WSR 11-16-056
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed July 29, 2011, 8:24 a.m., effective August 29, 2011]

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

Purpose: To bring citizenship/alien status rules into compliance with the federal Center for Medicare and Medicaid (CMS) guidelines. It expands the eligibility group of legally residing individuals which will allow: (1) Some children who are currently in a state-funded medical program to qualify for federally-funded medical coverage, and (2) some pregnant women to have their post partum period covered by federally funded medical. Note: The term PRUCOL has been replaced in this amendment by the term "nonqualified alien." Those formerly known as PRUCOL persons are still eligible for some state-funded benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0010, 388-424-0001, 388-424-0006, 388-424-0009, 388-424-0010, 388-424-0015, and 388-450-0156.

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

Adopted under notice filed as WSR 11-10-073 on May 3, 2011.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-400-0010:**

(2)(b) You are ((~~a alien who is permanently residing in the United States under color of law (PRUCOL) as defined in WAC 388-424-0001~~)) a nonqualified alien as defined in WAC 388-424-0001, who meets the Washington state residency requirements as listed in WAC 388-468-0005;

WAC 388-424-0001:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigration Services (CIS) to stay or live in the U.S.

(3) **"Nonqualifed [nonqualified] aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualifed [nonqualified] aliens ~~may~~ include but are not limited to:

(4) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section….

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 7, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: July 27, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-21-100, filed 10/18/05, effective 11/18/05)

WAC 388-400-0010 Who is eligible for state family assistance? (1) To be eligible for state family assistance (SFA), aliens must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are ((~~a alien who is permanently residing in the United States under color of law (PRUCOL) as defined in WAC 388-424-0001~~)) a nonqualified alien as defined in WAC 388-424-0001, who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(c) You are a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005; or

(e) You are a pregnant woman who has been convicted of misrepresenting their residence in order to receive benefits from two or more states at the same time.

AMENDATORY SECTION (Amending WSR 10-15-045, filed 7/13/10, effective 7/27/10)

WAC 388-424-0001 Citizenship and alien status—Definitions. ((~~**"American Indians"** born outside the United States. American Indians born outside the U.S. are eligible for benefits without regard to immigration status or date of entry if:~~

~~(1) They were born in Canada and are of fifty percent American Indian blood (but need not belong to a federally recognized tribe); or~~

~~(2) They are members of a federally recognized Indian tribe or Alaskan native village or corporation.~~

~~**"Hmong or Highland Lao."** These are members of the Hmong or Highland Laotian tribe, which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the United States. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribe members.~~

~~**"Nonimmigrants."** These individuals are allowed to enter the U.S. for a specific purpose, usually for a limited time. Examples include:~~

~~(1) Tourists,~~

~~(2) Students,~~

~~(3) Business visitors.~~

"PRUCOL" (Permanently residing under color of law) aliens. These are individuals who:

(1) Are not "qualified aliens" as described below; and

(2) Intend to reside indefinitely in the U.S.; and

(3) United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or INS) knows are residing in the U.S. and is not taking steps to enforce their departure.

"Qualified aliens." Federal law defines the following groups as "qualified aliens." All those not listed below are considered "nonqualified":

(1) **Abused spouses or children,** parents of abused children, or children of abused spouses, who have either:

(a) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried son or daughter of a Lawful Permanent Resident (LPR) - see definition of LPR below; or

(b) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(c) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA; and

(d) The alien no longer resides with the person who committed the abuse.

(e) Children of an abused spouse do not need their own separate pending or approved petition but are included in their parent's petition if it was filed before they turned age twenty-one. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn age twenty-one.

(f) An abused person who has initiated a self-petition under VAWA but has not received notice of prima facie approval is not a "qualified alien" but is considered PRUCOL. An abused person who continues to reside with the person who committed the domestic violence is also PRUCOL. For a definition of PRUCOL, see above.

(2) **Amerasians** who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam war.

(3) Individuals who have been granted **asylum** under Section 208 of the Immigration and Nationality Act (INA).

(4) Individuals who were admitted to the U.S. as **conditional entrants** under Section 203 (a)(7) of the INA prior to April 1, 1980.

(5) **Cuban/Haitian entrants.** These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(6) Individuals who are **lawful permanent residents** (LPRs) under the INA.

(7) Persons who have been granted **parole** into the U.S. for at least a period of one year (or indefinitely) under Section 212 (d)(5) of the INA, including "public interest" parolees.

(8) Individuals who are admitted to the U.S. as **refugees** under Section 207 of the INA.

(9) **Special immigrants from Iraq and Afghanistan** are individuals granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA). Under federal law, special immigrants from Iraq and Afghanistan, their spouses and unmarried children under twenty-one are to be treated the same as refugees in their eligibility for public assistance.

(10) Persons granted **withholding of deportation or removal** under Sections 243(h) (dated 1995) or 241 (b)(3) (dated 2003) of the INA.

"Undocumented aliens." These are persons who either:

(1) Entered the U.S. without inspection at the border, or

(2) Were lawfully admitted but have lost their status.

"U.S. citizens."

(1) The following individuals are considered to be citizens of the U.S.:

(a) Persons born in the U.S. or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens); or

(b) Legal immigrants who have naturalized after immigrating to the U.S.

(2) Persons born abroad to at least one U.S. citizen parent may be U.S. citizens under certain conditions.

(3) Individuals under the age of eighteen automatically become citizens when they meet the following three conditions on or after February 27, 2001:

(a) The child is a lawful permanent resident (LPR);

(b) At least one of the parents is a U.S. citizen by birth or naturalization; and

(c) The child resides in the U.S. in the legal and physical custody of the citizen parent.

(4) For those individuals who turned eighteen before February 27, 2001, the child would automatically be a citizen if still under eighteen when he or she began lawful permanent residence in the U.S. and both parents had naturalized. Such a child could have derived citizenship when only one parent had naturalized if the other parent were dead, a U.S. citizen by birth, or the parents were legally separated and the naturalizing parent had custody.

"U.S. nationals." A U.S. national is a person who owes permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(1) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(2) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

"Victims of trafficking." According to federal law, victims of trafficking have been subject to one of the following:

(1) Sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) Under federal law, persons who have been certified or approved as victims of trafficking by the federal Office of Refugee Resettlement (ORR) are to be treated the same as refugees in their eligibility for public assistance.

(4) Immediate family members of victims are also eligible for public assistance benefits as refugees. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one

~~years old~~)) For the purposes of determining an individual's citizenship and alien status for public assistance, the following definitions apply:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Laotian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including un-remarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified or approved as victims of trafficking by the federal office of refugee resettlement.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

(iii) Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under INA §101 (a)(27).

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age twenty-one of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned twenty-one years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn twenty-one years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d)(5), including "public interest" parolees.

(g) Individual's granted withholding of deportation or removal under INA §243(h) or §241 (b)(3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualifed aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualifed aliens include but are not limited to:

(a) Citizens of Marshall Islands, Micronesia or Palau;

(b) Immigrants paroled into the U.S. for less than one year;

(c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also nonqualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(5) **"U.S. citizens"** are one of the following:

(a) Individual's born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn eighteen years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age eighteen per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals who turned eighteen before February 27, 2001, would have automatically become a citizen if, while

the individual was still under eighteen, he or she became a lawful permanent resident and both his or her parents naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(6) **"U.S. nationals"** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

Reviser's note: The spelling errors in 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 10-15-045, filed 7/13/10, effective 7/27/10)

WAC 388-424-0006 Citizenship and alien status—Date of entry. (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on receiving TANF((,)) and nonemergency medicaid((, and SCHIP)) for nonpregnant adults.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar ((on)) for TANF((,)) and nonemergency medicaid((, and SCHIP)) for nonpregnant adults, unless exempt. The five-year bar starts on the date that "qualified" status is obtained. The medicaid and CHIP programs do not have a five-year bar for children under nineteen, children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230, or pregnant women.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

(a) Amerasian lawful permanent residents;

(b) Asylees;

(c) Cuban/Haitian entrants;

(d) Persons granted withholding of deportation or removal;

(e) Refugees;

(f) Special immigrants from Iraq and Afghanistan;

(g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and

(h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

(((5) In addition to subsection (4) of this section, the following "qualified aliens" are also exempt from the five-year bar on nonemergency medicaid and SCHIP:

(a) Pregnant women;

(b) Children under nineteen years of age; and

(c) Children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230.))

AMENDATORY SECTION (Amending WSR 10-15-068, filed 7/16/10, effective 8/16/10)

WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements. (1) ((A "qualified alien," as defined in WAC 388-424-0001,)) Any person who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following immigrants are not required to apply for an SSN:

(a) An alien, regardless of immigration status, who is applying for a program listed in WAC 388-476-0005(7);

(b) A ((PRUCOL (permanently residing under color of law) alien who is not in one of the PRUCOL groups)) nonqualified alien who is not applying for children or pregnancy related medical as listed in WAC 388-424-0010(4); and

(c) Members of a household who are not applying for benefits for themselves.

(3) "Qualified and nonqualified aliens," as defined in WAC 388-424-0001, ((and PRUCOL aliens in any of the PRUCOL groups listed in WAC 388-424-0010(4),)) who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) ((An immigrant)) Any person who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 10-15-068, filed 7/16/10, effective 8/16/10)

WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF, medicaid, and CHIP. (1) To receive temporary assistance for needy families (TANF), medicaid, or children's health insurance program (CHIP) benefits, an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, medicaid, and CHIP.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, medicaid, or CHIP for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006 (4) or (5) are met.

(4) A lawfully present "nonqualified alien" child or pregnant woman as defined in ((~~one of the following PRUCOL (permanently residing under color of law) groups~~)) WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive medicaid or CHIP((~~:~~

~~(a) A citizen of a compact of free association state (Micronesia, Marshall Islands or Palau) who has been admitted to the U.S. as a nonimmigrant;~~

~~(b) An individual in temporary resident status as an amnesty beneficiary;~~

~~(c) An individual in temporary protected status;~~

~~(d) A family unity beneficiary;~~

~~(e) An individual currently under deferred enforced departure;~~

~~(f) An individual who is a spouse or child of a U.S. citizen with an approved Visa petition pending adjustment of status;~~

~~(g) A parent or child of an individual with special immigration status;~~

~~(h) A fiance of a U.S. citizen;~~

~~(i) A religious worker;~~

~~(j) An individual assisting the Department of Justice in a criminal investigation; or~~

~~(k) An individual with a petition of status pending of three years or longer~~)).

(5) An alien who is ineligible for TANF, medicaid or CHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (state family assistance (SFA), ((~~general assistance (GA)~~)) disability lifeline (DL) and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)), and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or

(d) State-funded apple health for kids as described in WAC 388-505-0210 ((~~(2) or~~)) (5).

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

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, general assistance, and ADATSA programs. (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A ((~~PRUCOL alien as defined in WAC 388-424-0001~~)) nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive general assistance (GA) benefits, you must be ineligible for the TANF, SFA, or SSI program for a reason other than failure to cooperate with program requirements, and belong to one of the following groups as defined in WAC 388-424-0001:

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" or similarly defined lawful immigrant such as ((~~Hmong or Highland Lao or~~)) victim of trafficking; or

(e) A ((~~PRUCOL~~)) nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

(3) To receive ADATSA benefits, you must belong to one of the following groups as defined in WAC 388-424-0001:

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" or similarly defined lawful immigrant such as ((~~Hmong or Highland Lao or~~)) victim of trafficking; or

(e) A ((~~PRUCOL~~)) nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

AMENDATORY SECTION (Amending WSR 10-15-043, filed 7/13/10, effective 8/1/10)

WAC 388-450-0156 When am I exempt from deeming? (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with ((~~Immigration and Naturalization Service (INS)~~)) United States Citizenship and Immigration Services (USCIS):

(i) Refugee;

(ii) Parolee;

(iii) Asylee;

(iv) Cuban/Haitian entrant; or

(v) ((~~Haitian entrant~~)) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We

count a quarter of work by the following people toward your forty qualifying quarters:

(i) Yourself;

(ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and

(iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If ((~~INS~~)) USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

(i) You no longer live with your sponsor; and

(ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor;

(3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements.

(4) For Basic Food, you are exempt from deeming while you are under age eighteen.

(((~~(4)~~))) (5) For state family assistance, ((~~general assistance~~)) disability lifeline (DL), state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably-discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably-discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

(((~~(5)~~))) (6) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

(((~~(6)~~))) (7) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

(((~~(7)~~))) (8) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income;

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

(((~~(8)~~))) (9) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

(((~~(9)~~))) (10) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

WSR 11-17-037
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 11-04—Filed August 10, 2011, 8:10 a.m., effective September 10, 2011]

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

Purpose: This rule making adopts amendments to chapter 173-400 WAC, General regulations for air pollution sources and chapter 173-401 WAC, Operating permit regulation. These amendments bring the rule into compliance with United States Environmental Protection Agency (EPA) regulations which defer for a period of three years the consideration of CO2 emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the PSD and Title V applicability thresholds.

Citation of Existing Rules Affected by this Order: Amending chapter 173-400 WAC, General regulations for air pollution sources and chapter 173-401 WAC, Operating permit regulation.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Adopted under notice filed as WSR 11-13-127 on June 22, 2011.

Changes Other than Editing from Proposed to Adopted Version: Two changes were made to the rule text. The adoption by reference date was changed from July 1, 2011, to July 20, 2011. The date setting the end of the three year deferral was changed from July 1, 2014, to July 21, 2014. These changes were made to reflect EPA's final language.

A final cost-benefit analysis is available by contacting Linda Whitcher, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6875, fax (360) 407-7534, e-mail Linda.whitcher@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 10, 2011.

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Director

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-116 Increment protection. This section takes effect on the effective date of EPA's incorporation of this section into the Washington state implementation plan.

(1) Ecology will periodically review increment consumption. Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published in 40 CFR 52.21(c) as ((~~published in the Federal Register as final rule on October 20, 2010~~)) adopted by reference in WAC 173-400-720 (4)(a)(iv).

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by the administrator of the environmental protection agency. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the administrator.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (3) and (4).

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) The proposed major new source or major modification will comply with all applicable new source performance standards (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), and emission standards adopted under chapter 70.94 RCW that have been incorporated into the Washington state implementation plan; and

(iv) The following subparts of 40 CFR 52.21, in effect on ((~~October 20, 2010, and the amendments to 40 CFR 52.21 as published in the Federal Register as final rule on October 20, 2010, which are adopted by reference~~)) July 20, 2011, are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

Section	Title
40 CFR 52.21 (a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions.
40 CFR 52.21 (c)	Ambient air increments.

Section	Title
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.
40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
40 CFR 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - additional requirements
40 CFR 52.21 (r)	Source obligation.
40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 CFR 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 CFR 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p) (1) - (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 CFR 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 CFR 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 CFR 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit. For purposes of this paragraph (r)(6)(iii), fugitive emissions (to the extent

quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in 40 CFR 52.21 (b)(1)(iii) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions, as monitored pursuant to 40 CFR 52.21 (r)(6)(iii), during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 CFR 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

(E) 40 CFR 52.21 (r)(7) The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).

(F) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source.

(G) 40 CFR 52.21 (aa)(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740.

(H) 40 CFR 52.21 (aa)(9)(i)(b) Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate.

(I) 40 CFR 52.21 (aa)(14) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii).

(J) 40 CFR 52.21 (aa)(14)(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3).

(iv) 40 CFR 52.21 (r)(2) is not adopted by reference.

AMENDATORY SECTION (Amending Order 10-13, filed 12/1/10, effective 1/1/11)

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Affected source" means a source that includes one or more affected units.

(2) "Affected states" are the states or ((~~federally-recognized~~)) federally recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) "Affected unit" means a fossil-fuel fired combustion device or a source that opts-in under 40 CFR part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 CFR 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Preven-

tion of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) "Chapter 401 permit" or "permit" means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) "Chapter 401 source" means any source subject to the permitting requirements of this chapter.

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.

(8) "Delegated authority" means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(9) "Designated representative" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(10) "Draft permit" means the version of a permit for which the permitting authority offers public participation or affected state review.

(11) "Emissions allowable under the permit" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(12) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(13) The "EPA" or the "administrator" means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(14) "Federal Clean Air Act" or "FCAA" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392. December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(15) "Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 CFR §§ 70.7 and 70.8.

(16) "General permit" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(17) "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(18) "Intermittent compliance" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of noncompliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

(19) "Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual,* 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under com-

mon control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or

(xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

(c) A major stationary source as defined in part D of Title I of the FCAA, including:

(i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.

(20) "Permit modification" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(21) "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

(22) "Permit revision" means any permit modification or administrative permit amendment.

(23) "Permitting authority" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "Proposed permit" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 CFR 70.8.

(26) "Regulated air pollutant" means the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

(i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(27) "Regulated pollutant (for fee calculation)," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

(a) Carbon monoxide;

(b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

(28) "Renewal" means the process by which a permit is reissued at the end of its term.

(29) "Responsible official" means one of the following:

(a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 CFR part 70.

(30) "Section 502 (b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(31) "Small business stationary source" means a stationary source that:

(a) Is owned or operated by a person that employs one hundred or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit fifty tons or more per year of any regulated pollutant; and

(e) Emits less than seventy-five tons per year of all regulated pollutants.

(32) "Solid waste incineration unit" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(33) "State" means any nonfederal permitting authority, including any local agency, interstate association, or statewide program.

(34) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

(35) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 CFR chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions.

(b) The term "tpy (tons per year) CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO_2e. For purposes of this subsection (b), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

(36) "Title I modification" or "modification under any provision of Title I of the FCAA" means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

WSR 11-17-041

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 08-01—Filed August 10, 2011, 10:48 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: This rule is needed because state law requires ecology to authorize additional businesses other than the state contractor to emission test vehicles starting July 1, 2012, RCW 70.120.170 (2)(d).

Chapter 173-422A WAC does not repeal chapter 173-422 WAC but will apply to the program starting July 1, 2012. This new rule retains several provisions from chapter 173-422 WAC that are necessary to implement the program.

Chapter 173-422A WAC aims to make getting an emission test easier by:

- Allowing other businesses in addition to ecology's contractor to test vehicles.
- Streamlining testing procedures by eliminating gas cap and check engine light checks and dynamometer testing. Increasing numbers of vehicles tested by obtaining information from the vehicle's "on-board diagnostic" (OBD) system make these tests less relevant.

Other provisions in chapter 173-422A WAC include:

- Requiring that all testing to be done on-line with the state contractor's computer system.
- Exempting all light-duty diesel vehicles and the heavy-duty diesel vehicles that meet the EPA 2007 exhaust emission standards or are equipped with an exhaust particle filter.
- Using the same test standards for all 1995 model year and older gasoline vehicles.
- Requiring the OBD monitor(s) that detected a problem on the initial test be ready for a passing retest.
- Permitting a repair waiver for vehicles unable to be retested.
- No longer requiring listed automotive repair businesses to have an exhaust analyzer. They will be required to have an OBD scan tool with full diagnostic capabilities.

Statutory Authority for Adoption: RCW 70.120.120.

Adopted under notice filed as WSR 11-05-089 on February 15, 2011.

A final cost-benefit analysis is available by contacting Kasia Patora, Department of Ecology, Rules and Accountability Section, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail kasia.patora@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 17, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 0, Repealed 0.

Date Adopted: August 10, 2011.

Ted Sturdevant

Director

Chapter 173-422A WAC

MOTOR VEHICLE EMISSION INSPECTION

NEW SECTION

WAC 173-422A-010 Purpose. These rules implement the motor vehicle emission test program required by state law (chapter 70.120 RCW Motor vehicle emission control). They are intended to encourage appropriate emission repairs of vehicles to reduce air pollution.

NEW SECTION

WAC 173-422A-020 Definitions. Unless the context clearly indicates otherwise, the following definitions will apply:

"Appropriate repair" means the diagnosis or repair of the cause(s) of an emission test failure.

"Authorized tester" means a vehicle owner or business authorized by ecology to conduct testing other than ecology's contractor.

"Ecology" means the department of ecology.

"OBD" means the standardized on-board diagnostic system required to be installed on all 1996 and newer model year gasoline cars and light trucks sold in the United States. This system monitors the operation of the vehicle's emission control systems to detect possible problems. If problems are found a check engine light alerts the driver and trouble codes are stored to help an automotive repair technician diagnose the problem.

"On-line" means to electronically communicate during the emission test as directed by ecology.

"Waiver" is an exemption from further testing for twelve months when all the following conditions apply:

(a) The vehicle failed an emission test;

(b) The vehicle failed a retest or is unable to be retested;

(c) All primary emission control components (or appropriate replacements) are installed and operative;

(d) An ecology authorized emission specialist has performed at least one hundred fifty dollars of appropriate repairs;

(e) The appropriate repairs were performed between the initial and last test; and

(f) Ecology or its designee has received original receipts listing and providing the cost of each appropriate diagnosis or repair of the cause(s) of an emission test failure.

NEW SECTION

WAC 173-422A-030 Vehicle emission test requirements and testing schedule for private and United States government vehicles. The department of licensing, county auditors and their subagents shall issue or renew a vehicle license or change the registered owner only if the vehicle meets emission test requirements. Privately owned and United States government vehicles must obtain a passing test or waiver within the twelve months before the department of licensing renewal date for the vehicle. See the following table for the testing schedule.

Testing Schedule for Private and United States Government Vehicles	
Year License Expires	**Model Years**
2012	1988, 1990, 1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007
2013	1989, 1991, 1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008
2014	1990, 1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007
2015	1991, 1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008
2016	1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007
2017	1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008
2018	1994, 1997, 1999, 2001, 2003, 2005, 2007
2019	1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008

NEW SECTION

WAC 173-422A-040 Emission test schedule for state and local government vehicles. State and local government vehicles must be tested according to the following table.

Testing Schedule for State and Local Government Vehicles	
Year	**Model Years**
2012	1987 through 2007
2013	1988 through 2008
2014	1989 through 2008
2015	1990 through 2008
2016	1991 through 2008
2017	1992 through 2008
2018	1993 through 2008
2019	1994 through 2008

NEW SECTION

WAC 173-422A-050 Emission test areas. Vehicles registered within the following United States Postal Service zip codes (as of September 1, 1994) require emission tests. Zip code changes by the United States Postal Service after September 1, 1994, do not change emission test area designations.

Puget Sound Region	
98001-98009	98201-98208
98011	98258
98012	98270
98015	98271
98020	98275

Puget Sound Region	
98021	98290
98023	98291
98025-98028	98327
98031-98043	98332
98046	98335
98047	98338
98052-98059	98344
98062-98064	98352
98071-98073	98354
98083	98371-98374
98092	98387
90893	98388
98101-98109	98390
98111-98199	98401-98499

Spokane Region	
99001	99021
99005	99025
99014	99027
99016	99037
99019	99201-99209

Vancouver Region
98604 except north of N.E. 279th Street
98606
98607
98629 except east of N.E. 50th Avenue
98642
98660-98668
98671 except Skamania County
98682-98686

NEW SECTION

WAC 173-422A-060 Exemptions. The following vehicles are exempt from emission testing:

(1) Newer vehicles. Vehicles less than five years old and 2009 or newer model year vehicles.

(2) Older vehicles. Vehicles more than twenty-five years old.

(3) Motorcycles and mopeds as defined in chapter 46.04 RCW.

(4) Prorated vehicles as defined in chapter 46.85 RCW.

(5) Vehicles garaged and operated outside a test area.

(6) Farm vehicles as defined in chapter 46.04 RCW.

(7) Vehicles not intended for highway use.

(8) Vehicles registered as powered by electricity, propane, compressed natural gas, or liquid petroleum gas.

(9) Honda Insight and Toyota Prius model vehicles.

(10) Diesel powered vehicles weighing less than 6001 pounds or with an engine that was certified by its manufacturer as meeting the EPA 2007 exhaust emission standards or equipped with an exhaust particle filter acceptable to ecology.

(11) Vehicles being sold or being offered for sale by a Washington licensed motor vehicle dealer.

(12) An emission test is not required to transfer the registered ownership between parents, siblings, grandparents, grandchildren, spouses, legal domestic partners, or present co-owners or to a public agency and for all changes of the legal owner.

NEW SECTION

WAC 173-422A-100 Gasoline vehicle emission test standards. Gasoline motor vehicles are tested to determine if they meet one of the following requirements:

(1) Two-speed idle exhaust emission test standards:

Model Year	Carbon Monoxide (CO) (%)	Hydrocarbons (HC) (ppm)
1995 and older	3.0	400
1996-2008 (8500 or less GVWR)	1.2	220
1996-2008 (greater than 8500 GVWR)	3.0	400

(2) Instead of a two-speed idle exhaust emission test, ecology may require a 1996 or newer model vehicle be tested using the vehicle's on-board diagnostic (OBD) system. To pass the OBD test:

(a) The check engine light must not be commanded on while the engine is operating.

(b) The emission related monitors must have completed their checks and be ready to report potential problems, except:

(i) A 2001 or newer model year vehicle may have one monitor not ready to report.

(ii) A 2000 or older model year vehicle may have up to two monitors not ready to report.

(c) For the vehicle to pass a retest, the monitor(s) that commanded the check engine light on during the initial test must be ready to report.

NEW SECTION

WAC 173-422A-110 Gasoline vehicle emission testing procedures. (1) All persons testing gasoline vehicles shall, as directed by ecology, either:

(a) Connect the OBD testing equipment to determine what diagnostic codes may be commanding the check engine light on and whether each emission related monitor is ready to report; or

(b) Follow the two-speed idle exhaust emission testing procedures described in Appendix B-Test Procedures of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992.

(2) Ecology may require variations to the testing procedures to accommodate the design of certain vehicles.

NEW SECTION

WAC 173-422A-120 Gasoline vehicle emission testing equipment specifications. (1) Exhaust gas analyzers must meet the specifications in (I) Steady-State Exhaust Analysis System of Appendix D-Steady-State Short Test Equipment of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992.

(2) OBD testing equipment must be capable of:

(a) Communicating with all OBD systems used on 1996 through 2008 model year gasoline vehicles approved to be sold in the United States;

(b) Recording the readiness status of each emission-related OBD monitor; and

(c) Recording the diagnostic trouble code(s) that could command the check engine light on.

(3) The testing equipment must be able to perform the test on-line unless ecology grants prior approval.

NEW SECTION

WAC 173-422A-200 Exhaust emission test standards for diesel vehicles.

Model Year	Opacity (%)
1991 and older	50
1992-1996	40
1997-2008	30

NEW SECTION

WAC 173-422A-210 Test procedure for diesel vehicles. (1) Before beginning the test, the tester shall verify all of the following:

(a) The engine is within its normal operating temperature range;

(b) All vehicle accessories including air conditioning are off;

(c) The parking brake and an engine brake or retarder is off; and

(d) The transmission is in neutral (and clutch released if manual transmission).

(2) During the snap-acceleration test the tester shall do all of the following:

(a) Perform at least three preliminary snap-accelerations until the engine achieves consistent operation.

(i) A snap-acceleration consists of moving the accelerator pedal from normal idle as rapidly as possible to the full power position, then fully releasing the throttle so the engine returns to idle. Allow the engine to remain at idle for at least ten seconds between snap-accelerations.

(ii) Insert the opacity meter into an exhaust pipe.

(b) Perform additional snap-accelerations while measuring the smoke opacity.

(i) The tester must either begin a subsequent snap-acceleration within forty-five seconds or restart the test without removing the opacity meter.

(ii) The tester need not repeat the three preliminary snap-accelerations.

(c) Perform snap-accelerations (up to nine times if necessary) to obtain three consecutive peak opacity readings that meet ecology's standards. If this does not occur, the vehicle fails the test. Record the three final opacity readings.

(d) If the vehicle passes the first series of snap-accelerations, repeat these procedures for each additional exhaust pipe.

(3) Ecology may require variations to the testing procedures to accommodate the design of certain vehicles.

NEW SECTION

WAC 173-422A-220 Diesel vehicle testing equipment specifications. (1) An opacity meter that:

(a) Automatically recalibrates before each test.

(b) Provides for continuous measurement of exhaust opacity unaffected by rain or wind.

(2) The testing equipment must be able to perform the test on-line unless ecology grants prior approval.

NEW SECTION

WAC 173-422A-300 Testing equipment maintenance and calibration. (1) The tester must:

(a) Calibrate and maintain all test equipment according to the manufacturer's specifications and recommendations.

(b) Maintain logs approved by ecology of maintenance, repair, and calibration of testing equipment.

(c) Use, for exhaust gas analyzer calibration, the procedures in the following document: (I) Steady-State Test Equipment of Appendix A-Calibrations, Adjustments and Quality Control of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992.

(2) Ecology may require additional maintenance and calibration procedures if they are needed to ensure the accuracy of the testing equipment.

NEW SECTION

WAC 173-422A-310 Quality assurance. Ecology (or its designee) may:

(1) Monitor (remotely or on location) ecology's contractor and authorized testers' operations.

(2) Access the testing/reporting equipment and records.

(3) Stop or limit emission testing due to this monitoring.

NEW SECTION

WAC 173-422A-320 Test fees. (1) An ecology contractor shall charge fifteen or less dollars for a test. The first retest will be free for up to twelve months after a vehicle fails the initial test.

(2) Authorized testers may set their own fees.

NEW SECTION

WAC 173-422A-340 Authorized testers. (1) Authorized testers must meet the following conditions:

(a) Use ecology approved testing equipment. The test must be done on-line unless ecology grants prior approval.

(b) Follow the testing procedure described in section 110 for gasoline vehicles and section 210 for diesel vehicles.

(c) As directed by ecology, provide information to vehicle owners and obtain their approval for emission-related repairs.

(d) Properly maintain testing equipment.

(e) Maintain logs approved by ecology of maintenance, repair, and calibration of testing equipment.

(f) Allow ecology to conduct performance audits and compliance inspections.

(g) Take corrective actions required by ecology.

(2) Violations of this rule by an authorized tester will result in their authorization being permanently or temporarily revoked unless it is the first lesser rule violation such as an administrative or recordkeeping error.

(a) For the first lesser rule violation, the authorized tester will receive a written warning that further rule violations of this type will result in their authorization being temporarily revoked for thirty to ninety days.

(b) For the first major, deliberate rule violation, such as fraudulent testing or reporting, their authorization will be temporarily revoked for six months.

(c) A second major violation will result in their authorization being permanently revoked.

(d) Reauthorization of a temporarily revoked authorization requires a new application for authorization.

(3) Notifications of violations will be documented in writing.

(4) An authorized tester whose authorization has been revoked may appeal this decision to the pollution control hearings board as provided for in RCW 43.21B.310.

NEW SECTION

WAC 173-422A-400 Emission specialist authorization. (1) To become an authorized emission specialist an individual shall:

(a) Successfully complete an ecology-approved course on emission repair every two years.

(b) Agree in writing to meet all requirements of this rule and all Washington state and federal laws and regulations regarding emission control systems.

(2) To maintain authorization, an authorized emission specialist shall:

(a) Complete required training within ninety days of notification by ecology. Ecology may grant written extensions;

(b) Sign and include their specialist identification number on all receipts for appropriate diagnoses and repairs of vehicles that have failed an emission test. These receipts must:

(i) Be numbered and printed with the business's name and address;

(ii) Include the customer's name, telephone number, and address;

(iii) Include the vehicle's make, model, license number and vehicle identification number (VIN);

(iv) Itemize all appropriate diagnoses and repairs performed by the specialist;

(v) Include any missing or inoperative primary emission control components; and

(vi) Include any further recommended appropriate repairs and diagnoses.

(3) To maintain authorization, an authorized emission specialist may not:

(a) Tamper with emission control systems (a violation of chapter 173-421 WAC), including adjusting an engine outside of the manufacturer's specifications; or

(b) Obtain or attempt to obtain a passing test, waiver, or an exemption from the test requirements by providing false information or by any other fraudulent means that violate this rule; or

(c) Assist any individual in committing a violation of this rule or chapter 173-421 WAC.

(4) Violations of this rule by an authorized emission specialist will result in their authorization being permanently or temporarily revoked unless it is the first lesser rule violation such as an administrative or recordkeeping error.

(a) For the first lesser rule violation, the authorized emission specialist will receive a written warning that further rule violations of this type will result in their authorization being temporarily revoked for thirty to ninety days.

(b) For the first major, deliberate rule violation, such as fraudulent testing or reporting, their authorization will be temporarily revoked for six months.

(c) A second major violation will result in their authorization being permanently revoked.

(d) Reauthorization of a temporarily revoked authorization requires a new application for authorization.

(5) Notifications of violations will be documented in writing.

(6) An authorized emission specialist whose authorization is revoked may appeal to the pollution control hearings board as provided for in RCW 43.21B.310.

NEW SECTION

WAC 173-422A-410 Requirements for listing businesses with authorized emission specialists. (1) Ecology will maintain a list of businesses where a vehicle owner can have an authorized emission specialist diagnose and repair the causes of an emission test failure.

(2) Ecology will include the business's name, address and telephone number on the list when the business agrees in writing to require all of the following:

(a) The authorized emission specialist use an ecology-approved OBD scan tool to diagnose an emission test failure of a 1996 or newer gasoline vehicle equipped with an OBD system. For an OBD scan tool to be approved by ecology it will need:

(i) To provide mode 1 through mode 9 diagnostic data requests.

(ii) Support all communication protocols used by the vehicle manufacturers for 1996 through 2008 model year gasoline vehicles sold in the United States.

(b) That the diagnosis of the cause(s) of an emission tests failure and the repairs or adjustments to correct the cause(s) of an emission test failure are performed by an authorized emission specialist.

(c) That the authorized emission specialist:

(i) Sign the customer's receipt for emission repairs or adjustments; and

(ii) List on the receipt, the emission diagnosis or repairs done and those that are still needed.

(d) All employees not to tamper or assist anyone in tampering with emission control systems, including adjusting a vehicle outside the manufacturer's specifications.

(e) All employees to obtain or assist anyone in obtaining a fraudulent passing test, waiver, or an exemption from the test requirement.

(f) Notification of ecology when an authorized emission specialist begins or ends employment.

(3) When a business no longer meets the requirements for listing, it must discontinue any representation of listing immediately.

(4) Violations of this rule by a listed business will result in their listing being permanently or temporarily revoked unless it is the first lesser rule violation such as an administrative or recordkeeping error.

(a) For the first lesser rule violation, the listed business will receive a written warning that further rule violations of this type will result in their listing being temporarily revoked for thirty to ninety days.

(b) For the first major, deliberate rule violation, such as fraudulent testing or reporting, their listing will be temporarily revoked for six months.

(c) A second major violation will result in their listing being permanently revoked.

(d) Relisting of a temporarily revoked listing requires a new application for listing.

(5) Notifications of violations will be documented in writing.

(6) A business whose listing has been revoked may be appealed to the pollution control hearings board as provided for in RCW 43.21B.310.

NEW SECTION

WAC 173-422A-500 Civil penalty. Except for a lesser violation of this rule, such as an administrative or recordkeeping error, ecology may impose a civil penalty not to exceed two hundred fifty dollars on anyone who violates any requirement of this rule. This penalty may be appealed to the pollution control hearings board as provided for in RCW 43.21B.310.

WSR 11-17-044
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed August 11, 2011, 9:42 a.m., effective September 11, 2011]

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

Purpose: The state board of education amended WAC 180-16-195 to improve efficiency and streamline compliance regarding the annual reporting requirements of school districts to the board. The revisions include a change in the signature requirements, the submission date, and require school districts to submit compliance forms electronically.

Citation of Existing Rules Affected by this Order: Amending WAC 180-16-195.

Statutory Authority for Adoption: RCW 28A.150.220, 28A.150.250, 28A.150.260.

Adopted under notice filed as WSR 11-12-015 on May 23, 2011.

Changes Other than Editing from Proposed to Adopted Version: Date for submittal of Form 1497 was changed from "on or before the first Monday in September of each school year" to "on or before September 15 of each school year."

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

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

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

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

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

Date Adopted: July 14, 2011.

Kathe Taylor
Interim Executive Director

AMENDATORY SECTION (Amending WSR 02-18-056, filed 8/28/02, effective 9/28/02)

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before ((~~the first Monday in November~~)) September 15th of each school year, each school district superintendent shall complete and return the program assurance form (OSPI Form 1497) distributed by the state board of education as a part of an electronic submission to OSPI. The form shall be designed to elicit data necessary to a determination of a school district's compliance or noncompliance with basic education program approval requirements. ((~~Data reported by a school district shall accurately represent the actual status of the school district's program as of the first school day in October and as thus far provided and scheduled for the entire current school year.~~)) The form shall be submitted electronically and signed by:

(a) The school board president or chairperson, and

(b) The superintendent of the school district.

(2) **State board staff review.**

(a) State board of education staff shall review each school district's program assurance form, conduct on-site monitoring visits of randomly selected school districts, as needed and subject to funding support, and prepare recommendations and reports for presentation to the state board of education: Provided, That, if a school district's initial pro-

gram assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies. School districts which foresee that they will not be able to comply with the program approval requirements, or that are deemed by the state board to be in noncompliance, may petition for a waiver on the basis of substantial lack of classroom space as set forth in WAC 180-16-225 and instructional hours offering requirements under WAC 180-18-030.

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

(3) **Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.**

(a) At the ((~~annual spring~~)) November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board. Basic education allocation funds shall be deducted from the basic education allocation of a school district that has been certified as being in noncompliance unless such district has received a waiver from the state board for such noncompliance, pursuant to WAC 180-16-225 or 180-18-030, or assurance of program compliance is subsequently provided for the school year previously certified as in noncompliance and is accepted by the state board.

(d) The withholding of basic education allocation funding from a school district shall not occur for a noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(e) The superintendent of public instruction, or his/her designee, after notification by the state board of education to a school district regarding an existing noncompliance, shall enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the noncompliance(s), not to exceed sixty school business days per noncompliance as specified in (d) of this subsection.

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline shall result in the immediate withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the superintendent of public instruction, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(f) In the event a school district fails to sign the compliance agreement within five school business days from the date of issuance or does not satisfy the terms of the signed compliance agreement within the designated amount of time, the superintendent of public instruction shall withhold state funds for the basic education allocation until program compliance is assured based on the following procedure:

(i) For the first month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold twenty-five percent of the state funds for the basic education allocation to a school district.

(ii) For the second month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold fifty percent of the state funds for the basic education allocation to a school district.

(iii) For the third month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold seventy-five percent of the state funds for the basic education allocation to a school district.

(iv) For the fourth month, and every month thereafter, that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold one hundred percent of the state funds for the basic education allocation to a school district until compliance is assured.

(g) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section. The state board of education may not waive any of the basic education entitlement requirements as set forth in this chapter, except as provided in WAC 180-16-225 or 180-18-030.

(4) The provisions of subsection (3)(f) of this section shall not apply if the noncompliance is related to the district's

fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

WSR 11-17-045
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 11, 2011, 1:09 p.m., effective September 11, 2011]

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

Purpose: Creating new chapter 392-700 WAC, enacting provisions of E2SHB 1418 (establishing a statewide dropout reengagement system), which was adopted by the legislature in 2010.

Statutory Authority for Adoption: RCW 28A.175.100.

Other Authority: E2SHB 1418, chapter 20, Laws of 2010.

Adopted under notice filed as WSR 11-13-071 on June 15, 2011.

Changes Other than Editing from Proposed to Adopted Version: Additions and deletions in WAC 392-700-015, 392-700-025, 392-700-035, 392-700-065, 392-700-095, 392-700-120, 392-700-145, 392-700-155, 392-700-160, 392-700-165, 392-700-175, 392-700-195 and 392-700-225, dealing with definitions, interlocal agreements, eligibility, instruction, district administrative responsibilities, student FTE, funding and reimbursement, recordkeeping, operating agreements and the office of superintendent of public instruction approval were recommended by the drafting committee.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 21, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 21, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 21, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 21, Amended 0, Repealed 0.

Date Adopted: July 27, 2011.

Randy Dorn
Superintendent of
Public Instruction

Chapter 392-700 WAC

DROPOUT REENGAGEMENT

NEW SECTION

WAC 392-700-001 Purpose and authority. (1) The purpose of this chapter is to provide a statutory framework for a statewide dropout reengagement system and to provide appropriate educational opportunities and access to services for students age sixteen to twenty-one who have dropped out of high school or are not accumulating sufficient credits to reasonably complete a high school diploma in a public school before the age of twenty-one.

(2) Authority for this chapter is RCW 28A.175.100, which authorizes the superintendent of public instruction to adopt rules and procedures for statewide dropout reengagement programs.

NEW SECTION

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

"Agency" means an educational service district, community-based organization, or public entity other than a community or technical college.

"Annual student full-time equivalent (AFTE)" means the total student full-time equivalent (FTE) reported for each enrolled student in a school year divided by nine with the maximum being 1.0 per year.

"Average annual full-time equivalent (AAFTE)" means the sum total of the annual student full-time equivalents (AFTEs) reported for a reengagement program divided by the total number of enrolled students in the program.

"CEDARS" refers to comprehensive educational data and resource system, the statewide longitudinal data system of educational data for K-12 student information.

"College" means community college or technical college.

"Consortium" means a regional group of organizations that will consist of school districts, and agencies and/or colleges who agree to work together to create and operate a reengagement program or reengagement programs that will serve students from multiple school districts and reduce the administrative burden on school districts.

"Consortium agreement" means:

(a) The agreement that is signed by the consortium lead and all school districts which are part of the consortium and agree to refer eligible students to the consortium's reengagement programs. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring school districts. A model consortium agreement with standard language will be provided by OSPI; or

(b) The agreement that is signed by a school district or technical college that is directly operating a reengagement program and all school districts which agree to refer eligible students to the program. This agreement will clearly outline the responsibilities of the technical college or school district directly operating the program and those of the referring school districts. A model consortium agreement with standard language will be provided by OSPI.

"Consortium lead" means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-225 (4)(d).

"Contract" means the document signed by the administrator of a school district and the administrator of an agency (educational service district, community-based organization, or public entity other than a college or technical college)

when the agency agrees to operate a reengagement program on behalf of the district and will receive compensation for doing so in accordance with WAC 392-700-165. The contract will specifically outline all the required elements of a reengagement program (as stated in this chapter) that the agency and the school district are agreeing to implement. A model contract containing standard language will be provided by OSPI and may be used by the school district when requesting OSPI approval of their program as a reengagement program.

"Credential" means a GED, high school diploma, college certificate received after completion of a college program requiring at least forty hours of instruction, a college degree, or an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

"Enrolled student" is a student who meets all the criteria outlined in WAC 392-700-045, and is reported for student FTE.

"ERDC" refers to education research and data center, which conduct analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

"Full-time equivalent (FTE) eligible student" means an eligible student whose enrollment and attendance meets criteria adopted by the office of superintendent of public instruction (OSPI) specifically for dropout reengagement programs. The criteria shall be based on the community or technical college credits generated by the student if the program provider is a community or technical college or based on a minimum amount of planned programming or instruction and minimum attendance by the student rather than hours of seat time if the program provider is a community based organization. (See WAC 392-700-160.)

"Interlocal agreement" means the document signed by the administrator of a school district and a college when the college agrees to operate a reengagement program on behalf of the district and will receive compensation for doing so in accordance with WAC 392-700-165. The interlocal agreement will specifically outline all the required elements of a reengagement program (as stated in this chapter) that the college and the school district are agreeing to implement. A model interlocal contract containing standard language will be provided by OSPI and may be used by the school district when requesting OSPI approval of their program as a reengagement program.

"Letter of intent" means the document signed by the administrator of any school district or technical college that specifically outlines all the required elements of a reengagement program (as stated in this chapter) that the school district or technical college is agreeing to implement. A model letter of intent containing standard language will be provided by OSPI and may be used by the school district or technical college when requesting OSPI approval of their program as a reengagement program.

"Measure of academic progress" means standard academic benchmarks that are measures of academic performance which are attained by reengagement students in addition to a credential. These measures will be tracked and reported by reengagement programs and school districts for each student and for reengagement programs as a whole using definitions and procedures outlined by OSPI. Measures of academic progress will be reported when a student does one of the following:

(a) Passes one or more GED tests (may only be claimed once in a year);

(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);

(c) Completes approved college readiness course work with documentation of competency attainment;

(d) Completes job search and job retention course work with documentation of competency attainment;

(e) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet all the requirements of WAC 392-410-315(2);

(f) Enrolls in postsecondary classes other than ABE/GED/ESL; or

(g) Transitions from ESL to ABE/GED classes;

(h) Transitions from ABE/GED classes to postsecondary developmental math and English classes (math or English classes at less than the 101 level);

(i) Transitions from postsecondary developmental math or English classes to the next level of postsecondary developmental math or English or from postsecondary developmental math or English classes to college level math and English classes (classes at 101 or above); and

(j) Transitions from ABE/GED classes to college level classes at 101 or above (other than English or math).

"Minimum attendance standard" means the minimum attendance that must be made by a student enrolled in a reengagement program operated by an agency or directly by a district in order for student FTE to be reported for that student on any monthly count day. (See WAC 392-700-165 (1)(a)(ii).)

"Nonstandard school year" means the months of the year, not in the standard school year; the period during which a summer instruction may be offered.

"OSPI" means the office of superintendent of public instruction.

"School year" means the twelve-month period that encompasses the standard nine month school year and the three month nonstandard school year.

"Standard school year" means the nine months from September through May or October through June during which instruction is provided and FTE is reported.

"Student full-time equivalent (FTE)" means the enrollment reported to OSPI for an enrolled student on a monthly basis with the maximum being 1.0 FTE per month.

"Total annual student full-time equivalent" means the sum of the annual student full-time equivalents (AFTEs) reported for a reengagement program.

"Written agreement" means either a contract or an interlocal agreement.

NEW SECTION

WAC 392-700-025 Interlocal agreements. (1) School districts may directly operate or enter into the model interlocal agreement or contract developed under RCW 28A.175.110 with an agency or college to provide a dropout reengagement program for eligible students of the district.

(2) If a school district does not operate a dropout reengagement program directly or enter an interlocal agreement or contract with an agency or college, the agency or college may petition a school district other than the resident school district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter the interlocal agreement or contract with the petitioning entity to provide a dropout reengagement program for eligible students.

(3) Because school districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve youth, many models of operation (see WAC 392-700-225) are authorized as part of the statewide dropout reengagement system.

(4) OSPI will provide a model interlocal agreement, a model contract, a model school district letter of intent, and a model consortium agreement that will outline the required elements of a reengagement program and may be used by school districts to operate reengagement programs or to participate in a reengagement program consortium. (See WAC 392-700-225.)

(5) This chapter does not affect the authority of school districts, under RCW 28A.150.305 and 28A.320.035, to contract for educational services other than reengagement programming.

NEW SECTION

WAC 392-700-035 Eligibility. (1) Youth are eligible for reengagement programming when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) Have not yet met high school graduation requirements;

(c) Are significantly behind in credit as outlined below:

(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less.

(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less.

(2) If not credit deficient as outlined in subsection (1) of this section, have been:

(a) Recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district approved school personnel, or staff from community agencies which provide educational advocacy services;

(b) Are not currently enrolled in any high school or other educational program receiving state basic education funding;

(c) Released from their district of residence, if the reengagement program is operated by a different district.

(3) Once determined eligible for reengagement programming, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree;

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(4) A student's eligibility does not necessarily guarantee enrollment or continued enrollment in specific reengagement programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

NEW SECTION

WAC 392-700-045 Enrollment. Students will be considered enrolled when they have:

(1) Met all eligibility criteria;

(2) Been accepted for enrollment by the school district;

(3) Been enrolled by the program;

(4) Participated in one day of instruction.

NEW SECTION

WAC 392-700-055 Student documentation. (1) The agency or college shall maintain student documentation verifying eligibility, enrollment, request for student records, minimum attendance, case management, award of credit, and performance.

(2) The agency or college shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(3) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

NEW SECTION

WAC 392-700-065 Instruction. (1) Instruction for reengagement students enrolled in programs operated by an agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and GED preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English as a second language instruction; and

(v) Other course work approved by the school district, including cooperative work experience.

(c) Instruction will be scheduled so that all enrolled students have the opportunity to attend and work with instructional staff during all the hours of the program's standard instructional day.

(2) Instruction for reengagement students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and classification of instructional; and

(b) The following instruction will be offered provided all students, as appropriate with their skills levels and goals, will have the opportunity to enroll in each:

(i) Basic skills remediation courses and GED preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(3) The instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(4) All reengagement instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work. All instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(a) All instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(b) All instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating student FTE (see also WAC 392-700-155) and will be designed to prepare students for course work that is at the ninth grade level or higher.

(5) The program will administer standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(6) The agency or college will provide all instruction, core instructional materials, and required academic skills assessments at no cost to the students.

NEW SECTION

WAC 392-700-075 Instructional staff to student ratio. (1) For reentry programs operated by agencies the following must be adhered to:

(a) The scheduled teaching hours of an instructional staff FTE will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(b) The agency will employ or assign instructional staff as needed to maintain an instructional staff FTE to student ratio that does not exceed 1:25.

(c) Instructional staff are defined as certificated instructors or instructor-supervised noncertificated staff. However, if noncertificated instructional staff are part of the calculated instructional staff FTE to student ratio, the following conditions must be met:

(i) Noncertificated staff may not be a replacement for the certificated teacher and must always be working under the guidance and direct supervision of the certificated teacher;

(ii) A certificated instructor must always be employed or assigned by the agency to provide instruction as part of the 1:25 instructional staff FTE to student ratio; and

(iii) The ratio of certificated instructional staff FTEs to students may not exceed 1:50.

(2) For reentry programs operated by colleges the following must be adhered to:

(a) The college will ensure that all instruction will be provided by instructors who are employed or appointed by the college whose required credentials are established by the college;

(b) Instructor to student ratio for any course open to both reengagement students and nonreengagement students will be determined by the college; and

(c) Instructor to student ratio for classes designed exclusively for reengagement students will not be less than 1:35.

NEW SECTION

WAC 392-700-085 Case management and student support. (1) Case management staff will be employed or assigned to the reengagement program to provide accessible, consistent support to students as well as academic advising, career guidance information, employment assistance or referrals, and referrals to social and health services.

(2) The program will maintain a case management staff to student ratio not to exceed 1:75 (one case manager FTE to seventy-five enrolled students) on a full-time continuous basis throughout the program year.

(3) Only the percent of each staff member's time that is allocated to fulfilling case management responsibilities for reengagement students will be included in the calculation of a program's case management staff FTE to student ratio.

(4) Even though the provision of case management services will require case management staff to work in the community to meet client needs, case management staff will be primarily based at the reengagement program's instructional site(s).

(5) The agency or college will ensure that case management services and instruction are integrated and coordinated and that procedures are in place that facilitate timely relevant communication about student progress.

(6) Case management staff will be employed or assigned to provide services to reengagement students on a continuous basis throughout the program year.

(7) All case management staff will be employed or assigned by the agency or college and will have at least a bachelor's degree in social work, counseling, education, or a related field OR at least two years experience providing case management, counseling or related direct services to at-risk individuals or sixteen to twenty-one year old youth.

NEW SECTION

WAC 392-700-095 District administrative responsibilities. (1) Upon the office of superintendent of public instruction's determination that a program is approved as a reengagement program and the written agreement or letter of intent governing the program is determined to contain standard language that delineates responsibility for all the required elements of a reengagement program as outlined in RCW 28A.175.100 and this chapter, OSPI will give the school district a school or program code that will be used to uniquely identify this program and all students enrolled in the program in the district's student data system and in CEDARS.

(2) The school district will work cooperatively with the agency or college to implement an agreement or letter of intent and ensure that quality reengagement services are provided.

NEW SECTION

WAC 392-700-105 Reporting of student data. (1) The school district will ensure that there is accurate and timely data entry of all reengagement program student information into its student data system.

(2) The district will transmit student data to CEDARS in accordance with OSPI standards and procedures for reengagement programs.

NEW SECTION

WAC 392-700-120 Statewide student assessment. (1) The school district will work with the agency or college to ensure that all reengagement students have the opportunity to participate in the statewide assessment and understand that this assessment, or an approved alternative, is a high school graduation requirement.

(2) The school district will include reengagement students when calculating district-wide statistics in relation to the statewide assessments.

(3) The agency or college program staff will not be required to be direct test administrators but may act in this capacity with the approval of the school district which will be responsible for the appropriate training of agency or college staff. The school district will submit the proposed test site information to OSPI if a reengagement program is operating in adult jail, adult institution, hospital care, home care, library, group home, or church.

NEW SECTION

WAC 392-700-135 Provision of special education and Section 504 of the Rehabilitation Act of 1973 accommodations. (1) The school district will be responsible for the provision of special education services to any enrolled reengagement students who qualify for special education in accordance with all state and federal law.

(2) Section 504 of the Rehabilitation Act of 1973 accommodations will be provided to all eligible students served by the agency or college in accordance with all applicable state and federal law.

NEW SECTION

WAC 392-700-145 Award of credit. (1) For reengagement programs operated by agencies, high school credit will be awarded for all agency course work in which reengagement students are enrolled, including GED preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month out of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized GED pretests during the quarter and the certificated instructor has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The certificated instructor has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.

(iv) For reengagement students taking part in school district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the school district.

(v) The school district may elect to award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's certificated instructor's recommendation and on a review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The certificated instructor has assessed student learning and determined that the course of study has been successfully completed.

(2) For reengagement programs operated by colleges, high school credit will be awarded for course work in which reengagement students are enrolled, in accordance with the following:

(a) The school district and the college will determine whether the high school diploma will be awarded by the

school district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work that is below the one hundred level but has been determined by the college to be at the ninth grade level or higher. The college will determine the type of credit. College GED and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of GED course work; and

(iv) Adult basic education (ABE) courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE. (Also see WAC 392-700-165.)

(c) If the school district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work at or above the one hundred level. The school district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work that is below the one hundred level but has been determined by the district to be at the ninth grade level or higher. The school district will determine the type and amount of credit for each class. College GED and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of GED course work; and

(iv) Adult basic education (ABE) courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE. (Also see WAC 392-700-165.)

(3) The school district is responsible for reporting all high school credits earned by reengagement students in accordance with OSPI regulations. College transcripts and other student records requested by the school district will be provided by the college or agency as needed to facilitate this process.

(4) The school district will ensure that the process for awarding high school credits under this contract is implemented as part of the school district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

NEW SECTION

WAC 392-700-155 Annual reporting calendar. (1) For reengagement programs operated by agencies, the following requirements will be met in relation to the school calendar:

(a) The school year calendar shall be as follows:

(i) The standard school year will have nine instructional months and will begin in September and end in May; and

(ii) The agency may, but is not required to, offer instruction during one or more months of the nonstandard school year which will begin in June and end in August;

(b) The agency will provide the district a calendar of instruction for the standard school year prior to the first day of instruction in September.

(c) If the agency is going to provide summer reengagement instruction during one or more months of the nonstandard school year, the agency will provide the district with a calendar for the nonstandard school year prior to April 1st.

(d) Both the standard year and nonstandard year calendars must meet the following criteria:

(i) Each of the instructional months will have at least ten instructional days;

(ii) The specific planned days of instruction will be identified;

(iii) The number of hours of instruction as defined in WAC 392-700-065 (1), (3), and (4) that will be provided in a standard instructional day will be defined. For the purposes of calculation:

(A) The calculation for standard instructional day may not exceed six hours per day even if instruction is provided for more than six hours per day; and

(B) The standard instructional day may not be less than two hours per day; and

(iv) The calculated number of hours of instruction that will be provided in a standard instructional day during the standard school year may be different than the calculated number of hours of instruction that will be provided in a standard instructional day in the nonstandard school year.

(e) The agency's total planned hours of instruction will be calculated and reported as part of each calendar.

(i) The total planned hours of instruction for the standard school year will be calculated by multiplying the total number of instructional days scheduled during the standard school year by the hours of instruction that will be provided on a standard instructional day during the standard school year; and

(ii) The total planned hours of instruction for the nonstandard school year will be calculated by multiplying the total number of instructional days scheduled during the nonstandard school year by the hours of instruction that will be provided on a standard instructional day during the nonstandard school year.

(f) If the agency is going to offer instruction for the nonstandard school year, the average hours of instruction per instructional month must be calculated and reported as part of the nonstandard year calendar. The average hours of instruction per month will be calculated by dividing the total planned hours of instruction for the nonstandard school year by the number of instructional months that will be provided during the nonstandard school year.

(2) For reengagement programs operated by colleges, the following requirements will be met in relation to the school calendar:

(a) The standard school year will be nine months in length.

(b) Annually, the college and the school district will determine whether the standard school year runs from September through May or from October through June.

(c) The count day for each of the nine months of the standard school year will be the first college instructional day of each of the months.

(d) Regardless of the program's annual reporting calendar, instruction will be offered in accordance with the college's academic calendar.

(e) Instruction provided during a college's summer quarter or summer session will not be included in the standard school year. The three months that include the summer quarter of summer sessions will be considered the nonstandard school year.

(f) The count day for each of the three months of the nonstandard school year will be the first college instructional day of each of the months.

(g) Colleges will not be required to offer instruction to reengagement students during the nonstandard school year.

NEW SECTION

WAC 392-700-160 Reporting of student FTE. (1) For reengagement programs operated by agencies, student FTE will be reported as follows:

(a) Student FTE for the standard school year for reengagement programs operated by agencies will be reported in accordance with the following:

(i) If the program's total planned hours of instruction for the standard school year equals or exceeds nine hundred hours (also see WAC 392-700-155 (1)(e)):

(A) The program will be considered a full-time program; and

(B) Each enrolled student will be reported for a standard full-time student FTE of 1.0 on each monthly count day of the regular school year as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1).

(ii) If the program's total planned hours of instruction for the regular school year totals less than nine hundred hours, then:

(A) The program will be considered a part-time program and a standard part-time FTE figure will be used;

(B) The standard part-time FTE figure will be calculated by dividing the total planned hours of instruction by nine hundred; and

(C) The standard part-time FTE figure will be reported for each enrolled student on each monthly count day of the standard school year as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1).

(b) Student FTE for the nonstandard school year for reengagement programs operated by agencies will be reported in accordance with the following:

(i) No student may be reported as an FTE on count days during the nonstandard year months of instruction after the point they have been reported by any district for 1.0 annual FTE for the school year beginning in September;

(ii) If the program's average hours of instruction per instructional month for the nonstandard school year equals or exceeds one hundred hours (also see WAC 392-700-155 (1)(f)):

(A) The program will be considered a full-time program; and

(B) Each enrolled student will be reported as a 1.0 FTE for each instructional month as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1); and

(iii) If the program's average hours of instruction per instructional month for the nonstandard school year is less than an average of one hundred hours per month of instruction:

(A) The program will be considered a part-time program and a standard part-time FTE figure will be used;

(B) The standard part-time FTE figure will be calculated by dividing the average hours of instruction per instructional month by one hundred; and

(C) The standard part-time FTE figure will be reported for each enrolled student on each monthly count day of the nonstandard school year as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1).

(2) For reengagement programs operated by colleges, student FTE will be reported in accordance with the following:

(a) The number of credits of college course work in which a student is enrolled on the monthly count day will determine the student FTE reported each month.

(b) A student enrolled in fifteen quarterly credits on the count day of any month will be reported as 1.0 FTE for that month.

(c) If a student is enrolled in more than fifteen quarterly credits on the count day of any month, only fifteen of these can be reported as reengagement enrollment credits and the student will be reported as 1.0 FTE for that month.

(d) If a student is enrolled in less than fifteen quarterly credits, the FTE reported for that month will be calculated by dividing the number of credits of enrollment by fifteen.

(e) If a student withdraws or is dropped prior to a monthly count day, the student will not be counted as enrolled for that month and no student FTE will be reported.

(3) For all reengagement programs, agencies, colleges, and school districts will adhere to the following when reporting student FTEs:

(a) No student may be counted for more than 1.0 FTE in any month (including nonvocational and vocational FTE).

(b) If nonstandard school year instruction is provided, FTE may not be reported for any student after a total of 1.0 annual FTE has been reported for that student by any school district during the standard school year.

(c) The agency or college may not report student FTEs to the school district and the school district may not report student FTEs to OSPI for reengagement students who are concurrently enrolled in any other program for which basic edu-

cation allocation funding is received, i.e., common high school, running start, alternative learning education, college in the high school, education clinic, or on-line learning.

(d) The agency or college may not report student FTEs to the school district and the school district may not report student FTEs to OSPI for reengagement students who are enrolled in course work that has been reported by a college for postsecondary student FTE.

NEW SECTION

WAC 392-700-165 Funding and reimbursement. (1) For reengagement programs operated by agency or college, the school district and the agency will receive state basic education apportionment funding, as authorized in RCW 28A.175.100 and WAC 392-700-001 relating to the creation of a statewide dropout reengagement system, in accordance with the procedures set forth below:

(a) Each student will be reported as a full- or part-time student FTE on each monthly count day in accordance with the procedures outlined in WAC 392-700-160, only if all of the following conditions are met:

(i) Enrollment on or before count day;

(ii) Have met the minimum attendance standard by attending at least one instructional day on count day or during the month prior to count day; and

(iii) Has not withdrawn prior to the monthly count day.

(b) For students enrolled in reengagement programs operated by an agency reporting of FTE for students will be dependent upon satisfactory progress as outlined below:

(i) Satisfactory progress will be defined as the documented attainment of at least one credential and/or one measure of academic progress during any period that a student is reported for a total of 3.0 student FTE (also see WAC 392-700-175(4));

(ii) If a student has not attained a credential or at least one of the approved measures of academic progress during the period that 3.0 student FTEs have been reported, no additional student FTE will be reported until the student does make one of the specified gains or earns a credential;

(iii) During the reporting exclusion period, the student will be allowed to continue to attend the reengagement program, if the program has the resources and capacity to support that student;

(iv) When and if the student achieves one of the specified gains or earns one of the credentials, FTE may again be reported for that student and the student will again be required to attain a measure of academic progress or earn a credential during the next period for which 3.0 student FTE is reported; and

(v) Rules governing the calculation of the 3.0 student FTEs as it relates to attain a measure of academic progress:

(A) The period during which the 3.0 student FTE is calculated and academic progress or a credential must be attained, may occur in two different school years, if the student is enrolled in successive school years;

(B) 3.0 student FTEs may be reported over the course of three successive months or over the course of multiple months;

(C) For students enrolled in full-time reengagement programs operated by an agency, 1.0 FTE will be reported each month for students who meet the conditions of WAC 392-700-160 (1)(b)(ii). Therefore, these students will be required to attain a measure of academic progress or earn a credential within three months;

(D) For students enrolled in part-time reengagement program operated by an agency, it will take more than three months to report 3.0 student FTEs because standard student FTE for all students who meet the conditions of WAC 392-700-160 (1)(b)(iii) is less than 1.0; and

(E) The period that is used to calculate the 3.0 student FTEs is not limited to successive months. (For example, if a student was claimed as 1.0 FTE for January, February and April, but not in March, the student will not have to make a gain or earn a credential until the end of April.)

(c) In relation to school closures, during the standard school year:

(i) If planned days of instruction, as scheduled on the standard year calendar, are not provided, the agency may make up the scheduled days, as long as the replacement days occur during the nine months that comprise the standard school year;

(ii) At the end of the standard school year, prior to the final invoice, the agency will report to the district the actual total hours of instruction provided. The agency may not include more than six hours per instructional day in this calculation per WAC 392-700-155 (1)(d)(iii);

(iii) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction, the amount of basic education apportionment funding received by the school district and agency will be adjusted retroactively on a proportional status and will be reflected on the final invoice;

(iv) If the program was a part-time program and total hours of instruction provided is less than the total planned hours of instruction, the amount of basic education apportionment funding received by the school district and agency will be adjusted retroactively on a proportional status and will be reflected on the final invoice; and

(v) These calculations take into account any reductions to the total planned hours of instruction that may have been made during the standard or nonstandard school year in the event of program closures consistent with the provisions of chapter 392-129 WAC.

(2) For reengagement programs operated by colleges, the school district and college will receive state basic education apportionment funding in accordance with the following:

(a) Reimbursement will be based on the student FTE reported each month;

(b) Student FTE will be reported as outlined in WAC 392-700-160(2); and

(c) If a student withdraws or is dropped from classes prior to a monthly count day, the student will not be counted as enrolled for that month and no student FTE will be reported for that month.

(3) For all reengagement programs, the following rules apply:

(a) School district will work with the agency or college to ensure that student FTE and related data is reported as required on the appropriate P223x form;

(b) The school district, agency, and college will ensure that no student FTE is reported nor reimbursement requested from OSPI for any student after the point they have been reported by any district for 1.0 annual FTE for the school year beginning in September;

(c) The agency or college may not report student FTEs for reengagement students who are concurrently enrolled in any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning education, college in the high school, education clinic, or on-line learning; and

(d) The agency or college may not report student FTEs to the school district for reengagement students enrolled in course work that has been reported by a college for postsecondary student FTE.

(4) For all reengagement programs the monthly reimbursement rate per student FTE for reengagement programs will be determined as follows:

(a) The annual standard nonvocational and vocational reimbursement rates for all reengagement program FTEs will equal the statewide average annual nonvocational and vocational FTE rates as determined by OSPI; and

(b) The amount of reimbursement received per month will equal the annual standard nonvocational and vocational reimbursement rate divided by nine.

(5) For reengagement programs operated by a college or agency under contract or interlocal agreement with a school district:

(a) The school district will retain seven percent of the basic education FTE allocation received from OSPI for reported student FTEs; and

(b) The agency or college will receive ninety-three percent of the basic education FTE allocation received by the school district from OSPI for reported student FTEs.

(6) For reengagement programs directly operated by a school district and serving only students enrolled in that district: The district will assume all the responsibilities outlined in this chapter for both the district and the program and will retain one hundred percent of the basic education FTE allocation received from OSPI for reported student FTEs.

(7) For reengagement programs directly operated by a technical college receiving direct funding and authorized to directly enroll students and act as a district under WAC 392-121-187: The technical college will assume all the responsibilities outlined in this chapter for both the district and the program and will retain one hundred percent of the basic education FTE allocation received from OSPI for reported student FTEs.

(8) For reengagement programs operated as part of a consortium with a consortium lead agency (see WAC 392-700-225 (4)(e)):

(a) The school district will retain five percent of the basic education FTE allocation received from OSPI for reported student FTEs;

(b) The consortium lead will receive seven percent of the basic education FTE allocation received from OSPI for reported student FTEs; and

(c) The agency or college will receive eighty-eight percent of the basic education FTE allocation received by the district from OSPI for reported student FTEs.

NEW SECTION

WAC 392-700-175 Required reports and record-keeping. (1) Agencies will submit a report of the actual and planned total hours of instruction for the standard school year with the last P223 report of the standard school year and colleges will submit a report of the actual and planned total days of instruction for the regular school year with the last P223 of the standard school year.

(2) Agencies will submit a report of the actual and planned total hours of instruction for the nonstandard school year with the last P223 report of the nonstandard school year and colleges will submit a report of the actual and planned total days of instruction for the nonstandard school year with the last P223 of the nonstandard school year.

(3) On a monthly basis, the agency or college will report the type of credentials earned by each enrolled student and by monthly and year-to-date total for the following:

(a) GED;

(b) High school diploma;

(c) College certificate received after completion of a program requiring at least forty hours of instruction;

(d) College degree; and

(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

(4) Each month the following measures of academic progress for each student will be reported on a monthly and year-to-date basis:

(a) Passes one or more GED tests (may only be claimed once in a year);

(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);

(c) Completes approved college readiness course work with documentation of competency attainment;

(d) Completes job search and job retention course work with documentation of competency attainment;

(e) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet all the requirements of WAC 392-410-315 (2);

(f) Enrolls in postsecondary classes other than ABE/GED/ESL or continuing education courses;

(g) Transitions from ESL to ABE/GED classes;

(h) Transitions from ABE/GED classes to postsecondary developmental math and English classes (math or English classes at less than the 101 level);

(i) Transitions from postsecondary developmental math or English classes to the next level of postsecondary developmental math or English or from postsecondary developmental math or English classes to college level math and English classes (classes above at 101 or above); and

(j) Transitions from ABE/GED classes to college level classes at 101 or above (other than English or math).

(5) The agency or college will prepare and submit an annual performance report with, at a minimum, statistics related to the following standard reengagement system performance goals.

(a) Total enrolled students;

(b) Total annual FTE: The sum of all the enrolled students' annual FTE;

(c) Average annual FTE: The total annual student FTEs by the total enrolled students;

(d) Total measures of academic progress made and measures of academic progress made per annual student FTE: Total measures of academic progress divided by the total annual student FTE;

(e) Total high school credits earned and high school credits per annual student FTE;

(f) Total credentials earned and credentials earned per annual student FTE: Total high school credits divided by the total annual student FTE; and

(g) Total college credits earned and college credits earned per annual student FTE: Total college credits divided by the total annual student FTE.

(6) The program's annual performance report for the standard school year will be provided by the agency or college to the school district by no later than July 1st.

(7) The program's annual performance report, which will include outcomes from both the standard school year and the nonstandard school year and total annual school year will be provided by the agency or college to the school district by no later than September 1st.

(8) The school district will provide the program's annual performance report to the OSPI administrator responsible for implementation of the reengagement system by no later than September 30th.

NEW SECTION

WAC 392-700-195 Longitudinal performance goals. (1) Longitudinal performance data for the reengagement program and the statewide reengagement system as a whole will be reported through the Washington's P-20 (preschool to postsecondary and workforce) longitudinal data system maintained by the ERDC.

(2) The school district will work with the agency or college to collect and report student data requested by the ERDC in order to accomplish the longitudinal follow-up of reengagement students. Specifically, the following unique identifier data points will be collected, to the extent possible, by the program, reported by the agency, and verified by the school district, for each enrolled reengagement student:

(a) Full legal name;

(b) Birth date;

(c) State student identifier (SSID);

(d) Social Security number; and

(e) College student identification number (SID), if applicable.

(3) While reengagement students will be encouraged to provide the data needed for longitudinal follow-up, the program will ensure that a student's unwillingness or inability to provide the requested data will not be a barrier to enrollment.

(4) Appropriate school district and/or agency, college, or consortium lead staff will participate in ERDC or OSPI training related longitudinal follow-up and a specific school district staff or school district designated program staff will be responsible for ensuring that accurate and complete student identifier data points are entered into the school district's student information system in accordance with this training.

(5) At the end of each program year, the ERDC will identify the cohort of students for each reengagement program for whom longitudinal tracking will be done. A standard criteria to determine when students will be included in a longitudinal study cohort will be developed by the ERDC, with input from OSPI, district and program representatives and will apply to all reengagement programs.

(6) The ERDC will collect longitudinal data for each specific program cohort on an annual basis for five years. The ERDC will work with the OSPI administrator responsible for reengagement programs to prepare annual program specific reports for each cohort and an annual system-wide report for the entire reengagement system including data for the cohorts of all programs.

(7) The ERDC and OSPI will work with the school district so that the school district and the agency or college will have the opportunity to review data about the program prior to the release of the annual reports in December of each year. The ERDC and OSPI will develop procedures by which the school district or agency can provide supplemental information and backup documentation for review and inclusion as it relates to postsecondary or workforce engagement of specific students in the cohort.

(8) In relation to postsecondary engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:

(a) Total number of annual FTEs originally reported by the program during targeted school year for which follow-up data is being collected;

(b) Quarters of enrollment in postsecondary programming or other advanced training during the follow-up year and since the targeted school year ended;

(c) Enrolled credits per quarter during the follow-up year and total enrolled credits since the targeted school year ended;

(d) Earned credits per quarter during the follow-up year and total earned credits since the targeted school year ended; and

(e) Credentials earned during the follow-up year and total credentials earned since the targeted school year.

(9) In relation to labor market engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:

(a) Total number of annual FTEs originally reported by the program during targeted school year for which follow-up data is being collected;

(b) Number of quarters with employment during the follow-up year and since the targeted school year ended;

(c) Average hours worked per week for any employment reported during the follow-up year and since the targeted school year ended;

(d) Average pay per hour for any employment reported during the follow-up year and since the targeted school year ended; and

(e) Total earnings during the follow-up year and since the targeted school year ended.

NEW SECTION

WAC 392-700-200 Other agreements. Students enrolled in the program shall bear responsibility for their own transportation to and from the agency or college.

NEW SECTION

WAC 392-700-225 Operating agreements and OSPI approval. (1) All reengagement programs must be approved by OSPI and assigned a reengagement program code to be used in each district's student information system and CEDARS to identify all students enrolled in the program.

(2) Approval for each program will be determined as follows:

(a) If the school district is entering a contract or interlocal agreement with an agency or college to operate a program, OSPI will review the contract or interlocal agreement that the school district has developed with the agency or college.

(b) If a school district is directly operating a program and not entering into a contract or interlocal agreement with another entity, OSPI will review a letter of intent signed by the school district superintendent that outlines the required specific elements that will be included in the program.

(c) If a technical college receiving direct funding under WAC 392-121-187 is directly operating a program, OSPI will review a letter of intent signed by the technical college president that outlines the required specific elements that will be included in the program and will review the interlocal agreement that was signed by the technical college and the referring districts as a requirement under WAC 392-121-187.

(d) If a reengagement program is being provided through a consortium, OSPI will review the consortium agreement signed by the consortium lead and the participating school districts and each contract or interlocal agreement developed by the lead agency with an agency or college.

(3) OSPI will provide a model interlocal agreement, a model contract, a model letter of intent, and a model consortium agreement and will indicate which elements of these standard documents must be included in any document being submitted to OSPI for review and approval.

(4) Because school districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve youth, many models of operation are authorized as part of the statewide dropout reengagement system:

(a) A school district may enter into an interlocal agreement with a college to provide a dropout reengagement program for eligible students. The agreement will define whether the program will only serve students who are residents of the school district or whether the program will also serve students who are not residents of the school district but who petition for release from their resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(b) A school district may enter into a contract with an agency to provide a dropout reengagement program for eligible students. The contract will define whether the program will only serve students who are residents of the school district or whether the program will also serve students who are not residents of the school district but who petition for release from their resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(c) A school district may directly operate a dropout reengagement program for eligible students enrolled in the district. The letter of intent will define whether the program will only serve students who are residents of the school district or whether the program will also serve students who are not residents of the school district but who petition for release from their resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(d) A technical college receiving direct funding and authorized to directly enroll students and act as a district under WAC 392-121-187 may directly operate a reengagement program and serve students referred from multiple districts. The technical college will assume all the responsibilities of the district and the reengagement program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(e) A school district may work with other school districts, with regional partner agencies, with colleges in or near the district to form a consortium. The purpose of the consortium will be to create and operate a reengagement program or reengagement programs that will serve students enrolled in multiple school districts and reduce the administrative burden on school districts. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(i) Take the lead in organizing and managing the regional consortium;

(ii) Provide information and technical assistance to districts interested in participating in the consortium and providing the opportunity for students from their district to enroll;

(iii) Develop a consortium agreement that is signed by all member school districts;

(iv) Develop interlocal agreements and contracts with agencies and colleges to operate reengagement programs;

(v) Submit the consortium agreement and interlocal agreement(s) and contract(s) to OSPI for approval;

(vi) Provide oversight and technical assistance to programs to ensure compliance with all requirements of this chapter and the delivery of quality programming;

(vii) Assist programs with the preparation of required reports, enrollment data, and course records needed by each school district to enroll students, award credit and report FTE and performance to OSPI;

(viii) Facilitate data entry of all required student data into each district's statewide student information system related to enrollment; and

(ix) Work with the school districts to facilitate the provision of special education and accommodations under Section 504 of the Rehabilitation Act of 1973.

WSR 11-17-049
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-192—Filed August 11, 2011, 3:20 p.m., effective September 11, 2011]

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

Purpose: The new WAC specifies legal season dates, bag limits, and open areas to hunt waterfowl, coot, and snipe for the 2011-12 hunting season.

Waterfowl seasons and regulations are developed based on cooperative management programs among states of the Pacific Flyway and the United States Fish and Wildlife Service, considering population status and other biological parameters. The rule establishes waterfowl seasons and regulations to provide recreational opportunity, control waterfowl damage, and conserve the waterfowl resources of Washington.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-433 and 232-28-434.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.070.

Other Authority: C.F.R. Title 50, Part 20; Migratory Bird Treaty Act.

Adopted under notice filed as WSR 11-13-089 on June 17, 2011.

Changes Other than Editing from Proposed to Adopted Version: **WAC 232-28-435 2011-12 Migratory waterfowl seasons and regulations.**

Changes from the text of the proposed rule and reasons for difference:

- In Goose Management Area 1, additional requirements for the use of snow goose decoys were developed for the 2010-11 season to reduce trespass, ethical hunting concerns, and safety issues on Fir Island in Skagit County. The 2010-11 requirements were continued in the draft 2011-12 rule, which included size, numbers, placement, and attendance of decoys. The proposed adjustment eliminates requirements and associated penalties based on recent input from the Fir Island Working Group, which viewed the requirements as being too restrictive, interfering with legitimate hunting practices, and discouraging participation in the season.
- For the regular and late seasons in Goose Management Areas 2A and 2B, specific limits for cackling geese were not proposed in the draft rule. Due to lower cackling goose breeding numbers recorded in July 2011 and the continuing need to address agricultural damage concerns, United States Fish and Wildlife Service established the cackling goose limits at 3 per day and 6 in possession. These adjustments to limits are recommended in several locations in the draft rule.
- For Goose Management Area 2B, the Oct. 15 - Jan. 14 season dates are recommended for adjustment to Oct. 15-26 and Nov. 5 - Jan. 21, for both the regular and falconry seasons. The one week closure is proposed to accommodate a new Pacific Flyway population survey for the area, which requires no harvest of marked birds during the survey period.
- For Goose Management Areas 2A and 2B, the definition of a cackling goose was omitted from the draft rule because specific bag limits were not proposed. Specific cackling goose limits are recommended as adjustments to the draft rule, so the definition is now required and also included as a recommended adjustment.
- The brant season in Pacific County was proposed in the draft rule for ten days during January 14-29. In response to recent input from the waterfowl advisory group, the proposed adjustment shifts the ten day season one week earlier to January 7-22, to allow less overlap with the Skagit County brant season.
- The draft rule proposed an administrative penalty in 2012-13 for failing to report 2011-12 migratory bird harvest by established deadlines. This penalty is proposed for consistency with nonreporting penalties for several other game species with mandatory reporting requirements. The recommended adjustment proposes delaying implementation by one year, because of unanticipated scheduling problems in applying the penalty through the WILD licensing system for 2012-13. This adjustment will allow more time for implementation in the WILD licensing system and additional notice for migratory bird hunters.

Adoption of cougar rules contained in WSR 11-13-089 will come under a separate CR-103P, with filing expected on or shortly after August 19, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 11, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

NEW SECTION

WAC 232-28-435 2011-12 Migratory waterfowl seasons and regulations.

DUCKS

Statewide

Oct. 15-19, 2011 and Oct. 22, 2011 - Jan. 29, 2012; except scaup season closed Oct. 15 - Nov. 4.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 24-25, 2011.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 3 scaup, 1 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 6 scaup, 2 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season limit: 1 harlequin in Western Washington.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS

Hunters must possess a special 2011-2012 hunting authorization and harvest record card for sea ducks when hunting harlequin, scoter, long-tailed duck, and goldeneye in Western Washington. Hunters who did not possess a 2010-11 sea duck harvest record card must submit an application form to WDFW. Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest record card.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.
Possession limit: 25 coots.

SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.
Possession limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 24-25, 2011, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.
Possession limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1

Island, Skagit, Snohomish counties.

Oct. 15, 2011 - Jan. 29, 2012 for snow, Ross', and blue geese. Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012 for other geese (except Brant).

Daily bag limit: 4 geese.
Possession limit: 8 geese.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE

Hunters must purchase a special 2011-12 migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. Hunters who did not possess a 2010-11 snow goose harvest record card must submit an application form to WDFW. Immediately after taking a snow, Ross', or blue goose into possession, hunters must record in ink the information required on the harvest record card.

SNOW GOOSE QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1

All hunters must obey posted signs regarding access restrictions. Quality hunt units are not available for commercial uses.

SKAGIT COUNTY SPECIAL RESTRICTIONS

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; or (d) exceeding the daily bag limit for geese, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 12-27, 2011 and Dec. 7, 2011 - Jan. 29, 2012, except closed Dec. 25, 2011 and Jan. 1, 2012. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 12-26, 2011 and Dec. 8, 2011 - Jan. 28, 2012, except closed Nov. 24, 2011 and Dec. 25, 2011 and Jan. 1, 2012.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 3 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 6 cackling geese.

Season limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 15-26, 2011 and Nov. 5, 2011 - Jan. 21, 2012.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 3 cackling geese, and 1 Aleutian goose.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 6 cackling geese, and 2 Aleutian geese.

Season limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 40 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 40 duskys, to be distributed 5 for Zone 1 (Ridgefield NWR); 5 for Zone 2 (Cowlitz County south of the Kalama River); 15 for Zone 3 (Clark County except Ridgefield NWR); 7 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 8 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunters must possess a special 2011-12 migratory bird hunting authorization for Goose Management Area 2A/2B and daily goose harvest record card when hunting geese in Goose Management Areas 2A and 2B. New hunters and those who did not maintain a valid 2010-11 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to Washington department of fish and wildlife master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2011-12 southwest Washington goose hunting authorization and harvest record card, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 4 - Mar. 7, 2012.

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 3 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 6 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 45 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012.

Daily bag limit: 4 geese.
Possession limit: 8 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Saturdays, Sundays, and Wednesdays only during Oct. 15, 2011 - Jan. 22, 2012; Nov. 11, 24, and 25, 2011; Dec. 26, 27, 29, and 30, 2011; January 16, 2012; and every day Jan. 23-29, 2012.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 15-19, 2011, every day from Oct. 22, 2011 - Jan. 29, 2012.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.
Possession limit: 8 geese.

BRANT

Open in Skagit County only on the following dates:

Jan. 14, 15, 18, 21, 22, 25, 28, and 29, 2012.

If the 2011-12 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:
Jan. 7, 8, 10, 12, 14, 15, 17, 19, 21, and 22, 2012.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT

Hunters must possess a special 2011-12 migratory bird hunting authorization and harvest record card for brant when hunting brant. Hunters who did not possess a 2010-11 brant harvest record card must submit an application form to WDFW. Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest record card.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.
Possession limit: 4 brant.

SWANS

Season closed statewide.

MANDATORY REPORTING FOR MIGRATORY BIRD HARVEST RECORD CARDS

Hunters must report 2011-12 harvest information from band-tailed pigeon harvest record cards to WDFW for receipt by September 30, 2011, and harvest information from brant, sea duck, and snow goose harvest record cards to WDFW for receipt by February 15, 2012. Every person issued a migratory bird hunting authorization and harvest record card must return the entire card to the Washington department of fish and wildlife or report the card information at the designated internet site listed on the harvest record card. Any hunter failing to report by the deadline will be in noncompliance of reporting requirements. Hunters who have not reported hunting activity by the reporting deadline for any harvest record card acquired in 2012-13 will be required to pay a $10 administrative fee before any new 2013-14 migratory bird authorization and harvest record card will be issued. A hunter may only be penalized a maximum of $10 during a license year.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 15-19, 2011 and Oct. 22, 2011 - Jan. 29, 2012 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 15, 2011 - Jan. 29, 2012 for snow, Ross', or blue geese. Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 12-27, 2011 and Dec. 7, 2011 - Jan. 29, 2012.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 15-26, 2011 and Nov. 5, 2011 - Jan. 21, 2012.

Goose Management Areas 3, 4, and 5: Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-433	2009-10 Migratory waterfowl seasons and regulations.
WAC 232-28-434	2010-11 Migratory waterfowl seasons and regulations.

WSR 11-17-050
PERMANENT RULES
HORSE RACING COMMISSION

[Filed August 12, 2011, 2:30 p.m., effective September 12, 2011]

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

Purpose: Allows a trainer to purchase short duration coverage in thirty day increments at Class A and B tracks and adds exercise rider premiums to the short duration coverage.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders and 260-36-230 Short duration industrial insurance.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 11-13-023 on June 6, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 12, 2011.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders. (1) At the time of licensing, and as provided in this section and WAC 260-36-230, a trainer must pay the annual industrial insurance premiums for exercise riders established by labor and industries, unless exempted under WAC 260-36-240. Coverage will only apply to licensed exercise riders exercising horses for a licensed trainer and for trainers, also licensed as exercise riders, exercising any of the horses in their care. It is the trainer's responsibility to ensure all exercise riders in their employ are properly licensed by the commission.

(2)(a) A trainer at a Class A or B track must pay all required annual industrial insurance premiums for exercise riders equal to the maximum number of horses in training on any given day during the calendar year that the trainer has both on and off the grounds of a racing association.

(b) For horses on the grounds of a Class A or B track, a trainer must count stalls that are occupied by horses (including horses that are sick or injured) under the trainer's care. Premiums will be calculated on the total number of stalls allotted by the racing association, even if the horse is stalled on the grounds for a day or less. (For example, if a trainer comes to Washington to enter or nominate his/her horse in one race and the horse is only on the grounds for one day, the trainer is required to pay the full industrial insurance premium for that one horse, except as provided in WAC 260-36-230.) Stalls assigned to and occupied by pony horses will not be counted.

(c) For horses off the grounds, a trainer must count all horses in training that are subject to being ridden by licensed exercise riders, if the exercise riders are to be covered by the Washington labor and industries insurance under the horse industry account.

(d) If any trainer increases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is responsible to pay the additional premiums as provided in this section.

(e) If any trainer decreases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is not entitled to any refund as premiums are annual fees that are not prorated and are assessed on the maximum number of horses in training on any day during the calendar year.

(f) It is the trainer's responsibility to maintain records and accurately report the number of horses in training (both on and off the grounds) for purposes of paying industrial insurance premiums required by this section. Any time during the calendar year if a trainer increases the number of horses in training or racing beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

(3)(a) A trainer at a Class C track must pay industrial insurance premiums for exercise riders equal to the maximum number of different horses the trainer starts at the Class C tracks during the calendar year, or the maximum number of horses the trainer has in training, whichever is greater. All trainers at a Class C track are required to pay industrial insurance for at least one horse.

(b) If during the calendar year a horse is started by more than one trainer that horse, for the purpose of calculating the annual industrial insurance premium a trainer is required to pay, will count as a different horse for each trainer.

(c) It is the trainer's responsibility to maintain records and accurately report the number of different horses started or in training for the purpose of paying industrial insurance premiums required in this section. Any time during the calendar year if a trainer increases the number of different horses started or the total number of horses in training beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-230 Short duration industrial insurance coverage. (1) ((~~Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the trainer's base premium and the groom and/or assistant trainer slot(s). The reduced premiums for short duration coverage will not apply to the additional premiums required to cover exercise riders as provided in WAC 260-36-220. The following conditions will apply for short duration coverage:~~

~~(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.~~)) Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the amount of industrial insurance premium a trainer has to pay to provide employees financial relief from injury. Short duration coverage may be purchased no sooner than seven days prior to the start of the live race meet where the trainer plans to run. The following conditions will apply for short duration coverage:

(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for thirty consecutive calendar days. Trainers who have purchased any annual coverage at Class A or B race meets

including paying premiums quarterly are not eligible for short duration coverage. Thirty-day short duration coverage can be purchased for each trainer's base coverage. Separate thirty-day short duration coverage can be purchased for each groom, and/or assistant trainer and separate coverage can be purchased for each exercise rider (WAC 260-36-220). The premium for thirty-day coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class A or B race meet short duration coverage for three thirty-day periods per calendar year. If a trainer extends coverage for more than three thirty-day periods the trainer will owe the annual premium for each groom and assistant trainer, and the annual premium for exercise rides (based on all horses on the grounds during the previous ninety-day coverage period). The premium owed for coverage extending past ninety days will be the annual premium, less what the trainer may have already purchased for each risk class.

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. ((~~The trainer must pay twenty percent of the trainer base premium, and twenty percent of each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class C race meets.~~)) Seven-day short duration coverage can be purchased for each trainer's base premium. Separate seven-day short duration coverage can be purchased for each groom and assistant trainer. The premium for seven-day short duration coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission. Prior to the end of each short duration coverage period a trainer must pay the short duration premium for any additional grooms, or assistant trainers (groom slots) and any additional horses brought on the grounds of a Class A or B race meet, or any additional horses started in a race at Class C race meets.

WSR 11-17-056
PERMANENT RULES
HORSE RACING COMMISSION

[Filed August 15, 2011, 7:40 a.m., effective September 15, 2011]

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

Purpose: Allows the commission to retain .5 percent of the SMF's originally placed into the Class C purse fund as allowed by ESSB 5747.

Citation of Existing Rules Affected by this Order: Amending WAC 260-49-070 Distribution of source market fees.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 11-13-022 on June 6, 2011.

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

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

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

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

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

Date Adopted: August 12, 2011.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-21-015, filed 10/9/09, effective 11/9/09)

WAC 260-49-070 Distribution of source market fee. (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) Ninety percent of the total source market fee directly to the class 1 racing association and the remaining ten percent directly to the commission.

(b) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred owners' bonus fund and breeder award account as provided in RCW 67.16.175.

(c) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(d) The commission shall distribute two and one-half percent of the total source market fee to the Washington bred owners' bonus fund and breeder award account and ((~~one-half of one percent of the total source market fee to the class C purse fund account and~~)) seven and one-half percent of the total source market fee to the commission's operating account.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

WSR 11-17-061
PERMANENT RULES
DEPARTMENT OF HEALTH
(Occupational Therapy Practice Board)

[Filed August 15, 2011, 3:49 p.m., effective September 15, 2011]

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

Purpose: WAC 246-847-175, this rule is repealed because it is not necessary because the occupational therapy practice board has statutory authority to delegate the decision to initiate investigations to a panel.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-847-175.

Statutory Authority for Adoption: RCW 18.130.050 and 18.59.130.

Other Authority: RCW 18.130.080.

Adopted under notice filed as WSR 11-07-094 on March 22, 2011.

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

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

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

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

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

Date Adopted: May 27, 2011.

Camille Curry
Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-847-175	Delegation of authority to initiate investigations.

WSR 11-17-062
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed August 15, 2011, 4:01 p.m., effective October 1, 2011]

Effective Date of Rule: October 1, 2011.

Purpose: The purpose of this rule is to adopt the federal Lead and Copper Rule - Short-term Revisions into chapter 246-290 WAC, Group A public water supplies. The rule provides more effective public health protection by reducing exposure to lead in drinking water. The rule revisions clarify monitoring requirements, improve consumer awareness, as well as provide editorial changes to improve overall clarity and consistency with federal requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-290-025, 246-290-300, 246-290-320, and 246-290-72010.

Statutory Authority for Adoption: RCW 43.20.050(2).

Other Authority: RCW 70.119A.080.

Adopted under notice filed as WSR 11-12-033 on May 25, 2011.

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

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

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

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

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

Date Adopted: July 12, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-025 Adoption by reference. The following sections and subsections of Title 40 Code of Federal Regulations (CFR) Part 141 National Primary Drinking Water Regulations revised as of July 1, 2009, and including all amendments and modifications thereto effective as of the date of adoption of this chapter are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

Action level;

Corrosion inhibitor;

Effective corrosion inhibitor residual;

Enhanced coagulation;

Enhanced softening;

Haloacetic acids (five) (HAA5);

First draw sample;

Large water system;

Lead service line;

Maximum residual disinfectant level (MRDL);

Maximum residual disinfectant level goal (MRDLG);

Medium-size water system;
Optimal corrosion control treatment;
Service line sample;
Single family structure;
Small water system;
Specific ultraviolet absorption (SUVA); and
Total Organic Carbon (TOC).

141.12	Maximum contaminant levels for organic chemicals.
141.13	Maximum contaminant levels for turbidity.
141.21	Coliform monitoring.
141.22	Turbidity sampling and analytical requirements.
141.23(a) - excluding (i)(2)	141.23(j), Inorganic chemical sampling.
141.23(m) -	141.23(o)
141.24(a) -	141.24(d), Organic chemicals other than total trihalomethanes.
141.24 (f)(1) - 141.24 (f)(15), 141.24 (f)(18), 141.24 (f)(19), 141.24 (f)(21), 141.24 (f)(22) 141.24 (g)(1) - 141.24 (g)(9), 141.24 (g)(12) - 141.24 (g)(14), 141.24 (h)(1) - 141.24 (h)(11), 141.24 (h)(14) - 141.24 (h)(17) 141.24 (h)(20)	
141.25(a),	141.25 (c) - (d), Analytical methods for radioactivity.
141.26	Monitoring frequency and compliance for radioactivity in community water systems.
141.31(d)	Reporting of public notices and compliance certifications.
141.33(e)	Record maintenance of public notices and certifications.
141.40	Monitoring requirements for unregulated contaminants.
141.61	Maximum contaminant levels for organic contaminants.
141.62, excluding (b)	Maximum contaminant levels for inorganic chemical and physical contaminants.
141.64	Maximum contaminant levels and Best Available Technologies (BATs) for disinfection byproducts.
141.65(c)	Best Available Technologies (BATs) for Maximum Residual Disinfectant Levels.
141.66	Maximum contaminant levels for radionuclides.

Control of Lead and Copper

141.80, excluding (c)(3)(v)	General requirements.
141.81	Applicability of corrosion control treatment steps to small, medium-size and large water systems.
141.82(a) -	141.82(h) Description of corrosion control treatment requirements.
141.83	Source water treatment requirements.
141.84	Lead service line replacement requirements.
141.85	Public education and supplemental monitoring requirements.
141.86 (a) - (f)	Monitoring requirements for lead and copper in tap water.
141.87	Monitoring requirements for water quality parameters.
141.88	Monitoring requirements for lead and copper in source water.
141.89	Analytical methods for lead and copper testing.
141.90, excluding (a)(4)	Reporting requirements.
141.91	Recordkeeping requirements.

Disinfectants and Disinfection Byproducts (D/DBP)

141.130	General requirements.
141.131	Analytical requirements.
141.132	Monitoring requirements.
141.133	Compliance.
141.134	Reporting and recordkeeping.
141.135	Treatment technique for control of disinfection byproduct precursors.

Subpart O - Consumer Confidence Reports

141.153 (h)(6)	Contents of the reports.

Enhanced Filtration - Reporting and Recordkeeping

141.175(b)	Individual filter reporting and follow-up action requirements for systems treating surface water with conventional, direct, or in-line filtration and serving at least 10,000 people.

Subpart Q - Public Notification

141.201, excluding (3)(ii) of Table 1	General public notification requirements.
141.202, excluding (3) of Table 1	Tier 1 Public Notice - Form, manner, and frequency of notice.
141.203	Tier 2 Public Notice - Form, manner, and frequency of notice.

141.204	Tier 3 Public Notice - Form, manner, and frequency of notice.
141.205	Content of the public notice.
141.206	Notice to new billing units or new customers.
141.207	Special notice of the availability of unregulated contaminant monitoring results.
141.208	Special notice for exceedances of the SMCL for fluoride.
141.211	Special notice for *Cryptosporidium* monitoring failure.
Appendix A - NPDWR violations and situations requiring PN	
Appendix B - Standard health effects language for PN	
Appendix C - List of acronyms used in PN regulation	
141.400	General requirements and applicability.
141.402(c)	Groundwater source microbial monitoring and analytical methods.
141.403 (b)(3)(i) through (iii)	Treatment technique requirements for groundwater systems.
Subpart T - Enhanced Filtration and Disinfection - Systems Serving Fewer Than 10,000 People	
141.530 - 141.544	Disinfection profile and benchmark.
141.563	Follow-up actions required.
141.570, excluding (c)	Reporting requirements.
Subpart U and V - Initial Distribution System Evaluations and Stage 2 Disinfection Byproducts Requirements.	
141.600 - 141.605	Initial distribution system evaluations.
141.620 - 141.629	Stage 2 Disinfection Byproducts Requirements.
Subpart W - Enhanced Treatment for *Cryptosporidium*	
141.700-722 Enhanced Treatment for *Cryptosporidium*	
Part 143 - National Secondary Drinking Water Regulations	
143.1	Purpose.
143.2	Definitions.
143.3	Secondary maximum contaminant levels.
143.4	Monitoring.

Copies of the incorporated sections and subsections of Title 40 CFR are available from the Department of Health, P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at 800-521-0323.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-300 Monitoring requirements. (1) General.

(a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:

(i) Contamination is present or suspected in the water system;

(ii) A groundwater source is determined to be a potential GWI;

(iii) The degree of source protection is not satisfactory;

(iv) Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver;

(v) Under other circumstances as identified in a department order; or

(vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.

(b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to EPA-approved methods. The analyses shall be performed by a laboratory accredited by the state. Qualified water utility, accredited laboratory, health department personnel, and other parties approved by the department may conduct measurements for pH, temperature, residual disinfectant concentration, alkalinity, bromide, chlorite, TOC, SUVA, turbidity, calcium, conductivity, orthophosphate, and silica as required by this chapter, provided, these measurements are made according to EPA approved methods.

(d) Compliance samples required by this chapter shall be taken at locations listed in Table 3 of this section.

(e) Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department under WAC 246-290-480; and

(ii) The owner or operator of any consecutive system served and the appropriate water system users under 40 CFR 141.201 and Part 7, Subpart A of this chapter.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring under this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples under subsection (3) of this section;

(ii) Collect disinfection byproduct samples as required by subsection (6) of this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring under subsection (6) of this section, and as required under WAC 246-290-451 or 246-290-694. Systems with fewer than one hundred connections shall measure residual disinfectant concentration at the same time and location that a routine or repeat coliform sample is collected,

unless the department determines that more frequent monitoring is necessary to protect public health;

(iv) Perform lead and copper monitoring required under 40 CFR 141.86, 141.87, and 141.88;

(v) Perform the distribution system monitoring under 40 CFR 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

(c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, disinfection byproduct (including THMs and HAA5) and distribution system disinfectant residual concentration monitoring requirements, provided the receiving system:

(i) Purchases water from a purveyor that has a department-approved regional monitoring program;

(ii) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitoring, reporting and maintenance of the distribution system; and

(iii) Has at least one compliance monitoring location for disinfection byproducts, if applicable.

(d) Periodic review of regional programs. The department may periodically review the sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

(3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall measure the residual disinfectant concentration within the distribution system at the same time and location of routine and repeat samples.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and recorded on all coliform sample report forms submitted for compliance purposes.

(b) Coliform monitoring plan.

(i) The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. The plan shall include coliform sample collection sites and a sampling schedule.

(ii) The purveyor shall:

(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(c) Monitoring frequency. The number of required routine coliform samples is based on total population served.

(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table 1 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table 1, and no less than required under 40 CFR 141.21. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily population served is less than twenty-five, routine sample collection is not required when:

(A) Using only protected groundwater sources;

(B) No coliform were detected in samples during the previous month; and

(C) One routine sample has been collected and submitted for analysis during one of the previous two months.

(iii) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both resident and nonresident as determined by the department, but no less than the minimum required in Table 1; and

(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.

(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.

(d) Invalid samples. When a routine or repeat coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:

(i) Not include the sample in the determination of monitoring compliance; and

(ii) Take follow-up action as defined in WAC 246-290-320 (2)(d).

(e) Assessment source water monitoring. If directed by the department, a groundwater system must conduct assessment source water monitoring which may include, but is not limited to, collection of at least one representative groundwater source sample each month the source provides groundwater to the public, for a minimum of twelve months.

(i) Sampling must be conducted as follows:

(A) Source samples must be collected at a location prior to any treatment. If the water system's configuration does not allow sampling at the source itself, the department may approve an alternative source sampling location representative of the source water quality.

(B) Source samples must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 CFR 141.402(c).

(ii) A groundwater system may use a triggered source water sample collected under WAC 246-290-320 (2)(g) to meet the requirements for assessment source water monitoring.

(iii) Groundwater systems with an *E. coli* positive assessment source water sample that is not invalidated under WAC 246-290-320 (2)(g)(vii), and consecutive systems receiving water from this source must:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5); and

(B) Take corrective action as required under WAC 246-290-453(1).

(iv) The purveyor of a groundwater system that fails to conduct assessment source water monitoring as directed by the department shall provide Tier 2 public notice under Part 7, Subpart A of this chapter.

(f) The purveyor using a surface water or GWI source shall collect representative source water samples for bacteriological density analysis under WAC 246-290-664 and 246-290-694 as applicable.

TABLE 1

MINIMUM MONTHLY ROUTINE COLIFORM SAMPLING REQUIREMENTS

Population Served [1] During Month		Minimum Number of Routine Samples/Calendar Month: When NO samples with a coliform presence were collected during the previous month	Minimum Number of Routine Samples/Calendar Month: When ANY samples with a coliform presence were collected during the previous month
1 -	1,000	1*	5
1,001 -	2,500	2*	5
2,501 -	3,300	3*	5
3,301 -	4,100	4*	5
4,101 -	4,900	5	5
4,901 -	5,800	6	6
5,801 -	6,700	7	7
6,701 -	7,600	8	8
7,601 -	8,500	9	9
8,501 -	12,900	10	10
12,901 -	17,200	15	15
17,201 -	21,500	20	20
21,501 -	25,000	25	25
25,001 -	33,000	30	30
33,001 -	41,000	40	40
41,001 -	50,000	50	50
50,001 -	59,000	60	60
59,001 -	70,000	70	70
70,001 -	83,000	80	80
83,001 -	96,000	90	90
96,001 -	130,000	100	100
130,001 -	220,000	120	120
220,001 -	320,000	150	150
320,001 -	450,000	180	180
450,001 -	600,000	210	210
600,001 -	780,000	240	240
780,001 -	970,000	270	270
970,001 -	1,230,000[3]	300	300

[1] Does not include the population of a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

[2] Noncommunity systems using only protected groundwater sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

[3] Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

*In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional consideration of factors such as monitoring history, compliance record, operational problems, and water quality concerns for the system.

(4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity. (Except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems.)

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids*, and zinc.

* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table 4 and Table 5. Samples shall be collected in accordance with the monitoring requirements referenced in 40 CFR 141.23 introductory text, 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, except for composite samples for

systems serving less than three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or operated by a department-approved satellite management agency.

(c) Samples required by this subsection shall be taken at designated locations under 40 CFR 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, and Table 3 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 CFR 141.23 (a)(3), alternate sampling locations may be used if approved by the department. The process for determining these alternate sites is described in department guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. Alternate sampling plans shall address the following:

(A) Source vulnerability;

(B) Individual source characteristics;

(C) Previous water quality information;

(D) Status of monitoring waiver applications; and

(E) Other information deemed necessary by the department.

(d) Composite samples:

(i) Under 40 CFR 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 CFR 141.23 (b)(3), and 141.23 (c)(3).

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

(5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 CFR 141.86 (a) - (f), 141.87, and 141.88. All systems that have fewer than five drinking water taps used for human consumption shall collect at least one sample from each tap and then collect additional samples from those taps on different days during the monitoring period to meet the required number of samples as described in 40 CFR 141.86(c).

(6) Disinfection byproducts (DBP), disinfectant residuals, and disinfection byproduct precursors (DBPP). Purveyors of community and NTNC systems providing water treated with chemical disinfectants and TNC systems using chlorine dioxide shall monitor as follows:

(a) General requirements.

(i) Systems shall collect samples during normal operating conditions.

(ii) All monitoring shall be conducted in accordance with the analytical requirements in 40 CFR 141.131.

(iii) Systems may consider multiple wells drawing from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval in accordance with department guidance.

(iv) Systems required to monitor under this subsection shall prepare and implement a monitoring plan in accordance with 40 CFR 141.132(f) or 40 CFR 141.622, as applicable.

(A) Community and NTNC surface water and GWI systems that deliver water that has been treated with a disinfectant other than ultraviolet light and serve more than three thousand three hundred people shall submit a monitoring plan to the department.

(B) The department may require submittal of a monitoring plan from systems not specified in subsection (6)(a)(iv)(A) of this section, and may require revision of any monitoring plan.

(C) Failure to monitor for TTHM, HAA5, or bromate will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages.

(D) Failure to monitor for chlorine and chloramine residuals will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the systems' failure to monitor makes it impossible to determine compliance with the MRDLs.

(b) Disinfection byproducts - **Community** and **NTNC** systems only.

(i) TTHMs and HAA5.

(A) Systems shall monitor for TTHM and HAA5 in accordance with 40 CFR 141.132 (b)(1)(i) until the dates set in Table 2. On and after the dates set in Table 2, the systems shall monitor in accordance with 40 CFR 141.620, 141.621, and 141.622.

Table 2

Population Served	Routine Monitoring Start Date[1]
100,000 or more	April 1, 2012
50,000 - 99,999	October 1, 2012
10,000 - 49,999	October 1, 2013
Less than 10,000	October 1, 2013[2]
	October 1, 2014[3]

[1] Systems that have nonemergency interties with other systems must comply with the dates associated with the largest system in their combined distribution system.

[2] Surface water and GWI systems that did not have to do *Cryptosporidium* monitoring under 40 CFR 141.701 (a)(4).

[3] Surface water and GWI systems that also did *Cryptosporidium* monitoring under 40 CFR 141.701 (a)(4).

(B) With department approval, systems may reduce monitoring in accordance with 40 CFR 141.132 (b)(1)(ii) and (iii), or 40 CFR 141.623, as applicable.

(C) Systems on department-approved reduced monitoring schedules may be required to return to routine monitoring, or initiate increased monitoring in accordance with 40 CFR 141.132 (b)(1)(iv), 40 CFR 141.625, or 40 CFR 141.627, as applicable.

(D) The department may return systems on increased monitoring to routine monitoring if, after one year, annual average results for TTHMs and HAA5 are less than or equal to 0.060 mg/L and 0.045 mg/L, respectively, or monitoring results are consistently below the MCLs indicating that increased monitoring is no longer necessary. After the dates set in Table 2, systems must meet requirements of 40 CFR 141.628 and 40 CFR 141.625(c) to return to routine monitoring.

(E) After the dates set in Table 2, systems must calculate operational evaluation levels each calendar quarter and take action, as needed, in accordance with 40 CFR 141.626.

(F) NTNC systems serving ten thousand or more people and community systems must comply with the provisions of 40 CFR Subpart U - Initial Distribution System Evaluation at:

40 CFR 141.600	General requirements.
40 CFR 141.601	Standard monitoring.
40 CFR 141.602	System specific studies.
40 CFR 141.603	40/30 certification.
40 CFR 141.604	Very small system waivers.
40 CFR 141.605	Subpart V compliance monitoring location recommendations.

(ii) Chlorite - Only systems that use **chlorine dioxide.**

(A) Systems using chlorine dioxide shall conduct daily and monthly monitoring in accordance with 40 CFR 141.132 (b)(2)(i) and additional chlorite monitoring in accordance with 40 CFR 141.132 (b)(2)(ii).

(B) With department approval, monthly monitoring may be reduced in accordance with 40 CFR 141.132 (b)(2)(iii)(B). Daily monitoring at entry to distribution required by 40 CFR 141.132 (b)(2)(i)(A) may not be reduced.

(iii) Bromate - Only systems that use **ozone.**

(A) Systems using ozone for disinfection or oxidation must conduct bromate monitoring in accordance with 40 CFR 141.132 (b)(3)(i).

(B) With department approval, monthly bromate monitoring may be reduced to once per quarter in accordance with 40 CFR 141.132 (b)(3)(ii)(B).

(c) Disinfectant residuals.

(i) Chlorine and chloramines. Systems that deliver water continuously treated with chlorine or chloramines, including consecutive systems, shall monitor and record the residual disinfectant level in the distribution system under WAC 246-290-300 (2)(b), 246-290-451(7), 246-290-664(6), or 246-290-694(8), but in no case less than as required by 40 CFR 141.74 (b)(6), 40 CFR 141.74 (c)(3), 40 CFR 141.132(c), or 40 CFR 141.624.

(ii) Chlorine dioxide. Community, NTNC, or TNC systems that use chlorine dioxide shall monitor in accordance with 40 CFR 141.132 (c)(2) and record results.

(d) Disinfection byproducts precursors.

Community and NTNC surface water or GWI systems that use conventional filtration with sedimentation as defined in WAC 246-290-660(3) shall monitor under 40 CFR 141.132(d), and meet the requirements of 40 CFR 141.135.

(7) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements under 40 CFR 141.24 (a) - (d), 141.24 (f)(1) - (f)(15), 141.24 (f)(18) - (19), 141.24 (f)(21), 141.24 (g)(1) - (9), 141.24 (g)(12) - (14), 141.24 (h)(1) - (11), and 141.24 (h)(14) - (17).

(b) Sampling locations shall be as defined in 40 CFR 141.24(f), 141.24(g), and 141.24(h).

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 CFR 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. The alternate sampling location shall consider the following:

(A) Source vulnerability;

(B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;

(C) Individual source characteristics;

(D) Previous water quality information;

(E) Status of monitoring waiver applications; and

(F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from

within one system. Sampling procedures and protocols are outlined in department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 CFR 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), and 141.24 (h)(7);

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section when they are actively providing water to consumers.

(8) Radionuclides. Monitoring for radionuclides shall be conducted under 40 CFR 141.26.

(9) *Cryptosporidium* and *E. coli* source monitoring. Purveyors with surface water or GWI sources shall monitor the sources in accordance with 40 CFR 141.701 and 702.

(10) Other substances.

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

TABLE 3

MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.
Cryptosporidium and *E. coli* (Source Water) - WAC 246-290-630(16)	Under 40 CFR 141.703.
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 CFR 141.132 (b)(1) (Subpart L of the CFR).
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 CFR 141.600 - 629 (IDSE and LRAA in Subparts U and V of the CFR).
Disinfection Byproducts - Chlorite (Systems adding chlorine dioxide)	Under 40 CFR 141.132 (b)(2).
Disinfection Byproducts - Bromate (Systems adding ozone)	Under 40 CFR 141.132 (b)(3).
Disinfectant Residuals - Chlorine and Chloramines	Under 40 CFR 141.132 (c)(1).
Disinfectant Residuals - Chlorine dioxide	Under 40 CFR 141.132 (c)(2).
Disinfection Precursors - Total Organic Carbon (TOC)	Under 40 CFR 141.132(d).
Disinfection Precursors - Bromide (Systems using ozone)	From the source before treatment.
Radionuclides	From a point representative of the source, after treatment and prior to entry to distribution system.
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-320 Follow-up action. (1) General.

(a) When an MCL or MRDL violation or exceedance occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

(i) Notify the department under WAC 246-290-480;

(ii) Notify the consumers served by the system and the owner or operator of any consecutive system served in accordance with 40 CFR 141.201 through 208, and Part 7, Subpart A of this chapter;

(iii) Determine the cause of the contamination; and

(iv) Take action as directed by the department.

(c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results.

(2) Bacteriological.

(a) When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:

(i) The sample is analyzed for fecal coliform or *E. coli*. When a sample with a coliform presence is not analyzed for *E. coli* or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;

(ii) Repeat samples are collected in accordance with (b) of this subsection;

(iii) Triggered source water monitoring is conducted in accordance with (g) of this subsection unless the department determines and documents in writing that the total coliform positive sample collected was caused by a distribution system deficiency;

(iv) The department is notified in accordance with WAC 246-290-480; and

(v) The cause of the coliform presence is determined and corrected.

(b) Repeat samples.

(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization by the department is given. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.

(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:

(A) Four repeat samples for systems collecting one routine coliform sample each month; or

(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.

(iii) The purveyor shall collect repeat sample sets according to Table 7;

(iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence, or as directed by the department.

(v) When repeat samples have coliform presence, the purveyor shall:

(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or

(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.

(vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:

(A) On the same collection date;

(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or

(C) As directed by the department.

(vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;

(viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:

(A) Collects the sample within five active adjacent service connections of the location from which the initial sample with a coliform presence was collected;

(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;

(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)(iv) of this subsection; and

(D) Requests and receives approval from the department for the change.

(ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.

Table 7

REPEAT SAMPLE REQUIREMENTS

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
1	4	♦ Site of previous sample with a coliform presence

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
		♦ Within 5 active services upstream of site of sample with a coliform presence ♦ Within 5 active services downstream of site of sample with a coliform presence ♦ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)
more than 1	3	♦ Site of previous sample with a coliform presence ♦ Within 5 active services upstream of site of sample with a coliform presence ♦ Within 5 active services downstream of site of sample with a coliform presence

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the monitoring frequency requirement is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month.

(d) Invalid samples. Routine and repeat coliform samples may be determined to be invalid under any of the following conditions:

(i) A certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence-absence technique cultures that are turbid in the absence of an acid reaction;

(C) Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique;

(ii) The analyzing laboratory determines there is excess debris in the sample.

(iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

(iv) The department determines that a nondistribution system problem has occurred as indicated by:

(A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

(B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

(v) The department determines a coliform presence result is due to a circumstance or condition that does not reflect water quality in the distribution system.

(e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

(ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(g) Triggered source water monitoring.

(i) All groundwater systems with their own groundwater source(s) must conduct triggered source water monitoring unless the following conditions exist:

(A) The system has submitted a project report and received approval that it provides at least 4-log treatment of viruses (using inactivation, removal, or a department approved combination of 4-log virus inactivation and removal) before or at the first customer for each groundwater source; and

(B) The system is conducting compliance monitoring under WAC 246-290-453(2).

(ii) Any groundwater source sample required under this subsection must be collected at the source prior to any treatment unless otherwise approved by the department.

(iii) Any source sample collected under this subsection must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 CFR 141.402(c).

(iv) Groundwater systems must collect at least one sample from each groundwater source in use at the time a routine sample collected under WAC 246-290-300(3) is total coliform-positive and not invalidated under (d) of this subsection. These source samples must be collected within twenty-four hours of notification of the total coliform-positive sample. The following exceptions apply:

(A) The twenty-four hour time limit may be extended if granted by the department and will be determined on a case-

by-case basis. If an extension is granted, the system must sample by the deadline set by the department.

(B) Systems with more than one groundwater source may meet the requirements of (g)(iv) of this subsection by sampling a representative groundwater source or sources. The system must have an approved triggered source water monitoring plan that identifies one or more groundwater sources that are representative of each monitoring site in the system's coliform monitoring plan under WAC 246-290-300 (3)(b). This plan must be approved by the department before representative sampling will be allowed.

(C) Groundwater systems serving one thousand people or fewer may use a repeat sample collected from a groundwater source to meet the requirements of (b) and (g)(iv) of this subsection. If the repeat sample collected from the groundwater source is *E. coli* positive, the system must comply with (g)(v) of this subsection.

(v) Groundwater systems with an *E. coli* positive source water sample that is not invalidated under (g)(vii) of this subsection, must:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5);

(B) If directed by the department, take corrective action as required under WAC 246-290-453(1); and

(C) Systems that are not directed by the department to take corrective action must collect five additional samples from the same source within twenty-four hours of being notified of the *E. coli* positive source water sample. If any of the five additional samples are *E. coli* positive, the system must take corrective action under WAC 246-290-453(1).

(vi) Any consecutive groundwater system that has a total coliform-positive routine sample collected under WAC 246-290-300(3) and not invalidated under (d) of this subsection, must notify each wholesale system it receives water from within twenty-four hours of being notified of the total coliform-positive sample and comply with (g) of this subsection.

(A) A wholesale groundwater system that receives notice from a consecutive system under (g)(vi) of this subsection must conduct triggered source water monitoring under (g) of this subsection unless the department determines and documents in writing that the total coliform-positive sample collected was caused by a distribution system deficiency in the consecutive system.

(B) If the wholesale groundwater system source sample is *E. coli* positive, the wholesale system must notify all consecutive systems served by that groundwater source within twenty-four hours of being notified of the results and must meet the requirements of (g)(v) of this subsection.

(C) Any consecutive groundwater system receiving water from a source with an *E. coli* positive sample must notify all their consumers as required under (g)(v)(A) of this subsection.

(vii) An *E. coli* positive groundwater source sample may be invalidated only if the following conditions apply:

(A) The system provides the department with written notice from the laboratory that improper sample analysis occurred; or

(B) The department determines and documents in writing that there is substantial evidence that the *E. coli* positive groundwater sample is not related to source water quality.

(viii) If the department invalidates an *E. coli* positive groundwater source sample, the system must collect another source water sample within twenty-four hours of being notified by the department of its invalidation decision and have it analyzed using the same analytical method. The department may extend the twenty-four hour time limit under (g)(iv)(A) of this subsection.

(ix) Groundwater systems that fail to meet any of the monitoring requirements of (g) of this subsection must conduct Tier 2 public notification under Part 7, Subpart A of this chapter.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 CFR 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (c)(9), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 CFR 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o);

(c) For nitrite, 40 CFR 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Follow-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 CFR 141.85(((~~(d)~~))) (c), 141.86 (d)(2), 141.86 (d)(3), 141.87(c), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

Purveyors monitoring turbidity in accordance with Part 6 of this chapter shall provide follow-up under WAC 246-290-634.

(6) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:

(a) For VOCs, 40 CFR 141.24 (f)(11) through 141.24 (f)(15), and 141.24 (f)(22); or

(b) For SOCs, 40 CFR 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11), and 141.24 (h)(20).

(7) Radionuclide follow-up monitoring shall be conducted under 40 CFR 141.26 (a)(2)(iv), 141.26 (a)(3)(ii) through (v), 141.26 (a)(4), 141.26 (b)(6), and 141.26 (c)(5).

(8) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-72010 Report contents—Required additional health information. All reports must prominently display the following language: Some people may be

more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. Environmental Protection Agency/Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(1) Beginning in the report due by July 1, 2002, a system which detects arsenic levels above 0.005 mg/L and up to and including 0.010 mg/L:

(a) Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(b) May write its own educational statement, but only in consultation with the department.

(2) A system which detects nitrate at levels above 5 mg/l, but below the MCL:

(a) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue-baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask for advice from your health care provider.

(b) May write its own educational statement, but only in consultation with the department.

(3) Systems ((~~which detect lead above the action level in more than five percent, and up to and including ten percent, of homes sampled~~)) that monitor for lead within the reporting period:

(a) Must include a short informational statement about the special impact of lead on children ((~~using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791)~~)). The statement must include the following information: If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. (NAME OF UTILITY) is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for thirty seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at http://www.epa.gov/safewater/lead.

(b) May write its own educational statement, but only in consultation with the department.

WSR 11-17-067
PERMANENT RULES
PARKS AND RECREATION COMMISSION

[Filed August 16, 2011, 10:59 a.m., effective September 16, 2011]

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

Purpose: State parks' staff reviewed the commission rules in consideration of changes to current business practices. The agency proposed minor changes to the rule in order to reduce restrictions to current requirements and to bring state parks in line with residency requirements of other state agencies.

Substantive changes are requested in the following chapter: WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes and 352-32-252 Off-season senior citizen pass—Fee.

Citation of Existing Rules Affected by this Order: Amending WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes and 352-32-252 Off-season senior citizen pass—Fee. State parks will request changes to these sections of WAC pertaining to residency requirements for citizens applying for a pass within the state parks pass program. This change will reduce the residency requirement from twelve months to three months.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035.

Adopted under notice filed as WSR 11-09-049 (preproposal) [filed on April 18, 2011] and WSR 11-14-031 on June 27, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

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

Date Adopted: August 11, 2011.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes. (1)(a) Persons who are senior citizens, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission accompanied by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or a notarized affidavit of income on a form provided by the commission, receive a limited income senior citizen pass at no charge, which entitles the holder's camping party to free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in the campsite fee, or moorage fee as published by state parks. Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.

(b) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria shall be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are:

(a) Permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive a five year disability pass at no charge;

(b) Temporarily disabled and who meet the eligibility requirements of RCW 79A.05.065 and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive a one year disability pass at no charge; and

(c) Residents of Washington who have been issued a card, decal (placard) or special license plate for a permanent disability under RCW 46.16.381 shall be entitled, along with the members of their camping party to free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in the campsite fee, or moorage fee as published by state parks.

(3) Persons who are veterans, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive a lifetime disabled veteran pass at no charge. Pass holders must provide proof of continued residency as determined by the director or designee. The pass entitles the holder's camping party to free use of a state park campsite, trailer dump station, watercraft launch site, moorage facility, and reservation service.

(4) Applications for limited income senior citizen, disability, and disabled veteran passes shall be made on forms prescribed by the commission.

(5) Verification of age shall be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, or driver's license. Verification of residency shall be by original or copy of a Washington state driver's license, voter's registration card, or senior citizen property tax exemption, or other proof of continued residency as determined by the director or designee.

(6) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(7) Pass holders that violate or abuse the privileges of their pass, as listed below, may be subject to suspension of their pass and assessed other fees.

(a) Duplicate or multiple reservations for the same night - Thirty-day suspension.

(b) Use of pass by unauthorized person - Sixty-day suspension and/or a fee equal to two times the campsite fee.

(c) Two or more no-shows (failure to use or cancel reservation) for reservations between May 1 and November 1 - Ninety-day suspension.

(d) Repeated park rule violations - Minimum ninety-day suspension.

The pass will be confiscated by the ranger on duty or their designee and sent to the Olympia headquarters office. At the end of the suspension the pass will be returned to the authorized pass holder at no cost.

(8) Pass holders may appeal a suspension of their pass by providing written justification/explanation to the state parks director or designee at P.O. Box 42650, Olympia, WA 98504.

(9) Pass holder discounts shall apply only to those fees listed in subsections (1), (2), and (3) of this section. Pass holder discounts will not apply to all other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(10) If the conditions of a pass holder change or the pass holder changes residency to a place outside Washington state during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 79A.05.065 and WAC 352-32-251, the pass becomes invalid, and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

(11) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-252 Off-season senior citizen pass—Fee. (1) Persons who are senior citizens, are at least sixty-two years of age, and have been residents of Washington state for at least the past ((~~twelve~~)) three consecutive months shall, upon application to the commission, receive an off-season senior citizen pass which entitles the holder's camping party to camp at any camping areas made available by the commission, as well as use of agency mooring facilities, at no cost beyond the charges provided for in subsection (3) of this section, effective October 1 through March 31, and Sunday

through Thursday nights in April as determined by the director and posted. Each such pass shall be valid only during one off-season period.

(2) Applications for off-season senior citizen passes shall be made on forms prescribed by the commission and shall be accepted only after August 1 for the following off-season period.

(3) There shall be a fee for each off-season senior citizen pass. Limited income senior citizen pass holders may purchase the off-season pass at a 50 percent discount. A surcharge equal to the fee for an electrical hookup published by state parks shall be assessed for each night an off-season senior citizen pass holder uses a campsite with an electrical hookup.

(4) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(5) Pass holder discounts shall apply only to those fees in subsections (1) and (3) of this section. Pass holder discounts will not apply to other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(6) If a pass holder changes residency to a place outside Washington state during the time period when a pass is valid, the pass becomes invalid and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

WSR 11-17-068
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)

[Filed August 16, 2011, 11:14 a.m., effective September 16, 2011]

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

Purpose: State supplementary program (SSP) is a federally mandated program which requires the division to spend monies to meet a maintenance of effort in order to continue to receive state supplemental payments. Currently the division has a surplus in SSP dollars and by converting clients from the individual and family services program, more clients can be served that previously received services from the individual and family services program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-827-0115.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 11-13-112 on June 21, 2011.

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

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

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

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

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

Date Adopted: August 12, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-107, filed 9/21/09, effective 10/1/09)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

(i) Foster care basic maintenance,
(ii) Foster care specialized support,
(iii) Agency specialized support,
(iv) Staffed residential home,
(v) Out-of-home respite care,
(vi) Agency in-home specialized support,
(vii) Group care basic maintenance,
(viii) Group care specialized support,
(ix) Transportation,
(x) Agency attendant care,
(xi) Child care,
(xii) Professional services,
(xiii) Nursing services,
(xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

(i) Adult family home,
(ii) Adult residential care facility,
(iii) Alternative living,
(iv) Group home,
(v) Supported living,
(vi) Agency attendant care,
(vii) Supported living or other residential service allowance,
(viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, ((~~2009~~)) 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) As of December 31, 2010, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of three or four, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to January 1, 2011, or you received Social Security Title II benefits as a disabled adult child prior to January 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

NEW SECTION

WAC 388-827-0133 What is the impact on medicaid eligibility on the receipt of state supplemental payments (SSP)? The impact on medicaid eligibility on the receipt of state supplemental payments is that it does not in and of itself qualify an individual for medicaid.

WSR 11-17-069
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)

[Filed August 16, 2011, 11:15 a.m., effective September 16, 2011]

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

Purpose: Clients receiving services from the individual and family services program are no longer eligible to receive state funded emergency or one time awards if they also receive funding through the state supplementary program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-832-0025.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 11-13-113 on June 21, 2011.

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

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

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

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

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

Date Adopted: August 12, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0025 Am I eligible for the IFS program if I currently receive other DDD paid services? (1) If you receive other nonwaiver DDD funded services, you may be eligible for the IFS program.

(2) If you receive SSP in lieu of traditional family support ((~~or~~)), family support opportunity, or individual and family services, you are not eligible to receive IFS program funding including emergency and one time awards.

WSR 11-17-077

PERMANENT RULES

OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-11—Filed August 16, 2011, 3:54 p.m., effective September 16, 2011]

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

Purpose: These permanent amendments to WAC 284-66-063 and 284-66-064 eliminate inconsistency between the regulation and the underlying statute by clearly stating that medicare supplement issuers must allow policy replacement, as set forth in RCW 48.66.045, without regard to whether or not the original standardized policy was issued prior to 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 284-66-063 and 284-66-064.

Statutory Authority for Adoption: RCW 48.02.060(3) and 48.66.165.

Adopted under notice filed as WSR 11-12-068 on May 31, 2011.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-66-064 (4)(b) was amended for clarification. Deleted "policy or certificate or other more comprehensive coverage, including any standardized medicare supplement policy." Added: "plan A."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 16, 2011.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-063 Benefit standards for policies or certificates issued or delivered after June 30, 1992 and before June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) A medicare supplement policy or certificate may not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(d) Each medicare supplement policy must be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (d)(v) of this subsection, the issuer must offer certificate holders an individual medicare supplement policy that (at the option of the certificate holder) provides for continuation of the benefits contained in the group policy, or provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificate holder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must offer the certificate holder the conversion opportunity described in (c)(iii) of this subsection, or at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(e) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss that began while the policy was in force, but the extension of benefits beyond the period that the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

(f) If a medicare supplement policy or certificate eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy or certificate is deemed to satisfy the guaranteed renewal requirements of this section.

(g)(i) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate must be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four months) that the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to the assistance.

(ii) If the suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate must be automatically reinstituted effective as of the date of termination of the entitlement if the policyholder or certificate holder provides notice of loss of the entitlement within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Each medicare supplement policy must provide that benefits and premiums under the policy will be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy must be automatically reinstituted (effective as of the date of loss of coverage within ninety days after the date of the loss).

(h) Reinstitution of the coverages:

(i) May not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of the suspension. If the suspended medicare supplement policy or certificate provided coverage for outpatient prescription drugs, reinstitution of the policy for medicare Part D enrollees must be without coverage for outpatient prescription drugs and must otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) If an issuer makes a written offer to the medicare supplement policyholders or certificate holders of one or more of its plans, to exchange his or her standardized plan to a 2010 standardized plan during a specified period, the offer and subsequent exchange must comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured ((~~replaces~~)) exchanges a 1990 standardized policy or certificate with a 2010 standardized policy or certificate.

(b) An issuer may not apply new preexisting condition limitations or a new incontestability period to the ((~~replacement~~)) new 2010 standardized policy for those benefits contained in the former exchanged policy or certificate of the insured, but may apply preexisting condition limitations of no more than three months to any benefits contained in the new 2010 standardized policy or certificate that were not contained in the former exchanged policy.

(c) The new policy or certificate must be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

(3) Standards for basic ("core") benefits common to benefit plans A-J. Every issuer must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance benefit plans in addition to the basic "core" package, but not in place of the basic "core" package.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the sixty-first day through the ninetieth day in any medicare benefit period;

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital; outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible;

(4) Standards for additional benefits. The following additional benefits must be included in medicare supplement

benefit plans "B" through "J" only as provided by WAC 284-66-066.

(a) Medicare Part A deductible: Coverage for all of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A;

(c) Medicare Part B deductible: Coverage for all of the medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty percent of the medicare Part B excess charges: Coverage for eighty percent of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(e) One hundred percent of the medicare Part B excess charges: Coverage for all of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Basic outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible, to a maximum of one thousand two hundred fifty dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(g) Extended outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible to a maximum of three thousand dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(h) Medically necessary emergency care in a foreign country: Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, that would have been covered by medicare if provided in the United States and that began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars, and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: Coverage for the following preventive health services not covered by medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from (ii) of this subsection and patient education to address preventive health care measures.

(ii) Preventive screening tests or preventive services, the selection and frequency that is determined to be medically appropriate by the attending physician.

Reimbursement must be for the actual charges up to one hundred percent of the medicare-approved amount for each service, as if medicare were to cover the service as identified in *American Medical Association Current Procedural Terminology (AMA CPT)* codes, to a maximum of one hundred twenty dollars annually under this benefit. This benefit may not include payment for any procedure covered by medicare.

(j) At-home recovery benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions apply:

(A) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" means any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility is not considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a twenty-four hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(A) At-home recovery services provided must be primarily services that assist in activities of daily living.

(B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by medicare.

(C) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits may not exceed the number of medicare approved home health care visits under a medicare approved home care plan of treatment.

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars per visit.

(III) One thousand six hundred dollars per calendar year.

(IV) Seven visits in any one week.

(V) Care furnished on a visiting basis in the insured's home.

(VI) Services provided by a care provider as defined in this section.

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(VIII) At-home recovery visits received during the period the insured is receiving medicare approved home care services or no more than eight weeks after the service date of the last medicare approved home health care visit.

(iii) Coverage is excluded for: Home care visits paid for by medicare or other government programs; and care provided by family members, unpaid volunteers, or providers who are not care providers.

(5) Standardized medicare supplement benefit plan "K" must consist of the following:

(a) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any medicare benefit period;

(b) Coverage of one hundred percent of the Part A hospital coinsurance amount for each medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any medicare benefit period;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A deductible: Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in (j) of this subsection;

(e) Skilled nursing facility care: Coverage for fifty percent of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a medicare benefit period for post-hospital skilled nursing facility care eligible under medicare Part A until the out-of-pocket limitation is met as described in (j) of this subsection;

(f) Hospice care: Coverage for fifty percent of cost sharing for all Part A medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in (j) of this subsection;

(g) Coverage for fifty percent, under medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (j) of this subsection;

(h) Except for coverage provided in (i) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (j) of this subsection;

(i) Coverage of one hundred percent of the cost sharing for medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of one hundred percent of all cost sharing under medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(6) Standardized medicare supplement benefit plan "L" must consist of the following:

(a) The benefits described in subsection (4)(a), (b), (c) and (i) of this section;

(b) The benefit described in subsection (4)(d), (e), (f) and (h) of this section but substituting seventy-five percent for fifty percent; and

(c) The benefit described in subsection (4)(j) of this section but substituting two thousand dollars for four thousand dollars.

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-064 Benefit standards for policies or certificates issued or delivered on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards. Benefit standards applicable to medicare supplement policies or certificates issued before June 1, 2010, remain subject to the requirements of WAC 284-66-060 and 284-66-063.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) No medicare supplement policy or certificate may provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured other than the nonpayment of premium.

(d) Each medicare supplement policy shall be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (d)(v) of this subsection, the issuer shall offer certificate holders an individual medicare supplement policy which, at the option of the certificate holder:

(A) Provides for continuation of the benefits contained in the group policy; or

(B) Provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificate holder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must:

(A) Offer the certificate holder the conversion opportunity described in (d)(iii) of this subsection; or

(B) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issue of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination.

(vi) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

(vii)(A) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate are suspended at the request of the policyholder or certificate holder for the period not to exceed twenty-four months in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to assistance.

(B) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement within ninety days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C) Each medicare supplement policy must provide that benefits and premiums under the policy must be suspended for any period that may be provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy must be automatically reinstituted effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(viii) Reinstitution of coverages as described in this section:

(A) Must not provide for any waiting period with respect to treatment of preexisting conditions;

(B) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(C) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Every issuer of medicare supplement insurance benefit plans A, B, C, D, F, F with high deductible, G, M, and N must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the 61st day through the 90th day in any medicare benefit period.

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible.

(f) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) The following additional benefits must be included in medicare supplement benefit Plans B, C, D, F, F with high deductible, G, M, and N as provided by WAC 284-66-066:

(a) Coverage for one hundred percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(c) Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A.

(d) Coverage for one hundred percent of the medicare part B deductible amount per calendar year regardless of hospital confinement.

(e) Coverage for all of the difference between the actual medicare Part B charges as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by medicare if provided in the United States and which care began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(4)(a) Every issuer of a standardized medicare supplement plan B, C, D, F, F with high deductible, G, K, L, M, or N issued on or after June 1, 2010, must issue, without evidence of insurability, coverage under a 2010 plan B, C, D, F, F with high deductible, G, K, L, M, or N to any policyholder if the medicare supplement policy or certificate replaces another medicare supplement policy or certificate B, C, D, F, F with high deductible, G, K, L, M, or N or other more comprehensive coverage, including any standardized medicare supplement policy issued prior to June 1, 2010.

(b) Every issuer of a standardized medicare supplement plan A issued on or after June 1, 2010, must issue, without evidence of insurability, coverage under a 2010 plan A to any policyholder if the medicare supplement policy or certificate replaces another medicare supplement plan A issued prior to June 1, 2010.

WSR 11-17-094
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed August 22, 2011, 11:04 a.m., effective September 22, 2011]

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

Purpose: WAC 458-20-10001 (Rule 10001) explains the department's adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act, for actions involving revocation of a certificate of registration (tax registration endorsement).

The department has updated the telephone and fax numbers provided in this rule as the means by which a person may file a petition for review of an initial order. This petition must be made within twenty-one days after service of the initial order is received by the person.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation.

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

Adopted under notice filed as WSR 11-09-083 on April 20, 2011.

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

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

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

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

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

Date Adopted: August 22, 2011.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-04-056, filed 1/26/11, effective 2/26/11)

WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation. (1) **Introduction.** The department of revenue (department) has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494, except for 34.05.491(5), for actions involving revocation of a certificate of registration (tax registration endorsement) pursuant to RCW 82.32.215. This section explains the procedure for these brief adjudicative proceedings. This section does not apply to the following:

• Adjudicative proceedings under WAC 458-20-10002, which addresses converted brief adjudicative proceedings and formal adjudicative proceedings relating to log export enforcements;

• Nonadjudicative proceedings under RCW 82.32.160 and 82.32.170, and WAC 458-20-100;

• Enforcement proceedings under RCW 82.24.550 and 82.26.220; and

• Brief adjudicative proceedings for matters relating to the revocation of reseller permits under WAC 458-20-102.

The department has not adopted RCW 34.05.491(5), which provides that a request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.

(2) **Brief adjudicative proceedings - procedure.** The following procedure applies to the department's brief adjudicative proceedings for actions involving revocation of a certificate of registration, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Notice.** The department will set the time and place of the hearing. Written notice shall be served upon the taxpayer(s) at least seven days before the date of the hearing. Service is to be made pursuant to subsection (5)(a) of this section. The notice must include:

(i) The names and addresses of each taxpayer to whom the proceedings apply and, if known, the names and addresses of the taxpayer's representative(s), if any;

(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;

(iii) The official file or other reference number and the name of the proceeding;

(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;

(v) A statement of the time, place and nature of the proceeding;

(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(vii) A reference to the particular sections of the statutes and/or rules involved;

(viii) A short and plain statement of the matters asserted by the department against the taxpayer and the potential action to be taken; and

(ix) A statement that if the taxpayer fails to attend or participate in a hearing, the hearing can proceed and that adverse action may be taken against the taxpayer.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, must either be in the primary language of that person or must include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice must state that if a party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice must include a form to be returned to the department to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the department in a brief adjudicative proceeding is limited to:

(i) Persons who are natural persons representing themselves;

(ii) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(iii) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(iv) Public officials in their official capacity;

(v) Certified public accountants entitled to practice in the state of Washington;

(vi) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(vii) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(viii) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(c) **Hearings by telephone.** With the concurrence of the presiding officer and all persons involved in the proceedings, a hearing may be conducted telephonically. The conversation will be recorded and will be made a part of the record of the hearing.

(d) **Presiding officer.**

(i) The presiding officer must be an assistant director of the department's compliance division, or such other person as the director of the department may designate.

(ii) The presiding officer shall conduct the proceeding in a just and fair manner and before taking action, the presiding officer shall provide the taxpayer an opportunity to be informed of the department's position on the pending matter.

(iii) The presiding officer has all authority granted under chapter 34.05 RCW.

(e) **Entry of orders.**

(i) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties, the initial order and information regarding any departmental administrative review that may be available.

(ii) The decision and the brief written statement of the basis and legal authority for it is an initial order. The initial order will become a final order if no review is requested as provided in subsection (3) of this section.

(3) **Review of initial orders from brief adjudicative proceeding.** The following procedure applies to the department's review of a brief adjudicative proceeding conducted pursuant to subsection (2) of this section, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Request for review of the initial order.** A party to a brief adjudicative proceeding under subsection (2) of this section may request review of the initial order by filing a written petition for review, or making an oral request for review, with the department's appeals division within twenty-one days after service of the initial order is received or deemed to be received by the party. The address and telephone number of the appeals division is:

Appeals Division
Department of Revenue
P.O. Box 47460
Olympia, Washington 98504-7460
Telephone Number - 360-((~~570-6140~~)) 534-1335
Fax - 360-((~~664-2729~~)) 534-1340

(i) When a petition of review of the initial order is made, the taxpayer must submit to the appeals division at the time the petition is filed any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. If the petition for review is made by oral request, the taxpayer must also submit any evidence or written material to the appeals division on the same day that the oral request is made.

(ii) The department may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(b) **Reviewing officer.** The appeals division shall appoint a reviewing officer who shall make such determina-

tion as may appear to be just and lawful. The reviewing officer shall provide the taxpayer and the department an opportunity to explain their positions on the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or WAC 458-20-10002 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) **Record review.** Review of an initial order is limited to the evidence considered by the presiding officer, the initial order, the recording of the initial proceeding, and any records and written evidence submitted by the parties to the reviewing officer. However, the agency record need not constitute the exclusive basis for the reviewing officer's decision.

(i) The reviewing officer may request additional evidence from either party at any time during its review of the initial order. Once the reviewing officer requests evidence from a party, that party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, in his or her discretion, allows additional time to submit the evidence.

(ii) In addition to requesting additional evidence, the reviewing officer may review any records of the department necessary to confirm that the tax warrant upon which the initial order of revocation was based remains unpaid. In the event that the tax warrant has been satisfied subsequent to the entry of the initial order, but before the issuance of the final order, the reviewing officer shall reinstate the taxpayer's certificate of registration.

(iii) If the reviewing officer determines that oral testimony is needed, he/she may schedule a time for both parties to present oral testimony. Notice of the oral testimony must be given to the parties in the same manner as the notice provided in subsection (2)(a) of this section. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer in his or her discretion to be in person.

(iv) The department will have an opportunity to respond to the taxpayer's request for review and may also submit any other relevant evidence and written material to the reviewing officer. The department must submit its material within seven days of service of the material submitted by the party requesting review of the initial order. The department must also serve a copy of all evidence and written material provided to the reviewing officer to the taxpayer requesting review according to subsection (5) of this section. Proof of service is required under subsection (5)(h) of this section when the department submits material to the taxpayer under this subsection.

(d) **Failure to participate.** If a party requesting review of an initial order under this subsection fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon his or her request, the reviewing officer may uphold the initial order based upon the record.

(e) **The final orders.**

(i) The reviewing officer may issue two final orders. The first final order (the "final order") must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision. This order may contain confidential taxpayer information under RCW 82.32.330, and, therefore, cannot be disclosed by the department, except to the taxpayer.

(ii) The reviewing officer may issue a second final order (the "posting order"). The posting order will be issued when the reviewing officer has ordered the revocation of the tax registration certificate. The posting order will state what certificate of registration is being revoked, the listing of the tax warrants involved, and what jurisdictions the tax warrants were filed in.

(iii) Unless specifically indicated otherwise, the term "final order" as used throughout this section shall refer to both the final order and the posting order.

(iv) The parties can expect that, absent continuances, the final order and posting order will be entered within twenty days of the petition for review.

(f) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the department. A reconsideration of the reviewing officer's order may be sought only if the right to a reconsideration is contained in the final order.

(g) **Judicial review.** Judicial review of the final order of the department is available under Part V, chapter 34.05 RCW. However, judicial review may be available only if a review of the initial decision has been requested under this subsection and all other administrative remedies have been exhausted. See RCW 34.05.534.

(4) **Rules of evidence - record of the proceeding.**

(a) Evidence is admissible if in the judgment of the presiding or reviewing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in conducting their affairs. The presiding and reviewing officer should apply RCW 34.05.452 when ruling on evidentiary issues in the proceeding.

(b) All oral testimony must be recorded manually, electronically, or by another type of recording device. The agency record must consist of the documents regarding the matters that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records must be maintained by the department as its official record.

(5) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- In person;
- By first-class, registered, or certified mail;
- By fax and same-day mailing of copies;
- By commercial parcel delivery company; or
- By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (3) of this section.

(h) Where proof of service is required, the proof of service must include:

• An acknowledgment of service;

• A certification, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(6) **Interpreters.** When a party or witness requires an interpreter, chapters 2.42 and 2.43 RCW will apply. When those statutes are silent on an issue before the presiding or reviewing officer, the provisions regarding interpreters in WAC 10-08-150 apply.

(7) **Informal settlements.** The department encourages informal settlement of issues in proceedings under its jurisdiction. The presiding or reviewing officer may not order settlement of the proceedings. Settlement is at the discretion of the parties. Settlement of a proceeding may be concluded by:

(a) A stipulation signed by the taxpayer and the department, or their respective representatives, and/or recited into the record of the proceedings. If the stipulation provides for a payment agreement, the presiding or reviewing officer may order a continuance of the proceedings during the period of repayment and dismissal when all payments have been made. An order providing for the reconvening of the proceedings if the payment agreement is breached is allowed so long as the proceeding is not held less than seven days after notice of the reconvening is provided. Except as provided in this subsection, the presiding or reviewing officer must enter an order in conformity with the terms of the stipulation; or

(b) The entry of an order dismissing the proceedings if the department withdraws the revocation of the certificate of registration.

(8) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding or reviewing officer may at any time, on motion of the taxpayer, the department, or the officer's own motion, convert the brief adjudicative proceeding to a formal proceeding.

(a) The presiding or reviewing officer may convert the proceeding if the officer finds that use of the brief adjudicative proceeding:

• Violates any provision of law,

• The protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, or

• The issues and interests involved warrant the use of procedures governed by RCW 34.05.413 through 34.05.476 or 34.05.479.

(b) WAC 458-20-10002 applies to formal proceedings. In proceedings to revoke a taxpayer's certificate of registration, the converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

(9) **Computation of time.** In computing any period of time prescribed by this section, the day of the act or event after which the designated period is to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays will be excluded in the computation.

(10) **Posting of a final order of revoking a tax registration endorsement - revocation not a substitute for other collection methods or processes available to the department.** When an order revoking a tax registration endorsement is a final order of the department, the department shall post a copy of the posting order in a conspicuous place at the main entrance to the taxpayer's place of business and it must remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a tax registration endorsement. A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual tax liability of the taxpayer.

(c) Revocation proceedings will not substitute for, or in any way curtail, other collection methods or processes available to the department.

WSR 11-17-097
PERMANENT RULES
FOREST PRACTICES BOARD

[Filed August 22, 2011, 11:23 a.m., effective October 3, 2011]

Effective Date of Rule: October 3, 2011.

Purpose: To amend WAC 222-24-050 and 222-24-051 to give forest landowners the opportunity to extend the per-

formance period for road maintenance and abandonment plans (RMAPs) up to five years, until 2021. RMAPs are forest landowner plans that specify and schedule the work necessary to improve and maintain forest roads to standards detailed in chapter 222-24 WAC and prevent damage to public resources.

Citation of Existing Rules Affected by this Order: Amending WAC 222-24-050 and 222-24-051.

Statutory Authority for Adoption: RCW 76.09.040.

Adopted under notice filed as WSR 11-11-048 on May 13, 2011.

Changes Other than Editing from Proposed to Adopted Version: One additional change was made to amend the completion date and extension date from July 1 to October 31. This will provide landowners an entire operating season.

A final cost-benefit analysis is available by contacting Patricia Anderson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98506, phone (360) 902-1413, fax (360) 902-1428, e-mail forest.practicesboard@dnr.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2011.

B. Moran
Chair

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-24-050 *Road maintenance and abandonment. The goals for road maintenance are established in WAC 222-24-010. Guidelines for how to meet these goals and standards are in ((~~the~~)) board manual section 3. Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification and are capable of passing fish, until the end of the culvert's functional life.

The goals for road maintenance outlined in this chapter are expected to be achieved by ((~~July 1~~)) October 31, 2016. The strategies for achieving the goals are different for large forest landowners and small forest landowners.

For large forest landowners, all forest roads must be improved and maintained to the standards of this chapter prior to ((~~July 1~~)) October 31, 2016; however, large or small forest landowners may request an extension of up to five years, or October 31, 2021, as outlined in WAC 222-24-051(8). Work performed toward meeting the standards must generally be even flow over the ((~~fifteen-year~~)) performance period with priorities for achieving the most benefit to the public resources early in the period. These goals will be achieved through the road maintenance and abandonment plan process outlined in WAC ((~~22-24-051 [222-24-051]~~)) 222-24-051.

For small forest landowners, the goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 222-24-0511, by participation in the state-led family forest fish passage program, and by compliance with the Forest Practices Act and rules. The purpose of the family forest fish passage program is to assist small forest landowners in providing fish passage by offering cost-share funding and prioritizing projects on a watershed basis, fixing the worst fish passage barriers first. The department, in consultation with the departments of ecology and fish and wildlife, will monitor the extent, effectiveness, and progress of checklist road maintenance and abandonment plan implementation and report to the legislature and the board by December 31, 2008, and December 31, 2013.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-24-051 *Large forest landowner road maintenance schedule. All forest roads must be included in an approved road maintenance and abandonment plan by July 1, 2006. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

*(1) Landowners must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

*(2) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by ((~~July 1~~)) October 31, 2016 or by the extension deadline approved by the department under subsection (8) of this section.

*(3) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential benefits to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

*(4) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

(a) Roads with fish passage barriers;

(b) Roads that deliver sediment to typed water;

(c) Roads with evidence of existing or potential instability that could adversely affect public resources;

(d) Roads or ditchlines that intercept groundwater; and

(e) Roads or ditches that deliver surface water to any typed waters.

*(5) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition; and

(b) Detailed description of the first years work with a schedule to complete the entire plan within ((~~fifteen years~~)) the performance period; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

*(6) Priorities for road maintenance work within plans are:

(a) Removing fish passage barriers beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

*(7) Initial plans must be submitted to the department during the year 2001 as scheduled by the department.

*(8) Requests to extend the completion date of road maintenance and abandonment plans may lead to the reapproval of the road maintenance and abandonment plan for up to five years, or October 31, 2021.

(a) Landowner requests must be made at least one hundred twenty days prior to the plan's anniversary date of 2014 and must include:

(i) The length of time for the extension period; and

(ii) A revised road maintenance and abandonment plan according to subsections (3) through (6) of this section.

(b) The department shall provide forty-five days for the departments of ecology and fish and wildlife, affected tribes, and interested parties to review a revised road maintenance and abandonment plan.

(c) The approval or a denial of a road maintenance and abandonment plan's extension request will occur at least thirty days prior to the anniversary date of the initial plan's submittal.

(d) A landowner with an approved extension and revised road maintenance and abandonment plan must report work accomplished in accordance with subsection (9) of this section.

*(9) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the previous year and submit to the department a detailed description of the upcoming year's work including modifications to the existing work schedule.

The department's review and approval will be conducted in consultation with the departments of ecology((~~, the department of~~)) and fish and wildlife, affected tribes, and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

*((~~(9)~~)) (10) The department shall require the use of standardized forms as referenced in board manual section 3 for landowners requesting extensions under subsection (8) of this section and for annual reporting under subsection (9) of this section.

(11) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the departments of fish and wildlife((~~, the department of~~)) and ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

*((~~(10)~~)) (12) Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause

or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

*(((~~(11)~~))) (13) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

*(((~~(12)~~))) (14) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for review and approval a plan or plans for those drainages or road systems within the area identified by the department.

*(15) The department will notify the departments of ecology and fish and wildlife, affected tribes, and interested parties if actions taken under this section result in a change to an approved road maintenance and abandonment plan.

(16) When the department approves or denies a road maintenance and abandonment plan extension under subsection (8) of this section, that decision may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.

WSR 11-17-104
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed August 22, 2011, 3:31 p.m., effective September 22, 2011]

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

Purpose: WAC 246-282-005 and 246-282-032, the purpose of this rule making is to adopt the 2009 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide), which all shellfish producing states are required to follow in order to place molluscan shellfish into interstate commerce. The proposed rule will also update the office name in WAC 246-282-005 (1)(a) and correct a subsection numbering error in WAC 246-282-032(4).

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005 and 246-282-032.

Statutory Authority for Adoption: RCW 69.30.030.

Adopted under notice filed as WSR 11-12-034 on May 25, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 22, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 09-08-116, filed 3/31/09, effective 5/1/09)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((~~2007~~)) 2009 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of ((~~food safety and~~)) shellfish ((~~programs~~)) and water protection);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-032 Relay permit. (1) The department will issue a relay permit to a person to move shellfish from a harvest site in a growing area classified as "restricted" or "conditionally approved" in closed status meeting the criteria for "restricted" classification, if all of the following conditions are met.

(a) The person possesses a valid shellfish operation license.

(b) The person possesses a valid harvest site certificate listing both the initial harvest site and the grow-out site.

(c) The initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.

(d) The person submits a completed written application and plan of operations approved by the department completely describing the procedures and conditions of the relay operation.

(e) The person conducts and documents a separate validation study approved by the department for each of the following periods of time when shellfish will be relayed:

(i) May 1 through October 31; and

(ii) November 1 through April 30.

(f) The person pays the department a relay permit application fee or renewal fee as required by this chapter.

(2) Each validation study for a relay permit must demonstrate that shellfish harvested from a specified initial site do not contain excessive levels of fecal coliform bacteria and when relayed to a specified grow-out site for a specified time period consistently purge themselves of bacteria to approved levels. Each validation study must meet all of the following conditions.

(a) It must document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1300, with no sample having more than 2300.

(b) It must document that specified relay procedures, times, and environmental conditions reduce fecal coliform bacteria in a minimum of five 100-gram tissue samples, representative of the entire lot of shellfish relayed, to levels that are equal to or less than:

(i) 330, with no more than two samples having greater than 230; or

(ii) Ten percent greater than the geometric mean of a minimum of five 100-gram tissue samples representative of the same shellfish species grown continuously for a minimum of six months at the grow-out site.

(c) It must be repeated a minimum of once every twelve years for a continuing operation and whenever relay conditions change.

(d) All samples must be analyzed by an approved laboratory.

(3) A person operating under a relay permit must follow all procedures in the plan of operations approved by the department, including:

(a) Staking or marking the grow-out site to be easily identified by the person until the minimum relay period of time is passed;

(b) Considering the beginning of the minimum relay time period for a lot to be the moment that the last part of the lot is added to the grow-out site;

(c) Relaying shellfish to a designated grow-out site for a minimum of seven days, or longer period of time as approved by the department; and

(d) Keeping records for each relayed lot of shellfish that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(4) For each lot of shellfish relayed to a site for a grow-out period of less than fourteen days, a person must:

((~~(i)~~)) (a) Collect at least one sample from the shellfish lot at the initial harvest site and have it analyzed by an approved laboratory to demonstrate that the lot contains no more than 2300 fecal coliform bacteria per 100 grams of shellfish tissue; and

((~~(ii)~~)) (b) Collect at least one sample from the shellfish lot at the grow-out site at the end of the relay period and have it analyzed by an approved laboratory to demonstrate that the lot contains fecal coliform bacteria within the maximum limits determined by a validation study, as described in subsection (2)(b) of this section, before releasing control of the shellfish lot.

(5) A person is exempt from any fees for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of "approved" or "conditionally approved" to "restricted" within the previous twenty-four months.

(6) A person's relay permit expires on the same date as the person's shellfish operation license.

(7) A person is exempt from the provisions of subsection (1) (e) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of six months.

(8) A person possessing a valid shellfish operation license may act as an agent for another person possessing a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the permit, provided that the agent conducting the harvest is:

(a) Documented in the permit;

(b) In possession of a copy of the permit at the time of harvest; and

(c) Conducting activities described in the written plan of operations approved by the department for the agent's shellfish operation.

WSR 11-17-105
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed August 22, 2011, 3:32 p.m., effective September 22, 2011]

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

Purpose: Chapter 246-803 WAC replaces the term acupuncture with East Asian medicine; clarifies the scope of practice for East Asian medicine practitioners; establishes training, examination, and patient waiver requirements; and clarifies the inactive license status option. The rules are necessary to align the current rules with 2010 legislation (SSB 6280).

Citation of Existing Rules Affected by this Order: Repealing chapter 246-802 WAC.

Statutory Authority for Adoption: Chapter 18.06 RCW, SSB 6280 (chapter 286, Laws of 2010).

Adopted under notice filed as WSR 11-08-064 on April 6, 2011.

Changes Other than Editing from Proposed to Adopted Version: The words "nor does it include genital mobilization" were removed from WAC 246-803-030 (14)(c), East

Asian massage. The department determined that the language was unnecessary.

A final cost-benefit analysis is available by contacting Vicki Brown, Health Professions/Facilities, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail vicki.brown@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 21, Amended 0, Repealed 25.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 21, Amended 0, Repealed 25.

Date Adopted: August 22, 2011.

Mary C. Selecky
Secretary

Chapter 246-803 WAC

EAST ASIAN MEDICINE PRACTITIONER

EAST ASIAN MEDICINE PRACTITIONERS

NEW SECTION

WAC 246-803-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Accredited school, college or program" is:

(a) Accredited or has candidacy status as a United States postsecondary school, college or program; or

(b) Accredited by or has candidacy status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

(2) "Approved school" is a school, college or program approved by the secretary of the department of health that meets the requirements of WAC 246-803-500.

(3) "Credit" means ten classroom contact hours on the quarter system or fifteen classroom contact hours on the semester or trimester system.

(4) "Department" means the department of health.

(5) "East Asian medicine apprenticeship" is training in East Asian medicine administered by an apprenticeship trainer that satisfies the educational requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. An apprenticeship is of limited duration and ends at the time the parties to the apprenticeship agreement have completed their obligations.

(6) "East Asian medicine practitioner" is a person licensed under chapter 18.06 RCW.

(7) "East Asian medicine program" is training in East Asian medicine offered by an academic institution that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230 and also offers training in other areas of study. A program is an established area of study offered on a continuing basis. An East Asian medicine program may be referred to as a program in acupuncture, acupuncture and Oriental medicine, or Oriental medicine.

(8) "East Asian medicine school" is an accredited academic institution which has the sole purpose of offering training in East Asian medicine that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230.

(9) "East Asian medicine tutorial instruction" is training in East Asian medicine which is offered by an academic institution or qualified instructor on the basis of a tutorial agreement between the school or instructor and the student and satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. A tutorial is of limited duration and ends at the time the parties to the tutorial agreement have performed their obligations under the agreement.

(10) "Primary health care provider" is an individual licensed under:

(a) Chapter 18.36A RCW, Naturopathy;

(b) Chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery;

(c) Chapter 18.57A RCW, Osteopathic physicians' assistants;

(d) Chapter 18.71 RCW, Physicians;

(e) Chapter 18.71A RCW, Physician assistants; or

(f) RCW 18.79.050, "Advanced registered nursing practice" defined—Exceptions.

NEW SECTION

WAC 246-803-020 Advertising. (1) A person licensed under this chapter may use the title East Asian medicine practitioner (EAMP) or licensed acupuncturist (L.Ac.) in all forms of advertising, professional literature and billing.

(2) An East Asian medicine practitioner may not use the title "doctor," "Dr.," or "Ph.D." on any advertising or other printed material unless the nature of the degree is clearly stated.

(3) An East Asian medicine practitioner may not represent that he or she holds a degree from an East Asian medicine school other than that degree which appears on his or her application for licensure.

(4) An East Asian medicine practitioner shall not engage in false, deceptive, or misleading advertising including, but not limited to, the following:

(a) Advertising that misrepresents the potential of East Asian medicine or acupuncture; and

(b) Advertising of any service, technique, or procedure that is outside the scope of practice for an East Asian medicine practitioner.

NEW SECTION

WAC 246-803-030 East Asian medicine. East Asian medicine is a health care service using East Asian medicine diagnosis and treatment to promote health and treat organic

or functional disorders. East Asian medicine includes the following:

(1) Acupuncture. Acupuncture includes the use of acupuncture needles or lancets to directly or indirectly stimulate acupuncture points and meridians;

(2) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(3) Moxibustion;

(4) Acupressure;

(5) Cupping;

(6) Dermal friction technique;

(7) Infrared;

(8) Sonopuncture;

(9) Laserpuncture;

(10) Point injection therapy (aquapuncture);

(11) Dietary advice and health education based on East Asian medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements.

Health education. Health education is educational information directed to the patient that attempts to improve, maintain, promote and safeguard the health care of the patient. Health education consists of educating the patient on how the mind, body and spirit connect in context of imbalances, emotional patterns and tendencies as defined by and treated in East Asian medicine. Health education does not include mental health counseling;

(12) Breathing, relaxation, and East Asian exercise techniques;

(13) Qi gong;

(14) East Asian massage. East Asian massage means manual techniques having originated in East Asia involving the manipulation of the soft tissues of the body for therapeutic purposes.

(a) East Asian massage consists of:

(i) Applying fixed or movable pressure;

(ii) Passive, resistive, and assisted stretching of fascial and connective tissue;

(iii) Holding or causing movement of the body; or

(iv) Tapping, compressions or friction.

(b) East Asian massage may be performed with the use of tools common to the practice and aids of superficial heat, cold, water, lubricants, salts, minerals, liniments, poultices, and herbs.

(c) East Asian massage does not include attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force;

(15) Tui na. Tui na is a method of East Asian bodywork, characterized by the kneading, pressing, rolling, shaking, and stretching of the body and does not include spinal manipulation; and

(16) Superficial heat and cold therapies.

LICENSURE—APPLICATION AND ELIGIBILITY REQUIREMENTS

NEW SECTION

WAC 246-803-100 Application requirements for applicants from approved schools, colleges or programs. An applicant for an East Asian medicine practitioner license who has graduated from an approved school, college or program must submit to the department:

(1) A completed application.

(2) The application fee required under WAC 246-803-990.

(3) Verification of academic or educational study and clinical training at a school, college or program approved by the secretary. The school, college or program verification must include one of the following:

(a) Original copy of school transcript evidencing completion of a program in East Asian medicine that includes the required basic sciences sent directly from the school, college or program; or

(b) If the school no longer exists, a copy of the transcript and a sworn affidavit stating the school no longer exists.

(4) Verification of clinical training as required in WAC 246-803-230.

(5) Verification of successful completion of the examinations as required in WAC 246-803-240.

(6) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(7) Verification of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(8) Verification of current cardiopulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(9) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.

(10) Any additional documents requested by the secretary.

NEW SECTION

WAC 246-803-110 Application requirements for applicants from accredited schools, colleges or programs. An applicant for an East Asian medicine practitioner license who has graduated from an accredited school, college or program must submit to the department:

(1) A completed application.

(2) The application fee required under WAC 246-803-990.

(3) Verification of academic or educational study and clinical training at a school, college or program accredited by the Accreditation Commission for Acupuncture and Oriental

Medicine (ACAOM). The school, college or program verification must include one of the following:

(a) Original copy of school transcript evidencing completion of a program in East Asian medicine that includes the required basic sciences sent directly from the school, college or program. If all of the required basic sciences were not included as a part of the curriculum, then the applicant must also provide official transcripts where the basic sciences were obtained; or

(b) A notarized affidavit or statement signed by an officer of the school, college or program certifying the applicant's satisfactory completion of the training and designating the subjects and hours; or

(c) If the school no longer exists, a copy of the transcript and a sworn affidavit stating the school no longer exists.

(4) Verification of clinical training as required in WAC 246-803-230.

(5) Verification of successful completion of the examinations as required in WAC 246-803-240.

(6) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(7) Verification of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(8) Verification of current cardiopulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(9) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.

(10) Any additional documents requested by the secretary.

NEW SECTION

WAC 246-803-120 Application requirements for applicants from approved apprenticeships or tutorials. Prior to applying for an East Asian medicine practitioner license, an applicant must have on file an approved application for apprenticeship or tutorial. The application must meet the requirements set out in WAC 246-803-510. An applicant for an East Asian medicine practitioner license who has completed an apprenticeship or tutorial program approved by the secretary must submit to the department:

(1) A completed application.

(2) The application fee required under WAC 246-803-990.

(3) Verification of academic or educational study and clinical training at an approved apprenticeship or tutorial. Verification must include a notarized affidavit or statement signed by the apprenticeship trainer certifying the applicant's satisfactory completion of the training and designating the subjects and hours.

(4) Verification of clinical training as required in WAC 246-803-230.

(5) Verification of successful completion of the examinations as required in WAC 246-803-240.

(6) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(7) Verification of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(8) Verification of current cardiopulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(9) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.

(10) Any additional documents requested by the secretary.

NEW SECTION

WAC 246-803-130 Application requirements for applicants from foreign schools. (1) An applicant for an East Asian medicine practitioner license who has graduated from a foreign East Asian medicine practitioner program not accredited, or approved by the secretary must:

(a) Have at least a bachelor's or master's degree in East Asian medicine or acupuncture from an institution of higher learning which is approved by the foreign country's ministry of education/health, or other governmental entity;

(b) Have graduated from a program of East Asian medicine or acupuncture education with requirements substantially equal to those required of graduates of secretary-approved programs; and

(c) Demonstrate fluency in reading, speaking, and understanding the English language by taking the examinations required in WAC 246-803-240 (2)(a) through (c) in English or by passage of the test of English as a foreign language in WAC 246-803-240(3).

(2) An applicant for an East Asian medicine practitioner license must submit to the department:

(a) A completed application.

(b) The application fee required under WAC 246-803-990.

(c) Original copy of school transcripts from the East Asian medicine or acupuncture program showing degree and degree date.

(d) A credentialing evaluation report from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The report must be sent directly from the AACRAO to the department. Submit transcripts, fees, and other documentation to a credentialing service approved by the department and request the evaluation report be sent directly to the department. The department recognizes the AACRAO for credential evaluations.

(e) Verification of clinical training as required in WAC 246-803-230.

(f) Verification of successful completion of the examinations as required in WAC 246-803-240.

(g) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(h) Verification of completion of seven clock hours of AIDS education as required in chapter 246-812 WAC, Part 8.

(i) Verification of current cardiopulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(j) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.

(k) Any additional documents requested by the secretary.

EDUCATION, TRAINING AND EXAMINATION—REQUIREMENTS

NEW SECTION

WAC 246-803-200 Training for East Asian medicine practitioners. To become an East Asian medicine practitioner, an applicant must have training in:

(1) Basic sciences as described in WAC 246-803-210;

(2) East Asian medicine sciences as described in WAC 246-803-220; and

(3) Clinical training as described in WAC 246-803-230.

NEW SECTION

WAC 246-803-210 Basic sciences. To become an East Asian medicine practitioner, an applicant must have training in basic sciences that must consist of a minimum of forty-five quarter credits or thirty semester or trimester credits. These credits shall consist of the following:

(1) Anatomy;

(2) Physiology;

(3) Microbiology;

(4) Biochemistry;

(5) Pathology;

(6) Survey of western clinical sciences; and

(7) Hygiene.

NEW SECTION

WAC 246-803-220 East Asian medicine sciences. To become an East Asian medicine practitioner, an applicant must have training in East Asian medicine sciences consisting of a minimum of seventy-five quarter credits or fifty semester or trimester credits. These credits must include the following subjects of acupuncture/East Asian medicine:

(1) Fundamental principles;

(2) Diagnosis;

(3) Pathology;

(4) Therapeutics;

(5) Meridians/vessels and points; and

(6) Techniques, including electro-acupuncture.

NEW SECTION

WAC 246-803-230 Clinical training. To become an East Asian medicine practitioner, an applicant must complete a minimum of five hundred hours of supervised clinical training including no more than one hundred hours of observation which includes case presentation and discussion. At least four hundred hours must be patient treatment.

(1) Qualified instructors must observe and provide guidance to the student as appropriate. Instructors must be qualified to provide instruction in their areas of specialization in East Asian medicine as demonstrated by possession of the following:

(a) Broad and comprehensive training in East Asian medicine; and

(b) Two years of relevant current work experience or teaching experience in East Asian medicine.

(2) Qualified instructors must be available within the clinical facility to provide consultation and assistance to the student for patient treatments. Prior to initiation of each treatment, instructors must have knowledge of and approve the diagnosis and treatment plan.

(3) "Patient treatment" includes:

(a) Conducting a patient intake interview concerning the patient's past and present medical history;

(b) Performing East Asian medicine examination and diagnosis;

(c) Discussion between the instructor and the student concerning the proposed diagnosis and treatment plan;

(d) Applying East Asian medicine treatment principles and techniques; and

(e) Charting of patient conditions, evaluative discussions and findings, and concluding remarks.

NEW SECTION

WAC 246-803-240 Examinations. (1) The examinations administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) are the official examinations for licensure as an East Asian medicine practitioner.

(2) An applicant for licensure as an East Asian medicine practitioner must pass the following examinations:

(a) Foundations of Oriental medicine examination;

(b) Acupuncture with point location examination;

(c) Biomedicine examination; and

(d) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) clean needle technique course.

(3) If the applicant takes the examinations listed in subsection (2) of this section in a language other than English, they must also take and pass the test of English as a foreign language (TOEFL) internet-based (IBT) examination. This is done by obtaining scores on the TOEFL IBT of at least:

(a) 24 on the writing section;

(b) 26 on the speaking section;

(c) 21 on the reading section; and

(d) 18 on the listening comprehension section.

NEW SECTION

WAC 246-803-250 Documents in foreign language. All documents submitted to the department in a foreign language must be accompanied by an accurate translation in English. Each translated document must bear the affidavit of the translator certifying that the translator is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Translation of any document relative to a person's application is at the expense of the applicant.

PRACTICE STANDARDS

NEW SECTION

WAC 246-803-300 Patient notification of qualifications and scope of practice. East Asian medicine practitioners in the state of Washington must provide to each patient prior to or at the time of the initial patient visit the qualifications and scope of practice form. The form must include:

(1) The East Asian medicine practitioner's education. The degree obtained or if the education was by apprenticeship, the dates and locations of the didactic and clinical training.

(2) License information, including state license number and date of licensure.

(3) A statement that the practice of East Asian medicine in the state of Washington includes the following:

(a) Acupuncture, including the use of acupuncture needles or lancets to directly and indirectly stimulate acupuncture points and meridians;

(b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(c) Moxibustion;

(d) Acupressure;

(e) Cupping;

(f) Dermal friction technique;

(g) Infrared;

(h) Sonopuncture;

(i) Laserpuncture;

(j) Point injection therapy (aquapuncture);

(k) Dietary advice and health education based on East Asian medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements;

(l) Breathing, relaxation, and East Asian exercise techniques;

(m) Qi gong;

(n) East Asian massage and Tui na (which is a method of East Asian bodywork); and

(o) Superficial heat and cold therapies.

(4) A statement that side effects of the treatments listed above may include, but are not limited to, the following:

(a) Pain following treatment;

(b) Minor bruising;

(c) Infection;

(d) Needle sickness; and

(e) Broken needle.

(5) A statement that patients must inform the East Asian medicine practitioner if they have a severe bleeding disorder or pacemaker prior to any treatment.

NEW SECTION

WAC 246-803-310 Referral to primary health care provider. (1) When an East Asian medicine practitioner sees a patient with a potentially serious disorder, the East Asian medicine practitioner shall immediately request a consultation or written diagnosis from a primary health care provider.

(2) Potentially serious disorders include, but are not limited to:

(a) Cardiac conditions including uncontrolled hypertension;

(b) Acute abdominal symptoms;

(c) Acute undiagnosed neurological changes;

(d) Unexplained weight loss or gain in excess of fifteen percent body weight within a three-month period;

(e) Suspected fracture or dislocation;

(f) Suspected systemic infection;

(g) Any serious undiagnosed hemorrhagic disorder; and

(h) Acute respiratory distress without previous history or diagnosis.

(3) In the event a patient with a potentially serious disorder refuses to authorize such consultation or provide a recent diagnosis from a primary health care provider, East Asian medical treatments, including acupuncture, may only continue after the patient signs a written waiver acknowledging the risks associated with the failure to pursue treatment from a primary health care provider.

(4) The written waiver must include:

(a) A statement acknowledging that failure by the patient to pursue treatment from a primary health care provider may involve risks that such a condition can worsen without further warning and even become life threatening;

(b) An explanation of an East Asian medicine practitioner's scope of practice, to include the services and techniques East Asian medicine practitioners are authorized to provide; and

(c) A statement that the services and techniques that an East Asian medicine practitioner is authorized to provide will not resolve the patient's underlying potentially serious disorder.

NEW SECTION

WAC 246-803-330 Plan for consultation, emergency transfer and referral. Every East Asian medicine practitioner shall develop a written plan for consultation, emergency transfer, and referral. The written consultation plan must be submitted to the department after initial licensure but prior to treating any patients, and annually with the license renewal fee. The written plan for consultation, emergency transfer and referral must include:

(1) The name, license number and telephone numbers of two consulting primary health care providers.

(2) A statement attesting that in an emergency, the East Asian medicine practitioner will:

(a) Initiate the emergency medical system (EMS) by dialing 911;

(b) Request an ambulance; and

(c) Provide patient support until emergency response arrives.

(3) Confirmation from the primary health care providers listed as to their agreement to consult with and accept referred patients from the applicant.

NEW SECTION

WAC 246-803-340 Mandatory reporting. All individuals credentialed under this chapter must comply with the mandatory reporting rules in chapter 246-16 WAC.

LICENSE STATUS

NEW SECTION

WAC 246-803-400 Inactive status. (1) An East Asian medicine practitioner may obtain an inactive license by meeting the requirements of WAC 246-12-090.

(2) An inactive license must be renewed every year on the East Asian medicine practitioner's birthday according to WAC 246-12-100 and 246-803-990.

(3) If a license is inactive for three years or less, to return to active status an East Asian medicine practitioner must meet the requirements of WAC 246-12-110 and 246-803-990.

(4) If a license is inactive for more than three years and the East Asian medicine practitioner has been actively practicing in another state of the United States or its major territories, to return to active status the East Asian medicine practitioner must:

(a) Provide certification of an active East Asian medicine practitioner license, submitted directly from another licensing entity. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action;

(b) Provide verification of current active practice in another state of the United States or its major territories for the last three years; and

(c) Meet the requirements of WAC 246-12-110 and 246-803-990.

(5) If a license is inactive for more than three years, and the East Asian medicine practitioner has not been actively practicing in another state of the United States or its major territories, to return to active status the East Asian medicine practitioner must provide:

(a) A written request to change licensure status;

(b) The applicable fees according to WAC 246-803-990;

(c) Proof of successful completion of the examinations as required in WAC 246-803-240 (2)(a), (b), and (c) within the past year;

(d) Written certification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action; and

(e) Proof of AIDS education according to WAC 246-803-100, 246-803-110 or 246-803-120.

EAST ASIAN MEDICINE PROGRAM APPROVAL

NEW SECTION

WAC 246-803-500 Application for approval of a nonaccredited school, college or program. (1) Clinical and didactic training of a school, college or program may be approved separately.

(2) The department may consider for approval didactic training which meet the requirements outlined in WAC 246-803-210 and 246-803-220. Clinical training must meet the requirements outlined in WAC 246-803-230.

(3) Application for approval of a school, college or program is made by the authorized representative of the school, college or program.

(4) The authorized representative may request approval of the school, college or program as of the date of the application or retroactively to a specified date.

(5) The application for approval of a school, college or program shall include documentation required by the department pertaining to:

(a) Educational administration;

(b) Qualifications of instructors;

(c) Didactic and/or clinical facilities; and

(d) Content of offered training.

(6) An application fee as required under WAC 246-803-990 must accompany the completed application.

(7) The department will evaluate the application and, if necessary, conduct a site inspection of the school, college or program prior to approval by the department.

(8) After completing the evaluation of the application, the department may grant or deny approval, or grant approval conditioned upon appropriate modification to the application.

(9) If the department denies an application or grants conditional approval, the authorized representative of the applicant school, college or program may request a review within ninety days of the department's adverse action. After ninety days the contesting party may only obtain review by submitting a new application.

(10) The authorized representative shall notify the department of significant changes with respect to educational administration, instructor qualifications, facilities, or content of training.

(11) The department may inspect an approved school, college or program at reasonable intervals for compliance. Approval may be withdrawn if the department finds failure to comply with the requirements of law, administrative rules, or representations in the application.

(12) The authorized representative must immediately correct deficiencies which resulted in withdrawal of the department's approval.

NEW SECTION

WAC 246-803-510 Application for approval of alternative training. (1) Clinical and didactic training of any apprenticeship or tutorial instruction may be approved separately.

(2) The department may consider for approval didactic training which meets the requirements outlined in WAC 246-

803-210 and 246-803-220. Clinical training must meet the requirements of WAC 246-803-230.

(3) Application for approval of an apprenticeship or tutorial instruction is made by the apprenticeship or tutorial trainer.

(4) A request for approval of the apprenticeship or tutorial instruction may be as of the date of the application or retroactively to a specified date.

(5) The apprenticeship or tutorial instructor must be licensed as an East Asian medicine practitioner in the state of Washington and have no less than seven out of the last ten years of experience in full-time practice as an East Asian medicine practitioner.

(6) The application for approval of an apprenticeship or tutorial instruction must include documentation required by the department pertaining to:

(a) Educational administration;

(b) Qualifications of the apprenticeship or tutorial trainer;

(c) Didactic and/or clinical facilities; and

(d) Content of offered training.

(7) An application fee as required under WAC 246-803-990 must accompany the completed application.

(8) The department will evaluate the application and, if necessary, conduct a site inspection of the apprenticeship or tutorial instruction prior to approval by the department.

(9) After completing the evaluation of the application, the department may grant or deny approval, or grant approval conditioned upon appropriate modification to the application.

(10) If the department denies an application or grants conditional approval, the apprenticeship or tutorial trainer may request a review within ninety days of the department's adverse action. After ninety days the contesting party may only obtain review by submitting a new application.

(11) The apprenticeship or tutorial trainer shall notify the department of significant changes with respect to educational administration, trainer qualifications, facilities, or content of training.

(12) The department may inspect an approved apprenticeship or tutorial instruction at reasonable intervals for compliance. Approval may be withdrawn if the department finds failure to comply with the requirements of law, administrative rules, or representations in the application.

(13) The apprenticeship or tutorial trainer must immediately correct deficiencies which resulted in withdrawal of the department's approval.

(14) An apprenticeship or tutorial is of limited duration and ends at the time the parties to the agreement have completed their obligations.

FEES

NEW SECTION

WAC 246-803-990 East Asian medicine practitioner fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	$100.00
License renewal	196.00
Inactive license renewal	50.00
Late renewal penalty	105.00
Expired license reissuance	50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
East Asian medicine training program application	500.00
UW library access fee	9.00

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-802-010	Definitions.
WAC 246-802-025	Inactive status.
WAC 246-802-030	Approval of school, program, apprenticeship or tutorial instruction.
WAC 246-802-040	Western sciences.
WAC 246-802-050	Acupuncture sciences.
WAC 246-802-060	Clinical training.
WAC 246-802-070	Documents in foreign language.
WAC 246-802-080	Sufficiency of documents.
WAC 246-802-090	Examinations.
WAC 246-802-100	Consultation plan.
WAC 246-802-110	Referral to other health care practitioners.
WAC 246-802-120	Patient informed consent.
WAC 246-802-130	Application exhibits required.
WAC 246-802-140	Advertising.
WAC 246-802-160	General provisions.
WAC 246-802-170	Mandatory reporting.
WAC 246-802-180	Health care institutions.
WAC 246-802-190	Acupuncture associations or societies.
WAC 246-802-200	Health care service contractors and disability insurance carriers.
WAC 246-802-210	Professional liability carriers.
WAC 246-802-220	Courts.

WAC 246-802-230	State and federal agencies.
WAC 246-802-240	Cooperation with investigation.
WAC 246-802-250	AIDS prevention and information education requirements.
WAC 246-802-990	East Asian medicine practitioner fees and renewal cycle.

WSR 11-17-111
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed August 23, 2011, 10:28 a.m., effective September 23, 2011]

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

Purpose: Changes to the rule are required to comply with ESSB 6499 passed by the legislature during the 2010 regular session.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-005 Terminology—Definitions, 308-96A-350 Outstanding vehicle violations—Information to be supplied to the department by issuing jurisdictions, and 308-96A-355 Satisfaction of vehicle violations—Information to be supplied by issuing jurisdiction.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 11-13-117 on June 21, 2011.

A final cost-benefit analysis is available by contacting Ben Shomshor, Department of Licensing, P.O. Box 2957, Olympia, WA 98507-2957, phone (360) 359-4019, fax (360) 570-7063, e-mail bshomshor@dol.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: August 22, 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-027, filed 10/9/06, effective 11/9/06)

WAC 308-96A-005 Terminology—Definitions. Terms used in chapter ((~~46.16~~)) 46.16A RCW and this chapter will have the following meanings except where otherwise defined, and where the context clearly indicates the contrary:

(1) ((~~"Affidavit of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed or mutilated. The affidavit of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license of that vehicle to a new owner. The signature of the owner completing the affidavit of loss release of interest must be notarized or certified as described in WAC 308-56A-270.~~

~~(2) "Agent" means any county auditor, or other individual or business entity other than a subagent appointed to carry out vehicle licensing and titling functions for the department. (RCW 46.01.140.)~~

~~(3)~~)) "Application" means a form provided or approved by the department to apply for different types of services and documents.

(((~~(4)~~))) (2) "Cab and chassis" is an incomplete vehicle manufactured and sold with only a cab, frame and running gear. (WAC 308-96A-145.)

(((~~(5)~~))) (3) "Certificate of license registration" means a document issued by the department and required by RCW ((~~46.16.260~~)) 46.16A.180 to be carried in the vehicle to operate legally on the roadways of Washington and described in RCW ((~~46.12.050~~)) 46.12.540.

(((~~(6)~~))) (4) "Chattel lien" is a process by which a person may sell or take ownership of a vehicle when:

(a) They provide services or materials for a vehicle at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(((~~(7) "Collector vehicle license plate" is a special license plate that may be assigned to a vehicle that is more than thirty years old as authorized by RCW 46.16.305(1).~~

~~(8)~~)) (5) "Confidential" and "undercover" license plates ((~~are standard issue license plates assigned to vehicles owned or operated by public agencies. These license plates are used as specifically authorized by RCW 46.08.066~~)) have the same meaning as provided in RCW 46.04.142.

(((~~(9)~~))) (6) "Current year" means the current registration year unless otherwise stated. (WAC 308-96A-260.)

(((~~(10) "Department" means the department of licensing. (RCW 46.04.162.)~~

~~(11) "Empty scale weight" means the same as "scale weight" in this section.~~

~~(12)~~)) (7) "Exception reports" means the main source of communication between jurisdictions and the department of licensing as computer reports that must be used by the jurisdiction to correct errors they have submitted to the department. Reports are received by all participating jurisdictions, whether processing vehicle violations manually or electronically.

(8) "Expiration day and month."

(a) "Date of expiration" or "expiration date" means the day of the month on which the vehicle registration, gross weight license, decal or tabs expire.

(b) "Month of expiration" or "expiration month" means the calendar month during which a registration period ends. (WAC 308-96A-260.)

(((~~(13)~~))) (9) "Fleet" means a group of vehicles registered in the same owner name and which have been assigned the same fleet identifier code by the department.

(((~~(14) "Fixed load vehicle" is a vehicle that is exempt from the one hundred fifty percent gross weight requirements as specified in RCW 46.16.079 and described in WAC 308-96A-099.~~

~~(15)~~))) (10) "Gross weight," "declared gross weight," and "tonnage" mean gross weight defined in RCW ((~~46.16.070, 46.16.090, 46.16.111~~)) 46.16A.455, 46.16A.425, 46.04.140 and chapter 46.44 RCW.

(((~~(16) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as a maximum load weight of a single vehicle.~~

~~(17) "Hybrid motor vehicle" means a vehicle that uses multiple power sources or fuel types for propulsion and meets the federal definition of a hybrid motor vehicle.~~

~~(18)~~))) (11) "Identification card" means the identification card referred to in RCW ((~~46.16.381(3)~~)) 46.19.010 for disabled parking privileges and is used for identification of persons with disabilities.

(((~~(19)~~))) (12) "Indian country" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries set aside by the United States for the use and occupancy of Indian tribes by treaty, law or executive order and which are areas currently recognized as "Indian country" by the United States Department of the Interior as referenced in 18 U.S.C. 1151 and CFR 25.

(((~~(20)~~))) (13) "Indian tribe" means a Washington Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

(((~~(21)~~))) (14) "Indian" means a person on the tribal rolls of the Washington Indian tribe occupying Indian country.

(((~~(22)~~))) (15) "Individual with disabilities parking placard expiration date" means the last day of the month as specified on the department placard.

(((~~(23)~~))) (16) "Jurisdiction" as used in the ((~~parking ticket~~)) vehicle violation system means any district, municipal, justice, superior court, Washington state department of transportation, or authorized representative of one of these entities.

(((~~(24)~~))) (17) "Jurisdiction seal" means an embossed seal or stamp provided by the jurisdiction to authenticate ((~~court~~)) documents provided by jurisdictions.

(((~~(25)~~))) (18) "Landlord's lien" for rent is a process by which a landlord may sell or take ownership of a tenant's vehicle as security for rent due.

(((~~(26)~~))) (19) "License or licensing" and "register or registering" are synonymous and mean the act of registering a vehicle under chapter ((~~46.16~~)) 46.16A RCW.

(((~~(27)~~))) (20) "License fee" means the fees required for the act of licensing a vehicle under chapter ((~~46.16~~)) 46.17 RCW. License fee does not include license plate fees identified as taxes, and fees collected by the department for other jurisdictions.

(((~~(28) "License tab fees" means the same as described in RCW 46.16.0621.~~

~~(29)~~))) (21) "Licensed physician" for the purpose of individual with disabilities parking privileges, means: Chiropractic physicians, naturopaths, medical doctors, osteopathic physicians, podiatric physicians, and advanced registered nurse practitioners. Licensed physician does not include persons licensed in the professions of dentistry and optometry. (RCW ((~~46.16.381(1)~~)) 46.19.010.)

(((~~(30) "Motor home" means a vehicle designed or altered for human habitation as described in RCW 46.04.305.~~

~~(31)~~))) (22) "Municipality" in reference to parking tickets, means every court having jurisdiction over offenses committed under RCW 46.20.270.

(((~~(32) "Natural person" means a human being.~~

~~(33)~~))) (23) "NCIC number" means the numeric code assigned by the National Crime Information Center to identify a jurisdiction.

(((~~(34)~~))) (24) "One hundred twenty-day notice" in reference to ((~~parking~~)) vehicle violations means a notice of ((~~parking~~)) vehicle violations that must be satisfied prior to the registration renewal date. (RCW ((~~46.16.216~~)) 46.16A.120.)

(((~~(35) "Parking ticket~~))) (25) "Vehicle violation disposition" means the requested action as determined by the jurisdiction to add failure-to-pay ((~~parking~~)) vehicle violations, or to remove paid ((~~parking~~)) vehicle violations from a vehicle record. (RCW ((~~46.16.216~~)) 46.16A.120.)

(((~~(36) "Parking~~))) (26) "Vehicle violation" means any standing, stopping ((~~or parking~~)), toll nonpayment civil penalty, automated traffic safety camera infractions, or vehicle violation per RCW 46.20.270(3).

(((~~(37) "Parking~~))) (27) "Vehicle violation list" means a computerized list containing all outstanding ((~~parking~~)) vehicle violations, which have been processed by the department. (RCW ((~~46.16.216(1)~~)) 46.16A.120.)

(((~~(38)~~))) (28) "Permanent" in reference to individual with disabilities parking privileges, means a licensed physician has certified that a qualifying condition is expected to last at least five years. (RCW ((~~46.16.381~~)) 46.19.010. WAC 308-96A-306.)

(((~~(39)~~))) (29) "Permanent fleet" means a group of ((~~one hundred~~)) fifty or more vehicles registered in the same owner(s) name and which have been assigned the same fleet identifier code by the department and has an expiration date of December 31st of each year. (WAC 308-96A-161.)

(((~~(40)~~))) (30) "Permit" in reference to individual with disabilities parking privileges means the proof provided by the department in the form of placard(s), special license plate(s) and an identification card indicating eligibility for individual with disabilities parking privileges. (RCW ((~~46.16.381~~)) 46.19.010.)

(((~~(41) "Personalized license plates" are plates denoting the registered owner's chosen format or designation and are limited to those described in RCW 46.16.560, 46.16.570, and 46.16.580. (WAC 308-96A-065.)~~

~~(42)~~))) (31) "Personal use vehicle" in reference to disabled veteran's, prisoners of war and congressional medal of honor plates, means vehicles not used for commercial purpose including: Passenger vehicles, motor homes, motorcycles, and trucks with designated gross vehicle weight not exceeding twelve thousand pounds. Registration ownership must be in the name of the individual and not in the business name. (WAC 308-96A-046.)

(((~~43~~))) (32) "Placard" is an item issued to individuals who qualify for special individual with disabilities parking privileges under RCW ((~~46.16.381~~)) 46.19.010 and are entitled to receive from the department of licensing in the form of a removable windshield placard bearing the international symbol of access and individual serial number.

(((~~44~~))) (33) "Private carriers" means those entities contracting with public transportation authorities to transport persons with disabilities described in RCW ((~~46.16.381~~)) 46.19.010.

~~(((45) "Private use trailer" means one that is owned by a natural person, and used for the private noncommercial use of the owner.~~

~~(46)~~)) (34) "Privilege" in reference to individual with disabilities parking privileges means permission to utilize the benefits associated with the permit. (RCW ((~~46.16.381~~)) 46.19.010, 46.61.582 and ((~~70.84.090~~)) chapter 70.84 RCW (July 1, 2011, version). WAC 308-96A-306.)

(((~~47~~))) (35) "Public transportation authorities" means those entities operating motor vehicles owned or leased by Washington state, or a town, city, county, municipality, or metropolitan or municipal corporation within the state, or United States government agencies or Indian nations used for the primary purpose of transporting persons with disabilities described in RCW ((~~46.16.381~~)) 46.19.010.

(((~~48~~))) (36) "Regular fleet" means a group of five or more vehicles registered in the same owner(s) name and which have been assigned the same fleet identifier code by the department and has an expiration date of December 31st of each year. (WAC 308-96A-161.)

~~(((49) "Rental car" means a car that is rented as defined in RCW 46.04.465.~~

~~(50) "Renewal notice" means the notice to renew a vehicle license. Renewal notices are sent to the registered owner approximately sixty days prior to the current expiration date.~~

~~(51)~~)) (37) "Salvage title" means a certificate of title issued by another jurisdiction designating a motor vehicle as a "salvage vehicle."

~~(((52) "Scale weight" means the weight of a vehicle as it stands without a load. (RCW 46.16.070, 46.16.111, and chapter 46.17 RCW.)~~

~~(53)~~)) (38) "Self-storage facilities lien" is a process by which the owner of a self-storage facility may sell a vehicle stored at the facility as security for rent or other charges due.

(((~~54~~))) (39) "Signature" means any memorandum, mark, sign or subscriptions made with intent to authenticate an application. (RCW 9A.04.110(23).)

~~(((55) "Special mailer" means the notice sent by the department in lieu of a renewal notice. The special mailer indicates additional or corrective information that must be provided at the time of registration renewal.~~

~~(56) "Subagent" means individual(s) recommended by an agent and appointed by the director to provide vehicle and vessel licensing and titling services under contract with the agent as described in RCW 46.01.140.~~

~~(57) "Tab(s)" means stickers, issued by the department, affixed to the rear license plate to identify the registration expiration month and year for a specific vehicle.~~

~~(58) "Transit permit" means a document that authorizes an individual to operate a vehicle on a public highway of this state solely for the purpose of obtaining necessary documentation to complete and apply for a Washington certificate of ownership or registration, and does not allow unrestricted use of the vehicle. (WAC 308-96A-026.)~~

~~(59)~~)) (40) "Unprocessed" as used in ((~~parking ticket~~)) vehicle violation system means ((~~no~~)) an update of the computer record has not ((~~been updated~~)) occurred.

(((~~60~~))) (41) "Use classes" means those vehicles described in WAC 308-96A-099.

(((~~61~~))) (42) "Vehicle data base record" means the electronic record stored on the department's motor vehicle data base reflecting vehicle and ownership information.

(((~~62~~))) (43) "Vehicle/vessel ((~~seller's~~)) report of sale" means a document or electronic record transaction that when properly filed protects the seller of a vehicle/vessel from certain criminal and civil liabilities arising from use of the vehicle/vessel by another person after the vehicle/vessel has been sold or a change in ownership has occurred.

AMENDATORY SECTION (Amending WSR 01-17-091, filed 8/20/01, effective 9/20/01)

WAC 308-96A-350 Outstanding ((~~parking~~)) vehicle violations—Information to be supplied to the department by issuing jurisdictions. (1) **How is the department notified of outstanding (unpaid) ((~~parking~~)) vehicle violations?** The jurisdiction notifies the department of outstanding ((~~parking~~)) vehicle violations. The notice will include the following:

(a) Jurisdiction name.

(b) NCIC number/originating agency identifier (ORI)/ jurisdiction ID.

(c) ((~~Parking~~)) Vehicle violation number.

(d) Date ((~~parking~~)) vehicle violation was issued.

(e) Vehicle license plate number.

(f) Fine and penalty amount.

(g) Jurisdictions seal, except if filed electronically.

(h) Signature and date when required on form, except if filed electronically.

(2) **When will the department accept ((~~parking~~)) vehicle violations for a vehicle data base record by a jurisdiction?** An original report against a vehicle record must contain a minimum of two outstanding violations from one jurisdiction. Subsequent reports against that vehicle by that same jurisdiction may be for a single violation unless the vehicle record indicates all existing violations have been paid and no further violations have been accrued in the thirteen months following the payment. If thirteen months have elapsed, the jurisdiction must submit an original report containing a minimum of two violations.

(3) **What methods do jurisdictions use to notify the department of ((~~parking~~)) vehicle violations?** Information must be provided in accordance with department instructions by:

(a) A form ((~~issued~~)) created or approved by the department;

(b) A computer listing sheet; or

(c) Electronic format.

(4) **What methods do jurisdictions use to correct invalid, incomplete or inaccurate record transactions**

received and processed by the department electronically or manually?

(a) Reconcile and correct errors identified on the exception reports provided by the department; and

(b) Submit corrected transactions to the department.

AMENDATORY SECTION (Amending WSR 01-17-091, filed 8/20/01, effective 9/20/01)

WAC 308-96A-355 Satisfaction of ((~~parking~~)) vehicle violations—Information to be supplied by issuing jurisdiction. What happens when outstanding ((~~parking~~)) vehicle violations are satisfied? Upon satisfaction of ((~~parking~~)) vehicle violations previously reported as outstanding against a vehicle, the issuing jurisdiction must:

(1) Furnish the registered owner with a proof of payment form; and

(2) ((~~Supply~~)) Notify the department ((~~with the following information~~)) within ten days of satisfaction of the ((~~parking~~)) vehicle violations.

((~~The information must be on a form approved by the department, on a computer listing sheet or electronic format in accordance with department instructions containing:~~)) (3) Both proof of payment and notification to the department must contain:

(a) Jurisdiction name((~~,~~));

(b) NCIC number/originating agency identifier (ORI)((~~,~~))/jurisdiction ID;

(c) ((~~Parking~~)) Vehicle violation number((~~,~~));

(d) Date ((~~parking~~)) vehicle violation was issued((~~,~~));

(e) Vehicle license plate number((~~,~~));

(f) Date of satisfaction((~~,~~));

(g) Jurisdiction seal, except if filed electronically((~~,~~));

(h) Signature of ((~~court~~)) representative and date signed, except if filed electronically.

((~~Information must be provided on a form approved by the department on a computer listing sheet or electronic format in accordance with department instructions.~~)) (4) If filed electronically, must be in accordance with department instructions.

WSR 11-17-119
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed August 23, 2011, 2:29 p.m., effective September 23, 2011]

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

Purpose: To add a new infraction to WAC 137-25-030 for providing false or misleading information in the course of an investigation of sexual misconduct.

Citation of Existing Rules Affected by this Order: Amending WAC 137-25-030.

Statutory Authority for Adoption: RCW 72.09.130, 72.01.090, and 72.65.100.

Adopted under notice filed as WSR 11-15-069 on July 19, 2011.

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

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

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

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

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

Date Adopted: August 23, 2011.

Bernard Warner
Secretary

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-25-030 Serious infractions.

Category A

501 - Committing homicide.
502 - Aggravated assault on another offender.
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules.
511 - Aggravated assault on a visitor or community member.
521 - Taking or holding any person hostage.
550 - Escape.
601 - Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
602 - Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any component thereof.
603 - Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia.
604 - Aggravated assault on a staff member.
611 - Sexual assault on a staff member.
612 - Attempted sexual assault of staff.
613 - Abusive sexual contact with staff.
635 - Sexual assault on another offender.
636 - Attempted sexual assault of another offender.
637 - Abusive sexual contact with another offender.
650 - Rioting.
651 - Inciting others to riot.
882 - Possession or unauthorized use of a cell phone.

Category B - Level 1

504 - Engaging in sexual acts with others within the facility with the exception of approved conjugal visits.

Category B - Level 1

553 - Setting a fire.
560 - Unauthorized possession of items or materials likely to be used in an escape attempt.
633 - Assault on another offender.
704 - Assault on a staff member.
711 - Assault on a visitor or community member.
744 - Making a bomb threat.
884 - Urinating, defecating or placing feces or urine, in any location other than a toilet or authorized receptacle.
886 - Adulteration of any food or drinks.
892 - Giving, selling or trading any prescribed medication with another offender.

Category B - Level 2

505 - Fighting with any person.
556 - Refusing to submit or cooperate in a search when ordered to do so by a staff member.
607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member within the allotted time frame.
608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests when ordered to do so by a staff member.
652 - Engaging in or inciting a group demonstration.
655 - Making intoxicants, alcohol, controlled substances, narcotics, or possession of ingredients, equipment, items, formulas, or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
682 - Engaging in or inciting an organized work stoppage.
707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage or substance.
716 - Unauthorized use of an over the counter medication or failure to take prescribed medication as required when administered under supervision.
736 - Possession, manufacture or introduction of unauthorized keys.
750 - Indecent exposure.
752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.
830 - Any escape from work release with voluntary return within 24 hours.

Category B - Level 3

503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.

Category B - Level 3

506 - Threatening another with bodily harm or with any offense against another person, property, or family.
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.
525 - Violating conditions of a furlough.
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in DOC policy on *Response to and Investigation of Sexual Misconduct*.
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties.
600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
605 - Impersonating any staff member, contracted staff member, volunteer, other offenders or visitor.
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction.
654 - Counterfeiting, forgery, altering, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper.
660 - Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization.
738 - Possession of clothing or assigned equipment of a staff member.
739 - Possession of personal information about currently employed staff, contractors, or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved; including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, driver's license numbers, medical, personnel, financial, or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.
745 - Refusing a transfer to another institution.
746 - Engaging in or inciting an organized hunger strike.
762 - Failing to complete, or administrative termination from, DOSA substance abuse treatment program. Note: *This infraction must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC.*
777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
813 - Unauthorized/unaccounted time in the community or being in an unauthorized location in the community.
814 - While in work release, violation of an imposed special condition.

Category B - Level 3

831 - While in work release, failure to return from an authorized sign out.
879 - Operating a motor vehicle without permission or in an unauthorized manner or location.
889 - Unauthorized use of facility phones/related equipment or use of computer to conduct unauthorized or illegal business.

Category C - Level 1

508 - Throwing objects, materials, substances, or spitting in the direction of another person(s).
517 - Committing any act that would constitute a misdemeanor and that is not otherwise included in these rules.
555 - Theft of property or possession of stolen property.
557 - Refusing to participate in an available education or work program or other mandatory programming assignment.
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices.
610 - Unauthorized possession of prescribed medication greater than a single or daily dose.
620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
659 - Sexual harassment.
663 - Using physical force, intimidation or coercion against any person.
702 - Possession, manufacture or introduction of an unauthorized tool.
708 - Organizing or participating in unauthorized group activity or meeting.
714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.
717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
720 - Flooding a cell or other area of the institution/facility.
724 - Refusing a cell or housing assignment.
734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.
810 - Failure to seek/maintain employment or training or maintain oneself financially or being terminated from a job for negative or substandard performance.

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information.
554 - Damaging or destroying state property or any other item the value of which is ten dollars or more and that is not the personal property of the offender.
559 - Gambling; possession of gambling paraphernalia.
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.
706 - Giving false information when proposing a release plan.
710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.
718 - Use of mail or telephone in violation of court order or local, state, or federal law.
725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.
726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
727 - Telephoning or sending written communications to any person contrary to previous written warnings or direction and/or documented disciplinary action.
728 - Possession of any sexually explicit material(s), as defined by department policy and/or WAC 137-25-020.
740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
742 - A pattern of creating a false emergency by feigning illness.
778 - Providing a urine specimen that has been diluted, substituted or altered in any way.

Category C - Level 3

551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.
606 - Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
657 - Being found guilty of four or more general infractions arising out of separate incidents within a 90-day period.
658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any general or serious infraction.
662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.
712 - Attempted suicide as determined by mental health staff.
713 - Self-mutilation or self-harm.

Category C - Level 3

741 - Theft of food the value of which is more than five dollars.
755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more.
811 - Entering into an unauthorized contract.
812 - Failure to report/turn in all earnings income.
861 - Performing or taking part in an unauthorized marriage.
890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury.

(1) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-25-020.

(2) Attempts to commit infraction #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-25-020 which includes "attempts."

WSR 11-17-130
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION

[Filed August 24, 2011, 8:31 a.m., effective September 24, 2011]

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

Purpose: WAC 468-38-071, rules further define the requirements for the heavy haul corridor vehicles on US 97. Legislation revised the gross weight and increased the road segment length of the corridor.

WAC 468-38-093 [468-38-050], rules will establish conditions for compliance for over width tarping systems. RCW 46.44.092(3) authorizes a permit for tarping system equipped vehicles but did not establish conditions in which to do so.

WAC 468-38-101 [468-38-270], SB 5260 removes reference to saddlemount vehicle from statute to be referenced in administrative rule. Placing the saddlemount vehicle in rule allows for timely revisions at the state level when federal law revises the limits to the saddlemount vehicle type.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.0915, 46.44.101.

Adopted under notice filed as WSR 11-15-092 on July 20, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: August 23, 2011.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-050 Special permits for extra-legal loads. (1) **When can the department or its agents issue a permit for an extra-legal move?** The following general conditions must be met:

(a) Application has been made in written or electronic format to the department or its agents (oral application is acceptable in face-to-face over-the-counter transactions) and the applicant has shown there is good cause for the move.

(b) The applicant has shown the configuration is eligible for a permit.

(c) The vehicle, vehicle combination and/or load has been thoroughly described and identified.

(d) The points of origin and destination and the route of travel have been stated and approved.

(e) The move has been determined to be consistent with public safety. The permit applicant has indicated that appropriate safety precautions will be taken as required by state law, administrative rule or specific permit instruction.

(2) **How must a vehicle(s), including load, be configured to be eligible for a special permit to move on the state highways?** A vehicle(s), including load, that can be readily or reasonably dismantled must be reduced to a minimum practical size and weight. Portions of a load may be detached and reloaded on the same hauling unit when the separate pieces are necessary to the operation of the machine or equipment which is being hauled: Provided, That the arrangement does not exceed special permit limits. Detached and reloaded pieces must be identified on the special permit. Permit requests for specific divisible loads are authorized under WAC 468-38-071.

(3) **Are there any exceptions to dismantling the configuration?** Yes. A vehicle, vehicle combination or load may stay assembled if by separating it into smaller loads or vehicles the intended use of the vehicle or load would be compromised (i.e., removing the boom from a self-propelled crane), the value of the load or vehicle would be destroyed (i.e., removing protective packaging), and/or it would require more than eight work hours to dismantle using appropriate equipment. The permit applicant has the burden of proof in seeking an exception. Configurations that fall under the exception must not exceed special permit limits.

(4) **What does the applicant affirm when he/she signs the permit?** The permit applicant affirms:

(a) The vehicle or vehicle combination and operator(s) are properly licensed to operate and carry the load described

in accordance with appropriate Washington law and administrative code.

(b) They will comply with all applicable requirements stipulated in the permit to move the extra-legal configuration.

(c) The move (vehicle and operator) is covered by a minimum of seven hundred and fifty thousand dollars liability insurance: Provided, That a noncommercial move (vehicle and operator) shall have at minimum three hundred thousand dollars liability insurance for the stated purpose.

(d) Except as provided in RCW 46.44.140, the ((~~original~~)) official department special permit (((~~permit with original signature) or certified copy will~~))) signed by the permittee, or a copy of the signed permit, must be carried on the power unit at all times while the permit is in effect. Moves made by designated emergency vehicles, receiving departmental permit authorization telephonically, are exempt from this requirement.

(5) **What specific responsibility and liability does the state assign to the permit applicant through the special permit?** Permits are granted with the specific understanding that the permit applicant shall be responsible and liable for accidents, damage or injury to any person or property resulting from the operation of the vehicle covered by the permit upon public highways of the state. The permit applicant shall hold blameless and harmless and shall indemnify the state of Washington, department of transportation, its officers, agents, and employees against any and all claims, demands, loss, injury, damage, actions and costs of actions whatsoever, that any of them may sustain by reason of unlawful acts, conduct or operations of the permit applicant in connection with the operations covered by the permit.

(6) **When and where can a special permit be acquired?** The following options are available:

(a) Special permits may be purchased at any authorized department of transportation office or ((~~agency~~)) agent Monday through Friday during normal business hours.

(b) An application for a permit may be submitted by facsimile, including charge card information to an authorized location. The special permit will be issued and returned by facsimile subject to normal business hours.

(c) Companies that would like to self-issue permits for their own vehicles may apply to the department for this privilege. Department representatives will work with the company to determine if self-issuing is appropriate.

(d) The department will maintain and publish a list of authorized permit offices and ((~~agencies~~)) agents.

AMENDATORY SECTION (Amending WSR 08-13-042, filed 6/12/08, effective 6/12/08)

WAC 468-38-071 Maximums and other criteria for special permits—Divisible. (1) **Can a vehicle, or vehicle combination, acquire a permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?** Yes. There are ((~~some very~~)) specific configurations that ((~~can~~)) receive extra length, extra width, or extra height when carrying a divisible load.

(2) **What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul ((~~his~~)) the rancher's own hay from ((~~his~~)) the rancher's own fields to feed ((~~his~~)) the rancher's own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(f) An overwidth permit, termed a tarping system permit, may be issued to a vehicle or vehicle combination for a divisible load when such vehicle is equipped with a tarping system as defined in WAC 468-38-073 (5)(n) and under the following conditions:

(i) The divisible load must be authorized by a tarping system permit in order to display the special conditions on the permit;

(ii) A tarping system permit is required for any divisible load exceeding one hundred and two inches (eight feet six inches) in width but not exceeding nine feet in width, all of which must be within the confines of the tarping system dimensions. For example, bulging of the tarping material, to accommodate the load, is not authorized;

(iii) A tarping system permit is authorized to be used in conjunction with either of the overlength permits authorized under (a) or (b) of this subsection; and

(iv) Vehicles operating with a tarping system permit are exempt from the requirements and restrictions listed in WAC 468-38-075(1).

(3) **Are there any measurement exclusive devices related to these permits?** Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three inches beyond the width of a vehicle. The examples are not all inclusive.

(4) **Are overweight permits available for divisible loads?** Yes. There are specific criteria authorizing overweight permits to divisible loads.

(a) The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

(i) Weight on axles in excess of what is allowed in RCW 46.44.041;

(ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and

(iv) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.

(b) Additional weight allowances are authorized through special permit for a segment of US-97 from the Canadian border to milepost ((~~331.22~~)) 331.12 designated as a heavy haul industrial corridor. The permits will authorize vehicles to haul divisible loads weighing up to the Canadian inter-provincial weight limits and must comply with the following requirements:

(i) Vehicles applying for the Canadian weight special permit must be licensed to their maximum legal weight limit in Washington state.

(ii) Displaying the US-97 heavy haul industrial corridor permit does not waive registration fees, fuel taxes, operating authority requirements, future legislative or regulatory changes. Except as provided in the provisions for the heavy weight industrial corridor on US-97, all Washington state and federal laws must be complied with.

(iii) Routes of travel are strictly limited: Both directions of US-97 from the Canadian border at milepost 336.48 to milepost ((~~331.22~~)) 331.12.

(iv) A Washington state axle spacing report is required for Canadian weight verification.

(v) The following descriptions indicate the maximum weight limits that will be permitted:

(A) Primary steering axle - 600 lbs. (272 kg) per inch (25.4 mm) of width of tire* with a maximum limit of 12,100 lbs.

(B) Other axles - 500 lbs. (227 kg) per inch of width of tire*.

(C) Single axles - 20,000 lbs. (9,100 kg) maximum.

(D) Tandem axles - 37,500 lbs. (17,000 kg) maximum.

*Width of tire is determined by tire side-wall nomenclature.

(E) Tridem axles.

Axle Spread	Pounds	Kilograms
94" (2.4m) to < 118" (3.0m)	46,300	21,000
118" (3.0m) to < 141" (3.6m)	50,700	23,000
141" (3.6m) to < 146" (3.7m)	52,900	24,000

Note: When computing allowable weights, the most conservative figure (whether weight per width of tire, axle weights, or gross weights) will govern.

(F) Maximum gross weight - pounds (kilograms).

Number of Axles	2	3	4	5	6	7	8
Truck	36,000 (16,350)	53,000 (24,250)					
Truck and Full Trailer			74,000 (33,500)	91,000 (41,250)	106,500 (48,250)	118,000 (53,500)	139,994 (63,500)
Truck and Pup		56,200 (25,450)	74,000 (33,550)	91,000 (41,250)	99,800 (45,250)		
Tractor and Semi		52,300 (23,700)	69,700 (31,600)	87,100 (39,500)	95,900 - 102,500*		
A-Train**				92,500 (41,900)	109,800 (49,800)	118,000 (53,500)	118,000 (53,500)

Number of Axles	2	3	4	5	6	7	8
B-Train**				90,000 (40,700)	107,200 (48,600)	124,600 (56,500)	((~~137,800 (62,500)~~)) 139,994 (63,500)
C-Train**				92,500 (41,900)	109,800 (49,800)	120,500 (54,600)	130,000 (58,500)

*Semi tridem axle spacing and weight limits:
94" to < 118" (2.4m to < 3.0m) spread - 95,900 lbs. (43,500 kg).
118" to < 141" (3.0m to < 3.6m) spread - 100,310 lbs. (45,500 kg).
141" to < 146" (3.6m to < 3.7m) spread - 102,500 lbs. (46,500 kg).
**Double trailer vehicles definition for this section:
A-Train: Double trailers coupled by a single drawbar.
B-Train: Two semi-trailers coupled by a fifth wheel mounted to rear of first trailer.
C-Train: Double trailers coupled by double drawbars with self-steering dolly axle(s).

AMENDATORY SECTION (Amending WSR 05-12-001, filed 5/18/05, effective 6/18/05)

WAC 468-38-270 Specialized ((~~mobile~~)) equipment. (1) **Why are certain vehicles designated as specialized ((~~mobile~~)) equipment?** Certain vehicles are designed and built for very unique functions other than transporting persons. The federal highway administration ((~~has classified~~)) classifies and references some of these vehicles as specialized ((~~mobile~~)) equipment in Title 23 CFR Part 658.13(e) and sets minimum and/or maximum parameters for the vehicle to operate ((~~legally~~)). The department ((~~has~~)) adopted these specialized classifications and accepted or further defined the legal parameters for operation on state highways. In addition to federal rule, the department has also recognized certain specially designed vehicles that, by necessity, exceed one or more of the vehicle size and weight parameters in chapter 46.44 RCW. The department has also classified these overlegal vehicles as specialized ((~~mobile~~)) equipment in order to ((~~address their needs, via~~)) authorized their movement on state highways, using a special motor vehicle permit, and provide a consistent administrative and enforcement treatment. ((~~This rule is not intended to encourage the development of vehicles that exceed the legal requirements of chapter 46.44 RCW.~~)) All vehicles exceeding legal requirements are subject to ((~~restricted access to the state highway network~~)) the requirements of this section and the requirements of chapter 46.44 RCW.

(2) **What vehicle types are classified by Title 23 Code of Federal Regulations (CFR) 658.13(e) as specialized equipment, including size ((~~parameters, can~~)) limits, and authorized to operate ((~~legally~~)) on the state highways without a special permit?** Listed in alphabetical order:

Automobile transporter: To be considered an automobile transporter, the power unit and the trailing unit must be modified to carry assembled automobiles. If the combination consists of a truck and stinger-steered trailing unit, the overall dimension for length ((~~can be up to~~)) must not exceed seventy-five feet, plus a front overhang of three feet and rear overhang of four feet. ((~~A~~)) If the combination consists of a tractor and semi-trailer (traditional high mount) ((~~may have an~~)), overall dimension for length ((~~of~~)) will not exceed sixty-five feet, plus three-foot front overhang and four-foot rear overhang.

Boat transporter: See automobile transporter.

Driveaway saddlemount vehicles: A combination consisting of a maximum of four trucks or truck tractors used in driveaway service where three of the vehicles are towed by the fourth in triple saddlemount position. The overall dimension for the length of the saddlemount combination will not exceed ninety-seven feet. Such combinations may include all axles of one vehicle loaded upon another, known as a full-mount.

Munitions carriers with dromedary equipment: A truck tractor equipped with a dromedary unit operating in combination with a semi-trailer transporting Class 1 explosives and/or any munitions related security material, as specified by the U.S. Department of Defense in compliance with 49 CFR 177.835, ((~~may have an~~)) overall dimension for length ((~~up to~~)) not to exceed seventy-five feet.

(3) **What ((~~specialized equipment~~)) other vehicle types does the department recognize as specialized equipment for the purpose of oversize and overweight permitting?** The following specialized equipment, including size and weight parameters, can operate with special permit((~~?~~)). Listed in alphabetical order:

Concrete pumper trucks: As a single unit fixed load vehicle, may exceed the legal weight limits ((~~up to the maximums established~~)) in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit, but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. ((~~Included with the fixed load are~~)) Pumper hose extensions and a ((~~necessary~~)) volume of water to flush the system ((~~at the job site~~)), when the pumping process is complete.

Construction equipment: Equipment used primarily for off-road heavy construction activity may be permitted for use on designated highway segments ((~~up to the maximums established~~)) identified in RCW 46.16.010 (5)(h)(i)(B) and (C) and must comply with the weight limits in RCW 46.44.091 ((~~when properly equipped for highway operation per chapter 46.37 RCW~~)). Equipment ((~~delivered to a con-~~

~~struction site~~)) may operate without permit on highway segments designated as part of the construction zone.

Cranes: As a single unit fixed load vehicle, may exceed the legal weight limits ((~~up to the maximums established~~)) in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Cranes may be permitted with standard working components that are included within the rated capacity of the crane. A boom trailer or boom dolly will be permitted only when the boom is attached to the crane upper works, for the purpose of transferring load to meet weight requirements. A crane may be permitted with counterweights, outrigger assemblies, load block, hook and cable tension ball assembly also loaded on the boom trailer or boom dolly, as long as those components are included in the rated capacity of the crane and do not cause the vehicle to exceed permitted weight limits.

Well drilling trucks: As a single unit fixed load vehicle, may exceed the legal weight limits ((~~up to the maximums established~~)) in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. ((~~In addition to the fixed load,~~)) The vehicle may carry drill extensions as part of the fixed load.

(4) **Can specialized ((~~mobile~~)) equipment tow a licensed vehicle used for commute purposes?** A specialized self-propelled single unit vehicle registered as a fixed load, operating under a fixed load permit, and/or cranes operating under an oversize/overweight permit (exclusive of boom dollies or trailers), may be permitted to tow a vehicle with a gross vehicle weight rating not to exceed eight thousand pounds. The overall length of the combination must not exceed seventy-five feet. The towed vehicle must be used for the sole purpose of commuting to and from the job site where the specialized ((~~mobile~~)) equipment is in service.

(5) **Does a specialized ((~~mobile~~)) vehicle operating under an overweight or fixed load permit receive any exemption from weight postings or weight restrictions placed on highway infrastructure?** No. Specialized mobile equipment must not cross load-restricted infrastructure when the equipment, either as a result of gross weight, axle weight or tire loadings, exceeds the stated capacity of the posting or restriction. However, exemptions to specific requirements, in WAC 468-38-075, may apply to specific fixed loads as identified in WAC 468-38-075.

WSR 11-17-147
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 24, 2011, 11:22 a.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: As authorized by RCW 34.05.380(3), office of superintendent of public instruction (OSPI) has found that establishing the effective date as September 1, 2011, is required by section 12 of ESHB 2065.

Purpose: The 2011 legislature passed ESHB 2065, which the governor signed on June 15, 2011. OSPI has been charged with implementing the requirements of the new legislation by the beginning of the 2011-12 school year.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: ESHB 2065, section 2(5).

Adopted under notice filed as WSR 11-14-002 on June 22, 2011.

Changes Other than Editing from Proposed to Adopted Version: Received comments suggesting adding more flexibility to "substantially similar" definition in subsection (3) of the proposed rule; the definition was altered to offer more flexibility. Also received comments suggesting clarification of differentiated funding requirements for students enrolled less than full time in an alternative learning experience identified in subsection (8) of the proposed rule. Clarifications were made to this subsection regarding requirements for such students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: August 17, 2011.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 11-12-022, filed 5/24/11, effective 9/1/11)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience, including an alternative learning experience on-line program as defined in RCW 28A.150.262. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means:

((~~(i)~~)) (A) A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience. Such enrollment is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and

((~~(ii)~~)) (B) The student pursues the requirements of the written student learning plan in whole or in part independently from a regular ((~~attendance-based instructional~~)) classroom setting or schedule, ((~~although the learning plan~~)) but the learning plan may include some components of direct ((~~instructional components~~)) instruction; and

((~~(iii)~~)) (C) The student's learning is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(ii) The broad categories of alternative learning experience programs include, but are not limited to:

(A) On-line programs as defined in RCW 28A.150.262;

(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and

(C) Contract based learning programs.

(b) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(c) "Written student learning plan" means a written plan for learning that is developed by a certificated teacher that defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience;

(ii) An estimate by a certificated teacher of the average number of hours per week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan((~~.~~));

(iii) A description of how weekly direct personal contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan, and must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented((~~.~~));

(e) "Satisfactory progress" means a certificated teacher has determined that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher;

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed,

documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of direct personal contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which direct personal contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(h) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive on-line, voice, or video communication technology;

(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125.

(4) **Alternative learning experience program requirements:**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties.

(b) Each student enrolled in an alternative learning experience must have direct personal contact with a certificated teacher at least once a week, until the student completes all course objectives or otherwise meets the requirements of the learning plan.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher and the results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student.

(iii) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(iv) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student.

(v) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) **Required school district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection ((~~(9)~~)) (10) of this section.

(6) **Alternative learning experience implementation requirements:**

(a) School districts that offer alternative learning experiences must ensure that they are accessible to all students, including students with disabilities. Alternative learning experiences for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experiences is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience program.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experiences must be consistent in quality with those available to the district's overall student population.

(((f))) (g) Instructional materials used in alternative learning experiences must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.-230.

(((g))) (h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience programs if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. However, nothing in this subsection prohibits school districts from contracting with on-line providers pursuant to chapter 28A.250 RCW.

(j)(i) A school district that provides one or more alternative learning experiences to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(((h))) (k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(((i))) (l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(((j))) (m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(((k))) (n) State funded alternative learning experience on-line programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.

(((l))) (o) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

(((m))) (p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC((;)).

(((n))) (q) Alternative learning experience courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the num-

ber of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's prior month progress evaluation pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in that month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115((.)):

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) School districts providing alternative learning experiences to nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) **Differentiated funding:** For the 2011-12 school year, school districts reporting student enrollment pursuant to the requirements of this section shall generate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:

(a) For alternative learning experience on-line programs under RCW 28A.150.262, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives either:

(i) Face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (e) of this subsection; or

(ii) Synchronous digital instructional contact time from a certificated teacher according to the criteria identified in (e) of this subsection if the student's written student learning plan includes only on-line courses as defined by RCW 28A.250.010.

(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (e) of this subsection;

(c) The instructional contact time must be for the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(d) The district certifies monthly to the superintendent of public instruction that the alternative learning experience program is designed and implemented in a manner that will accomplish such contact requirements;

(e) Using the estimate by a certificated teacher of the average number of hours per week the student will engage in learning activities to meet the requirements of the written student learning plan, as required in subsection (3)(c)(iii) of this section:

(i) For students whose learning plan includes an estimate of five hours per week or less, on average at least fifteen minutes of contact per school week during each month of reported enrollment for the student;

(ii) For students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week, on average at least thirty minutes of contact per school week during each month of reported enrollment for the student;

(iii) For students whose learning plan includes an estimate of more than fifteen hours per week, on average at least

one hour of contact per school week during each month of reported enrollment for the student.

(9) **Assessment requirements:**

(a) All students enrolled in alternative learning experiences must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience schools, programs, or courses who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

((~~(9)~~)) (10) **Program evaluation requirements:** School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

((~~(10)~~)) (11) **Reporting requirements:**

(a) Each school district offering alternative learning experiences must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experiences must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experiences must ((~~also~~)) report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section. The annual report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The annual report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

((~~(11)~~)) (12) **Documentation and record retention requirements:** School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection ((~~(10)~~)) (11) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of direct personal contact required by subsection (4) of this section;

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection ((~~(8)~~)) (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; ((~~and~~))

(i) Signed parent enrollment disclosure documents required by subsection (6)((~~(g)~~))(j) of this section; and

(j) Evidence of face-to-face contact required in subsection (8)(a) of this section.