in all Puget Sound Shrimp Districts except the Port Townsend Shrimp District.

(ii) Pot gear closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.

(3) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule((±)) and authorized by a permit issued by the director.

(a) Gear restrictions - Beam trawl gear only. Otter trawl gear may not be used.

(i) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.

(ii) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 25A, 25B, and 29 is 60 feet.

(b) It is unlawful to retain spot shrimp.

(c) Area restrictions:

(i) Shrimp trawl fishing closed in all Puget Sound Shrimp Districts.

(ii) Shrimp trawl fishing closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.

(d) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.

(e) It is lawful to fish for shrimp in Puget Sound with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Area 21A only in those waters north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

(f) The following restrictions apply to shrimp beam trawl harvest in Marine Fish-Shellfish Management and Catch Reporting Area 20A:

(i) Closed in waters east of a line from the southwest corner of Point Roberts to Sandy Point.

(ii) Closed in waters shallower than 20 fathoms.

(g) It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.

(h) It is unlawful to fish for, retain, land or deliver shrimp taken with trawl gear without a valid Puget Sound shrimp trawl fishery permit.

(i) It is unlawful to take, retain, land, or deliver any shrimp taken with trawl gear without complying with all provisions of a Puget Sound shrimp trawl fishery permit.

(j) A violation of this subsection is punishable under RCW 77.15.750.

(4) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a licensed wholesale dealer, or if transferred at sea, without transfer to a licensed wholesale dealer. A fisher who is a licensed wholesale dealer may complete and return a fish receiving ticket to satisfy the requirements of this subsection.

(5) For purposes of shrimp pot harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (catch areas) are modified as follows:

(a) That portion of Catch Area 22A south of a line due east from the international boundary to Lime Kiln Point light on San Juan Island, then south of the shores of San Juan Island, then south of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island, then south of the shores of Lopez Island to Point Colville shall be considered to be part of Catch Area 23A.

(b) Catch Area 23A is divided into four subareas:

(i) 23A-E (east) is those waters of Catch Area 23A east of 122°57'W. Long. and north of 48°22.5'N. Lat.

(ii) 23A-W (west) is those waters of Catch Area 23A west of 122°57'W. Long. and north of 48°22.5'N. Lat.

(iii) 23A-C (central) is those waters of Catch Area 23 south of 48°22.5'N. Lat. and east of a line projected 335° true from the Dungeness lighthouse.

(iv) 23A-S (south) is those waters of Catch Area 23A west of a line projected 335° true from the Dungeness lighthouse.

(c) Catch Area 26A is divided into two subareas:

(i) 26A-E (east) is those waters of Catch Area 26A north and east of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.

(ii) 26A-W (west) is those waters of Catch Area 26A south and west of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.

(d) Catch Area 26B is divided into two subareas:

(i) 26B-1 is those waters of Catch Area 26B westerly of a line projected from West Point to Alki Point.

(ii) 26B-2 is those waters easterly of a line projected from West Point to Alki Point.

(6) For purpose of shrimp trawl harvest allocation and catch reporting, 23A East is that portion of Catch Area 23A, east of a line projected true north from the Dungeness lighthouse. 23A West is that portion of Catch Area 23A, west of the line described herein.

(7) The following areas are defined as Puget Sound Shrimp Management Areas:

(a) Shrimp Management Area 1A: Waters of Catch Area 20B west of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and all waters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island, west of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island.

(b) Shrimp Management Area 1B: Waters of Catch Area 20B east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island, east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, and east of a line projected true south from Point Colville, and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

(c) Shrimp Management Area 1C: Waters of Catch Areas 20A, 21B, 22B, and waters of Catch Area 21A not included in Management Area 1B.

(d) Shrimp Management Area 2E: Waters of Catch Areas 24A, 24B, 24C, 24D, and 26A-E (east).

(e) Shrimp Management Area 2W: Waters of Catch Areas 25B, 25C, 25D, and 26A-W (west).

(f) Shrimp Management Area 3: Waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

(g) Shrimp Management Area 4: Waters of Catch Areas 26B and 26C.

(h) Shrimp Management Area 5: Waters of Catch Areas 27A, 27B, and 27C.

(i) Shrimp Management Area 6: Waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(8) In Shrimp Management Areas 1A, 1B and 1C, all catch must be reported by Management Area and Catch Area combined, either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, 1C-20A, 1C-21A, 1C-21B, or 1C-22B.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after January 7, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by November 24, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 24, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule does not make it illegal to buy and sell unlawfully taken wildlife. The proposed rule will prohibit the sale, purchase, and trade of fish, shellfish, and wildlife taken in violation of any law or regulation. The rule also adds velvet antlers of moose to the list of nonedible wildlife parts that cannot be sold, purchased, or traded without a permit from the director; and it more clearly details the conditions required for selling, purchasing, or trading game-farm raised deer and elk. Lastly, it provides information so that a person whose permit to sell, purchase, or trade nonedible wildlife parts was denied can request a hearing to contest the denial.

Reasons Supporting Proposal: The changes will reduce poaching by prohibiting the sale, purchase, and trade of unlawfully taken wildlife. They also will provide clearer guidance to people who want to buy, sell, or trade game-farm raised deer and elk, or who want to contest a denial of a permit to sell, purchase, or trade nonedible parts of wild animals, game birds, or game fish.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.12.590, and 77.12.600.

Statute Being Implemented: RCW 77.04.012, 77.12.-047, 77.12.590, and 77.12.600.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Preuss, 1111 Washington Street S.E., Olympia, (360) 902-2930; Implementation: Mike Cenci, 1111 Washington Street S.E., Olympia, (360) 902-2938; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: The rule requires anyone who offers for sale, sells, purchases, or trades game-farm raised deer and elk to provide proof of the source of the game-farmed meat and to keep the proof until the meat is consumed or exported. This proof includes sales or purchase invoices or receipts containing the name of the seller or importer; the name of the company selling the meat; the date of the sale; the quantity of meat sold; and the species of meat sold.

#### WSR 10-21-119

#### PROPOSED RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Filed October 20, 2010, 11:47 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-024 on December 8, 2008.

Title of Rule and Other Identifying Information: WAC 232-12-071 Buying or selling game unlawful—Game-farmed meat exception.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: None.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. The requirements under this proposal are the same as they are in the current rule. The only difference is that this proposal more clearly indicates the type of information required to provide proof of a game-farmed meat source.

5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

There is no cost of compliance, as explained in number 4 above.

Now Compare the Largest Businesses' Cost of Compliance with the Cost of Compliance for Small Businesses. Will this rule have a disproportionate impact on small businesses? All businesses that buy, sell, or trade nonedible parts of wild animals or game birds, or edible meat from game fish or game-farm raised deer and elk, are considered small businesses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So. There are no costs associated with this rule.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The Washington department of fish and wildlife (WDFW) posted the CR-101 (preproposal statement of inquiry) on the agency's web site shortly after the CR-101 was filed in December 2008. Since that time, the agency received comments on the proposal from external stakeholders who run small businesses. As a result of those comments, the agency removed the requirement for a department permit prior to buying, selling, or trading trophy deer and elk antlers, except those naturally shed, and moose antlers, except those naturally shed.

In addition, WDFW will post this proposed rule making on the agency web page at <http://wdfw.wa.gov/about/regulations/development.html> and is accepting written comments through November 24, 2010.

Public testimony will be taken at the commission's December 3-4, 2010, meeting as part of the WDFW rule adoption process.

8. A List of Industries That Will Be Required to Comply with the Rule: Any companies that buy, sell, or trade nonedible parts of wild animals or game birds, or edible meat from game fish or game-farm raised deer and elk.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: No jobs will be created or lost.

A copy of the statement may be obtained by contacting Lori Preuss [Preuss], 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail [Lori.preuss@dfw.wa.gov](mailto:Lori.preuss@dfw.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

October 20, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 06-209, filed 8/16/06, effective 9/16/06)

**WAC 232-12-071 Buying or selling game unlawful—Game-farmed meat exception.** (1) ~~((Unless prohibited by federal regulations,))~~ It is unlawful to offer for sale, sell, purchase, or barter edible parts of wild animals or game birds. It is unlawful to offer for sale, sell, purchase, or barter edible parts of game fish, except pursuant to RCW 77.65.480.

(2) A person may offer for sale, sell, purchase, or barter the nonedible parts of wild animals, game birds, or game fish ((lawfully taken may be offered for sale, sold, purchased or traded, ~~except it is unlawful to offer for sale, sell, purchase or trade the following unless authorized by~~)) that are legally taken, unless the sale, selling, purchase, or barter is prohibited by federal regulations or the nonedible parts are listed below. If the parts are listed below, a person may not offer for sale, sell, purchase, or barter the parts unless he or she has a written permit issued by the director:

(a) ~~((Nonedible))~~ Parts of bighorn sheep or mountain goat((-));

(b) Gall bladders, claws, or teeth of bear, except for claws or teeth permanently attached to a full bear skin or mounted bear;

(c) Velvet antlers of deer ((~~or~~)), elk((-);

(e) Gall bladder, claws, or teeth of bear, ~~except those claws or teeth permanently attached to a full bear skin or mounted bear.~~

(2) ~~It is unlawful to knowingly buy, sell, or otherwise exchange, or offer to buy, sell, or otherwise exchange the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not pursuant to permit.~~

~~(3)), or moose; and~~

(d) Fish, shellfish, or wildlife taken in violation of any law or regulation in any jurisdiction.

(3) Under RCW 77.15.194, it is unlawful to buy, sell, or otherwise exchange, or to offer to buy, sell, or otherwise exchange, the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not the animal is trapped pursuant to a permit.

(4) It is ~~((lawful))~~ unlawful to offer for sale, sell, purchase ~~((and sell the meat of)), or barter~~ game-farm raised deer and elk, ~~((provided))~~ unless the following conditions have been met:

(a) Proof of the source of the game-farmed meat is maintained with the meat until the meat is consumed or exported. Qualifying proof includes sales or purchase invoices or receipts containing the following information in the English language:

(i) Name of seller or importer;

(ii) Name of the company selling the meat;

(iii) The date of sale;

(iv) The quantity of meat sold; and

(v) The species of the meat sold.

(b) The meat is imported from a licensed game farm in another state or country((;)).

(c) The meat is boned, and only the meat is imported ((for sale, and)).

(d) The meat is packaged for retail sale prior to ((import)) importation into this state. ((It is unlawful to fail to maintain proof of the source of the game-farmed meat together with the meat until the meat is consumed or exported.))

(5) A violation of subsection (3) of this section is punishable under RCW 77.15.194. The remaining subsections in this section are punishable under RCW 77.15.260.

(6) If you request a written permit to offer for sale, sell, purchase, or barter the nonedible parts of wild animals that are excluded under subsection (2)(a) through (d) of this section, and your request is denied, you have a right to a hearing under the provisions of chapter 34.05 RCW. In order to obtain a hearing, you must notify the department, in writing, within forty-five days of the letter denying your permit. The address to send hearing requests to is:

The Washington Department of Fish and Wildlife  
Legal Affairs - Office of the Director  
Post Office Box 43137  
Olympia, Washington 98504-3137

If you do not request a hearing to contest denial of the permit, the permit denial will become effective forty-five days following the denial.

**WSR 10-21-120  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed October 20, 2010, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-074 on January 5, 2010.

Title of Rule and Other Identifying Information: WAC 232-12-251 Removal of minerals, wood and artifacts from department lands.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after January 7, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by November 24, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 24, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department currently lacks the ability to prohibit people from cutting down snags and taking mushrooms and berries on land it owns or controls.

Reasons Supporting Proposal: Snags provide habitat for many species. This proposal will protect that habitat from destruction. The proposal will also minimize the amount of downed dead wood that people can collect and use on the department's lands, and it will limit the amount of mushrooms that can be taken, to conserve these resources.

Statutory Authority for Adoption: RCW 77.04.012 and 77.12.047.

Statute Being Implemented: RCW 77.04.012 and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Preuss, 1111 Washington Street S.E., Olympia, (360) 902-2930; Implementation: Mike Cenci, 1111 Washington Street S.E., Olympia, (360) 902-2938; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only affects recreational use of department lands.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

October 20, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 437, filed 5/11/90, effective 6/11/90)

**WAC 232-12-251 Removal of minerals, wood and artifacts from department lands.** (1) Except as provided below, it is unlawful to cut down or remove dead standing timber, live trees, wood, soil, petrified wood, minerals, fossils, ((wood products)) plants, mushrooms, berries, or artifacts from department lands unless such ((removal)) activity is authorized by a permit issued by the director.

(a) Downed dead wood for camping on department lands may be collected without a department permit in a quantity not to exceed one-half cord. However, such wood may not be transported from department lands.

(b) Mushrooms or berries may be collected for personal use without a permit in quantities not to exceed the following limits:

(i) For wild edible mushrooms, five United States gallons; and

(ii) For berries, no limit.

(2) Unlawful cutting down or removal of dead standing timber, live trees, wood, soil, petrified wood, minerals, fossils, or plants constitutes theft under chapter 9A.56 RCW.

(3) Unlawful removal or exceeding limits for downed dead wood, mushrooms, or berries is punishable under RCW 77.15.230.

**WSR 10-21-122**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed October 20, 2010, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-16-046 on July 27, 2010.

Title of Rule and Other Identifying Information: WAC 220-52-069 Scallop fishery—Puget Sound, commercial fishing for scallop using trawl gear.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on December 3-4, 2010, at 8:30 a.m.

Date of Intended Adoption: On or after February 4, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by December 4, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 15, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of this proposal is to close the otter trawl fishery for scallops in all areas of Puget Sound, due to concerns over the adverse impacts of otter trawl fishing on other species of aquatic life. The commercial dive fishery for scallops will not be affected by this proposal.

Reasons Supporting Proposal: In 2010, the National Marine Fisheries Service listed three species of rockfish under the federal Endangered Species Act (ESA). This action by the federal government resulted in a review of commercial and recreational fisheries that might impact the listed species. The trawl fishery for scallops was judged to pose an unacceptably high risk to the listed species. Closure of the trawl fishery will provide needed conservation benefits to rockfish. Alternate harvest measures (collecting scallops by hand) exist that do not pose a risk to ESA-listed rockfish.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.12.-045, and 77.12.047.

Rule is necessary because of federal law, 50 C.F.R., Parts 223 and 224.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Greg Bargmann, 1111 Washington Street, Olympia, (360) 902-2825; Implementation: James Scott, 1111 Washington Street, Olympia, (360) 902-2736; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This fishery has been inactive in Puget Sound for at least ten years; no landings of scallops taken by otter trawl gear have been reported during this time. Therefore, closure of the fishery will have no economic impact on any existing businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

October 20, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-153, filed 8/16/00, effective 9/16/00)

**WAC 220-52-069 Scallop fishery—Puget Sound.** It is unlawful to fish for or possess scallops taken for commercial purposes from Puget Sound except as provided for in this section:

(1)(a) Rock scallops and weathervane scallops. It is unlawful at any time to take or possess rock or weathervane scallops taken for commercial purposes from Puget Sound unless a person has first obtained a scallop brood stock permit issued by the department. The permit will specify the species, location, time, and quantity of scallops that can be taken for brood stock or culture purposes.

(b) Licensing:

((+)) A shellfish dive fishery license is a license that allows a permittee to retain rock and weathervane scallops for brood stock purposes.

~~((ii) Shrimp trawl—Puget Sound and food fish trawl—Puget Sound fishery licenses are licenses that allow a permittee to retain weathervane scallops for brood stock purposes.))~~

(2) Pink scallops and spiny scallops.

(a) General provisions:

(i) Pink and spiny scallops may be harvested from Puget Sound at any time.

(ii) The minimum commercial pink or spiny scallop size is 2 inches in length from the hinge to the outer margin of the shell.

(iii) Persons fishing for pink or spiny scallops must have approval of the Washington state department of health. Scallops may only be taken from areas approved by the department of health and any fisher taking pink or spiny scallops must have on board the harvesting vessel a valid department of health shellfish toxin sampling agreement.

(iv) No other shellfish except octopus and squid (~~or food fish~~) may be retained while scallop fishing or while scallop are possessed aboard the scallop fishing vessel.

(b) Trawl gear provisions: Otter trawl gear may not be used to fish for scallops in Puget Sound at any time.

~~((i) Trawlers may only use single beam trawls not exceeding ten feet in width and having mesh size no smaller than two inches in the intermediate portion and cod end of the trawl.~~

~~((ii) Trawling for scallops is prohibited in waters less than 120 feet below mean lower low water.~~

~~((iii) Trawling for scallops is prohibited in the following areas:~~

~~(A) All waters closed to bottomfish trawl in WAC 220-48-015.~~

~~(B) Shrimp Districts 1 and 3 as defined in WAC 220-52-051.~~

~~(C) Sea Urehin Districts 1 and 2 closed waters defined in WAC 220-52-073 (1)(a)(i), (ii), and (1)(b)(ii).~~



~~(iv) Licensing: A food fish trawl—Puget Sound fishery license is the license required to operate the gear provided for in this section.)~~

(c) Shellfish diver gear provisions:

(i) Diving for scallops is prohibited in Sea Urchin Districts 1 and 2 closed waters as defined in WAC 220-52-073 (1)(a)(i), (ii), (1)(b)(i), and (ii).

(ii) Licensing: A shellfish dive fishery license is the license required to take scallops with shellfish diver gear.