

WSR 11-22-043
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 27, 2011, 10:53 a.m., effective November 27, 2011]

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

Purpose: The department is adopting new rules in chapter 388-106 WAC, Long-term care services, regarding addition of a new service to the state plan. This new service is called chronic care management (CCM). CCM provides chronic care management to high-cost and high-risk Medicaid only clients who meet eligibility criteria and voluntarily agree to participate.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 11-17-071 on August 16, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 1, Repealed 0.

Date Adopted: October 17, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds

or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

- (d) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intrave-

nous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.

"Health action plan" means an individual plan which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the activity;
- (b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigued easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instru-

mental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"SSI-related" is defined under WAC 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

NEW SECTION

WAC 388-106-1500 What is the department's chronic care management program? (1) The department of social and health services, aging and disability services administration's chronic care management program is designed to improve health outcomes, reduce medical costs, improve functional and self-care abilities and slow progression of disease or disability. The program:

(a) Offers care management and coordination activities for medical assistance-eligible clients who are also receiving medicaid long-term care services identified to be at risk for high medical costs;

(b) Provides education, training and coordination of services for program participants through providers contracted with the department to assist in achieving health action plans;

(c) Assists program participants in improving self-management skills and improving health outcomes; and

(d) The program provides education to better utilize health care services.

(2) The department's chronic care management program does not:

(a) Change the scope of services available to clients eligible under a Title XIX medicaid program;

(b) Interfere with the relationship between a client and a client's chosen providers;

(c) Duplicate or take the place of existing case management activities available to a client in the client's community; or

(d) Substitute for established activities, including case management, that are otherwise available to a client through programs administered by the department or other government agencies.

NEW SECTION

WAC 388-106-1505 What services may I receive under the chronic care management program? You may be eligible to receive the following services under the chronic care management program:

(1) Registered nurse care manager assistance with coordination of health care, support services, education, training and transitional care services.

(2) Registered nurse care manager assessment of your risk factors, health status, self-management skills and treatment plan.

(3) Registered nurse care manager development of a health action plan to identify your health-related problems, interventions and goals.

NEW SECTION

WAC 388-106-1510 Who provides chronic care management services to medical assistance clients receiving long-term care services and supports? Chronic care management program services may be provided by department contracted organizations. Each contracted organization must meet the conditions of the contract between the department and the contractors, including:

(1) Meet all applicable state and federal requirements;

(2) Provide services according to the contract with the department;

(3) Document all chronic care management services as required by the contract with the department; and

(4) Submit timely and accurate invoices for payment.

NEW SECTION

WAC 388-106-1515 Am I eligible to enroll in the chronic care management program? (1) You are eligible for chronic care management services if you are:

(a) Age twenty-one or older;

(b) Identified through predictive modeling as being at risk for having future high medical costs as a result of requiring medical treatment for multiple conditions;

(c) Agree to enroll in the chronic care management program;

(d) Are a recipient of the supplemental security income (SSI) program or general assistance with expedited medical categorically needy (GAX) program;

(e) Have a current CARE assessment as defined in WAC 388-106-0050;

(f) Assessed by CARE as meeting one or more of the following characteristics:

(i) Live alone in your own home;

(ii) Experience isolated moods and behaviors;

(iii) Rate your health as fair or poor;

(iv) Have deteriorating self-sufficiency; or

(v) Have more than 8 prescribed medications; and

(g) Receive home and community support services in your home; or

(h) Receive home and community support services in a licensed residential facility.

(2) As a long-term care services client, you are not eligible for enrollment in the chronic care management program if you do not meet the criteria described above, or if you are:

(a) Eligible for enrollment in the department's healthy options managed care program;

(b) Receiving hospice services;

(c) Receiving case management services for HIV/AIDS;

(d) Receiving education, training and coordination services for another program due to pregnancy;

(e) Eligible for third party coverage that provides a comparable service;

(f) Eligible for medicare coverage;

(g) Enrolled in another managed care program or other chronic care management program; or

(h) Residing in an institution as defined in WAC 388-500-0005, for more than thirty days.

NEW SECTION

WAC 388-106-1520 How do I enroll in the chronic care management program? Enrollment in the chronic care management program is voluntary. You must meet the eligibility criteria listed in WAC 388-106-1515. You may be referred by:

(1) The department's referral and enrollment process;

(2) The department's case managers;

(3) Providers in other settings; or

(4) You may also request to enroll by contacting your long-term care case manager.

NEW SECTION

WAC 388-106-1525 How long can I participate in the chronic care management program? (1) There is no

required minimum or maximum duration of enrollment in the chronic care management program.

(2) The chronic care management program is a voluntary service and you may choose to disenroll at any time for any reason.

(3) Your registered nurse care manager shall disenroll you when:

(a) You are not actively participating in the chronic care management program; or

(b) You have met your goals and are sustaining self-management activities.

(4) You are required to be disenrolled when:

(a) You become medicare eligible;

(b) You enroll in hospice, PACE, Washington medicaid integration project, or a managed care program;

(c) You reside in an institution as defined in WAC 388-106-0010, for more than thirty days; or

(d) You become pregnant.

(5) At the time of disenrollment, you will continue to receive services for which you are eligible.

NEW SECTION

WAC 388-106-1530 Is there a cost to me for participating in the chronic care management program? There is no cost to participants enrolled in the chronic care management program.

NEW SECTION

WAC 388-106-1535 Do I have a right to a fair hearing while receiving chronic care management services? Yes. If you do not agree with a decision regarding eligibility, enrollment or disenrollment for chronic care management program services, you have a right to a fair hearing based on the rules outlined in WAC 388-106-1305.

**WSR 11-22-077
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed November 1, 2011, 9:26 a.m., effective December 2, 2011]

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

Purpose: The department is amending these rules as a result of legislative activity during session and to be consistent with federal regulations and newly passed state laws: SSB 5042, vulnerable adults protection, ESHB 1277, oversight of licensed or certified long-term care settings for vulnerable adults and 2E2SHB 1738, changing the designation of medicaid state agency.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-0001, 388-97-0140, 388-97-0600, 388-97-1640, 388-97-4160, 388-97-4180, 388-97-4280, and 388-97-4460.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Adopted under notice filed as WSR 11-17-070 on August 16, 2011.

Changes Other than Editing from Proposed to Adopted Version: **The changes, other than editing follow: Changes are shown with the new language underlined and deleted text lined through.**

WAC 388-97-0001 Definitions.

(3) "**Sexual abuse**" means any form of nonconsensual((=)) sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

WAC 388-97-0600 Refusal of certain transfers. (1) Each resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to make the resident eligible for coverage by the medicare or medicaid program.

(2) Refer to WAC 388-97-0580 for requirements related to a resident's right to notice before room or roommate changes.

(3) At the time of a proposed transfer, the skilled nursing facility or nursing facility must inform the resident of the right to refuse under subsection (1), if the purpose is to make the resident eligible for coverage by the medicare ~~or medicaid~~ program.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
WAC 388-97-0001 Would be helpful to have examples of what proposed amendment means.	The department has accepted this comment and will include examples.
WAC 388-97-0600 The proposed change will increase discrimination against medicaid residents. Residents will be transferred when medicare benefits stop, even though medicaid residents can remain in the same bed under medicaid. Recommend reverting back to existing language.	The proposed language is consistent with federal law and interpretive guidelines. Federal law and interpretive guidelines allow residents to refuse transfer from a room in one distinct part of an institution to a room in another distinct part of the institution for purposes of obtaining medicare or medicaid eligibility, 42 C.F.R. 483.10(o). The department agrees with comments that nursing homes would not be moving a resident in order to make the resident eligible for medicaid, because in Washington state the entire facility is medicaid certified. Therefore, the proposed changes to WAC 388-97-0600(3) has been modified to delete "or medicaid" from the end of subsection (3). Federal law and interpretive guidelines allows for room changes within a certified facility when notice is given. 42 C.F.R. 483.15 (e)(2). WAC 388-97-0580 establishes a three day notice time period except for certain reasons.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
	Moving the statement that all beds in a nursing facility are certified to provide medicaid services to the definition section clarifies all of the Chapter 388-97 WAC rules that use the term "nursing facility," including WAC 388-97-0600. It is not necessary to repeat the same language in WAC 388-97-0600.
WAC 388-97-4460 Need a subsection (4) pursuant to RCW 74.39A.060(7) the department must sanction and may issue a civil fine up to \$3000 for retaliatory treatment of a resident or for willful interference with the official duties of the ombudsman program. Model after the boarding home rule language.	While this section is currently open, the scope of this rule making is limited to only rules that were necessary to be consistent with federal regulations and newly passed state laws. The department will keep this suggestion for consideration during the next round of rule making and when the governor's executive order suspending noncritical rule development is lifted. WAC 388-97-4480 provides authority for imposition of optional remedies, including civil fines, for willful interference with the performance of ombudsman duties.
WAC 388-97-0120 Put forth the provisions of the federal discharge and notice laws in the rules rather than just referencing the C.F.R.	This section is not currently open. The department will keep this suggestion for consideration during future rule making and when the governor's executive order suspending noncritical rule development is lifted.
WAC 388-97-0140 Need to address hospital dumping and urge the department to have a stakeholder meeting to start this process.	The department will keep this suggestion for consideration during future rule making and when the governor's executive order suspending noncritical rule development is lifted.

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 7, 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 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: October 31, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a

duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

(3) **"Sexual abuse"** means any form of nonconsensual(;-) sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrative law judge (ALJ)" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an

advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

"Deficiency" is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

"Department" means the state department of social and health services (DSHS).

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" is an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any (~~individual~~) person or entity for ((his or her)) any person or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and

medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Informal department review" is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for the mentally retarded (ICF/MR)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"License revocation" is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of boarding home, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and

services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"Plan of correction" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** is an action taken by the department prohibiting nursing home

admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicare certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Termination" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicare certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicare or medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0140 Transfer and discharge appeals for resident in medicare or medicare certified facilities.

(1) A skilled nursing facility and a nursing facility that initi-

ates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and

(iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter ~~((388-02))~~ 388-526 WAC, chapter 182-526 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter ~~((388-02))~~ 388-526 WAC or chapter 182-526 WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a medicare certified or medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under ~~((WAC 388-02-0600(1)))~~ chapter 388-526 WAC or chapter 182-526 WAC.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0600 Refusal of certain transfers. ~~((In dually certified facilities all beds are medicaid certified. Therefore the beds in a certified distinct part for medicare are also nursing facility beds for medicaid.))~~

(1) Each resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to ~~((relocate:~~

~~(a) A resident from the medicare distinct part of the facility to a part of the facility that is not a medicare distinct part; or~~

~~(b) A resident from the part of the facility that is not a medicare distinct part to the medicare distinct part of the facility))~~ make the resident eligible for coverage by the medicare or medicaid program.

(2) ~~((A resident's exercise of the right to refuse transfer under subsection (1)(a) of this section does not affect the individual's eligibility or entitlement to medicare or medicaid benefits))~~ Refer to WAC 388-97-0580 for requirements related to a resident's right to notice before room or roommate changes.

(3) At the time of a proposed transfer, the skilled nursing facility or nursing facility must inform the resident((s)) of ((their)) the right((s)) to refuse under subsection (1) ((and (2) of this section at the time of the proposed transfer or relocation)), if the purpose is to make the resident eligible for coverage by the medicare program.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1640 Required notification and reporting. (1) The nursing home must immediately notify the department's aging and disability services administration of:

(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;

(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (k), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and

(c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.

(3) The nursing home must notify the department's aging and disability services administration of:

(a) Physical plant changes, including but not limited to:

(i) New construction;

(ii) Proposed resident area or room use change;

(iii) Resident room number changes; and

(iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's aging and disability services administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's aging and disability services administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) The nursing home licensee must notify the department in writing of a nursing home's voluntary closure.

(a) The licensee must send this written notification sixty days before closure to the department's designated local aging and adult administration office and to all residents and resident representatives.

(b) Relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public must be in accordance with WAC 388-97-4320(2).

(9) The nursing home licensee must notify the department and the health care authority in writing of voluntary termination of its medicare or medicaid contract.

(a) The licensee must send this written notification sixty days before contract termination, to the department's designated local aging and disability services administration office and to all residents and resident representatives.

(b) If the contractor continues to provide nursing facility services, the contract termination will be subject to federal law prohibiting the discharge of residents who are residing in the facility on the day before the effective date of the contract termination.

(10) The nursing home licensee must notify the Centers for Medicare and Medicaid Services of voluntary termination of its medicare provider agreement in accordance with the requirements of 42 C.F.R. 489.52 or successor regulations.

AMENDATORY SECTION (Amending WSR 10-21-037, filed 10/12/10, effective 10/29/10)

WAC 388-97-4160 Initial nursing home license. (1) A complete nursing home license application must be:

(a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;

(b) Signed by the proposed licensee or the proposed licensee's authorized representative;

(c) Notarized; and

(d) Reviewed by the department in accordance with this chapter.

(2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:

(a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;

(b) The names of the administrator, director of nursing services, and, if applicable, the management company;

(c) The specific location and the mailing address of the facility for which a license is sought;

(d) The number of beds to be licensed; and

(e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

(a) The individual or entity responsible for the daily operation of the nursing home;

(b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. ~~((The nonrefundable nursing home license fee is three hundred twenty seven dollars per bed per year))~~ The per bed license fee is established in the state's omnibus biennial appropriations act and any amendment or additions made to that act.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed licensee or any other individuals or entities named in the application.

(7) A license may not exceed twelve months in duration and expires on a date set by the department.

(8) A license must be issued only to the person who applied for the license.

AMENDATORY SECTION (Amending WSR 10-21-037, filed 10/12/10, effective 10/29/10)

WAC 388-97-4180 Nursing home license renewal. (1) All nursing home licenses must be renewed annually.

(2) License renewals must be:

(a) Submitted at least thirty days prior to the license's expiration date on forms designated by the department;

(b) Signed by the current licensee; and

(c) Reviewed by the department in accordance with this chapter.

(3) The current licensee must provide all information on the license renewal form or other information requested by the department.

(4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.

(5) The nursing home license renewal fee must be submitted at the time of renewal. ~~((The nonrefundable nursing home license renewal fee is three hundred twenty seven dollars per bed per year))~~ The per bed license fee is established in the state's omnibus biennial appropriations act and any amendment or additions made to that act.

(6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.

(7) A change of nursing home ownership does not change the date of license renewal and fee payment.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4280 Change of ownership. (1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the licensee or a substitution of control of the licensee. "**Control,**" as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a change of ownership include, but are not limited to, the following:

(a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(c) Dissolution or consolidation of the entity;

(d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;

(e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders); or

(ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or

(f) Any other event or combination of events that the department determines results in a:

(i) Substitution, elimination, or withdrawal of the licensee; or

(ii) Substitution of control of the licensee responsible for the daily operational decisions of the nursing home.

(2) Ownership does not change when the following, without more, occur:

(a) A party contracts with the licensee to manage the nursing home enterprise in accordance with the requirements of WAC 388-97-4260; or

(b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property

or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee.

(3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW 18.51.530:

(a) Name of the proposed licensee;

(b) Name of the managing entity;

(c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;

(d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and

(e) Names of all general partners if proposed licensee is a partnership.

(4) The proposed licensee must comply with license application requirements. The operation or ownership of a nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

(5) In the event of a change of ownership, the previously established license expiration date must not change.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4460 Remedies.

Mandatory Remedies

(1) In accordance with RCW 18.51.060 (5)(a), the department must impose a stop placement order when the department determines that the nursing home is not in substantial compliance with applicable laws or regulations and the cited deficiency(ies):

(a) Jeopardize the health and safety of the residents; or

(b) Seriously limit the nursing home's capacity to provide adequate care.

(2) When required by RCW 18.51.060(3), the ~~((department))~~ health care authority must deny payment to a nursing home that is certified to provide medicaid services for any medicaid-eligible individual admitted to the nursing home. Nursing homes that are certified to provide medicare services or both medicare and medicaid services may be subject to a federal denial of payment for new admissions, in accordance with federal law.

(3) The department must deny, suspend, revoke or refuse to renew a proposed or current licensee's nursing home license in accordance with WAC 388-97-4220(3).

Optional Remedies

(4) When the department determines that a licensee has failed or refused to comply with the requirements under chapter 18.51, 74.39A or 74.42 RCW, or this chapter; or a medicaid contractor has failed or refused to comply with medicaid requirements of Title XIX of the Social Security Act or medicaid regulations, the department, or when appropriate, the health care authority, may impose any or all of the following optional remedies:

(a) Stop placement;

- (b) Immediate closure of a nursing home, emergency transfer of residents or both;
- (c) Civil fines;
- (d) Appoint temporary management;
- (e) Petition the court for appointment of a receiver in accordance with RCW 18.51.410;
- (f) License denial, revocation, suspension or nonrenewal;
- (g) Denial of payment for new medicaid admissions;
- (h) Termination of the medicaid provider agreement (contract);
- (i) Department on-site monitoring as defined under WAC 388-97-0001; and
- (j) Reasonable conditions on a license as authorized by chapter 74.39A RCW. Examples of conditions on a license include but are not limited to training related to the deficiency(ies); consultation in order to write an acceptable plan of correction; demonstration of ability to meet financial obligations necessary to continue operation.

WSR 11-22-092**PERMANENT RULES****BENTON CLEAN AIR AGENCY**

[Filed November 1, 2011, 3:58 p.m., effective December 2, 2011]

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

Purpose: The changes are primarily housekeeping items such as:

- Updating outdated references to WACs and/or RCWs.
- Aligning language with the current RCWs and WACs.
- Making the document easier to read and clarifying language, including clarifying definitions.
- Updating Agricultural Burning rule and fees per changes already made to the WAC.
- Updating agency name change.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-17-117 on August 23, 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 0, Repealed 0.

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

Date Adopted: October 27, 2011.

Robin Priddy
Director/Control Officer

ARTICLE 1**Name, Short Title, and Policy****Section 1.01 Name of ((Authority)) Agency**

The name of this Air Pollution Control ((Authority)) Agency, declared to be and directed to function as a single county authority with the boundaries of Benton County and activated by the Washington Clean Air Act, Revised Code of Washington (RCW) 70.94 as amended, shall be known as the BENTON CLEAN AIR ((AUTHORITY)) AGENCY, hereinafter referred to as the BCAA, or the ((Authority)) Agency.

Section 1.02 Policy

A. The BCAA adopts Regulation 1 to control the emissions of air contaminants from all sources within Benton County; to provide for the uniform administration and enforcement of this regulation; and to carry out the requirements and purposes of the ((U-S)) Federal. Clean Air Act (42 USC. 7401 et. seq.) and the Washington State Clean Air Act (RCW 70.94).

B. It is hereby declared to be the public policy of the BCAA to:

1. Secure and maintain such levels of air quality that protect human health and safety, including the most sensitive members of the population;
2. Secure compliance with the requirements of the F((#))ederal C((e))lean A((#))ir A((#))ct;
3. Prevent injury to plant and animal life and to property;
4. Foster the comfort and convenience of its inhabitants;
5. Promote the economic and social development of Benton County; and
6. Facilitate the enjoyment of the natural attractions of Benton County.

C. It is further the intent of Regulation 1 to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

D. Wherever Regulation 1 constitutes a restatement of the requirements and purposes of RCW 70.94, it is the intent of the BCAA that Regulation 1 be interpreted in the same manner as the statute adopted by the Washington State Legislature. Any deviation from the statute, except where the statute allows BCAA to be more stringent, is intended for purposes of clarity.

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

ARTICLE 5**Outdoor Burning****Section 5.01 Definitions**

A. Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-425-030.

B. A "burn day" is a day, as determined by the BCAA, during which outdoor burning may take place in areas where open burning is allowed. The length of the burn day shall be defined as the period from 9:00 AM until one hour before sunset.

~~((The BCAA shall make a daily burn day decisions based on available meteorological information. The daily burn decision shall be provided daily through a burn day message line and/or through the local media.))~~

1. BCAA shall make a burn day decision for residential burning that will be updated and provided daily.

2. BCAA shall make a burn day decision for agricultural burning that will be updated and provided daily.

C. A "person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

D. An "Urban Growth Area" or "UGA" means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

ARTICLE 6

Agricultural Burning

Section 6.01 Definitions

A. Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-430-030.

B. An "agricultural burn day" is a day, as determined by the BCAA, during which permitted agricultural burning may take place in areas where agricultural burning is allowed. The length of the burn day shall be defined as the period from 9:00 AM until one hour before sunset. The BCAA shall make daily burn day decisions ~~((based on available meteorological information)).~~ The ~~((daily-))~~ burn decision shall be provided daily ~~((through a burn day message line and/or through the local media)).~~

C. ~~(("))~~Incidental agricultural burning~~(("))~~ Burning of organic debris related to agricultural activity requires a permit and a fee except for agricultural burning that is incidental to commercial agricultural activities (RCW 70.94.6524). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area, the BCAA, and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to permit requirements are ~~((is the burning of vegetative debris that is non-essential to the propagation of a crop and is any of the following))~~

1. Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training and improve the management of plant and disease, and pest infestations.;

2. ((Vegetative)) Organic debris along fence ((lines or irrigation or drainage ditches. ; or)) ~~;~~ A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field.

3. Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which

predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field

~~((3))~~ 4. Organic Debris ((Vegetative debris)) blown by the wind. The primary example is tumbleweeds.

A "person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

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

Section 6.02 Agricultural Burning Permit

A. Agricultural Burning Permit Required

1. All agricultural burning, except for incidental agricultural burning, requires a written agricultural burning permit from the BCAA. Agricultural burning permits shall be subject to a fee as described in Article 10 and payable at the time of application.

2. Agricultural burning shall be allowed only on designated agricultural burn days.

3. It shall be the responsibility of the person conducting agricultural burning to be informed of any additional fire safety rules as determined by the Benton County Fire Marshall.

B. Agricultural Burning Permit Not Required

1. Incidental agricultural burning, as defined in Section 6.01(C), shall be allowed without obtaining an agricultural burning permit from the BCAA and on days that are not agricultural burn days, except:

a. When the Benton County Fire Marshall has declared a ban on burning due to fire safety; or

b. During any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode declared under RCW 70.94.715.

c. When wind speeds forecasted by the National Weather Service (NWS) Pendleton are equal to or over 20 mph.

ARTICLE 9

Source Registration

Section 9.02 Source Registration Program Purpose and Components

A. Program purpose. The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

B. Program components. The components of the registration program consist of:

1. Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule,

regulatory order, or ordinance pursuant to chapter RCW 70.94.

2. On-site inspections necessary to verify compliance with registration requirements.

3. Data storage and retrieval systems necessary for support of the registration program.

4. Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

5. Staff review, including engineering analysis for accuracy and ((currentness)) currency of information provided by source owners pursuant to registration program requirements.

6. Clerical and other office support in direct furtherance of the registration program.

7. Administrative support provided in directly carrying out the registration program.

Section 9.04 Source Registration Source List

The following sources shall register with the BCAA:

A. Any source classification listed below:

1. Abrasive blasting operation (WAC 173-460), except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and operations that are inside a building and any associated air pollution control equipment that exhausts inside of the building;

2. Adhesive manufacturing operations;

3. Agricultural chemical operations or soil amendment operations - including manufacturing, mixing, packaging, concentrators, and/or other activities;

4. Agricultural drying and dehydrating operations;

5. Asphalt and asphalt products production operations;

6. Brick and clay manufacturing operations - including tiles and ceramics;

7. Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

8. Chemical manufacturing operations;

9. Coffee roasting operations;

10. Composting operations - including commercial, industrial and municipal, but exempting residential composting activities;

11. Concrete product manufacturing operations;

12. Concrete manufacturing operations, ready mix and premix;

13. Crematoria - including human and animal crematoria;

14. Dry cleaning operations using solvents emitting VOCs or toxic air pollutants;

15. Flexible polyurethane foam, polyester resin, and styrene production operations;

16. Flexible vinyl and urethane coating and printing operations;

17. Gasoline dispensing facilities, bulk gasoline loading terminals, or bulk gasoline plants;

18. Grain handling facilities - including seed, animal feed, legume, and flour processing operations;

19. Hay cubing and pelletizer operations;

20. Hazardous waste treatment and disposal facilities;

21. Ink manufacturers;

22. Insulation and insulation fiber manufacturing;

23. Landfills, active and inactive - including covers, gas collections systems or flares;

24. Materials handling and transfer facilities that generate particulate matter - including pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

25. Metal casting facilities and foundries, ferrous and nonferrous;

26. Metal plating and anodizing operations;

27. Metallic and nonmetallic mineral processing plants - including rock crushing, sand, and gravel mixing operations;

28. Metallurgical and mineralogical processing operations;

29. Mills - including lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

30. Mills - including grain, seed, feed, flour production, and related activities;

31. Mills - including cabinet works, casket works, furniture, wood by-products, and other wood product manufacturing operations;

32. Natural gas transmission and distribution;

33. Paper manufacturing operations, except kraft and sulfite pulp mills;

34. Petroleum refineries;

35. Pharmaceutical production operations;

36. Plastics and fiberglass fabrication - including gel-coat, polyester resin, or vinyl ester coating operations;

37. Refuse systems - including landfills with gas collection systems and/or flares, hazardous waste treatment, storage, and disposal facilities,; and wastewater treatment plants other than private and publicly owned treatment works,;

38. Rendering facilities;

39. Semi-conductor manufacturing;

40. Soil and ground water remediation projects;

41. Surface coating operations - including automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

42. Surface coating manufacturers;

43. Synthetic fiber production operations;

44. Synthetic organic chemical manufacturing;

45. Tire recapping operations;

46. Wastewater treatment plants - including private and publicly owned treatment works with a rated capacity of more than 1 million gallons per day;

B. Any source that owns or operates any of the following equipment:

1. Boilers, all gas fired boilers above ten (10) million BTU/hr input;

2. Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

3. Chemical evaporators or concentrators;

4. Flares utilized to combust any gaseous material;

5. Fuel burning equipment - including, but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs of equal to or greater than any of the following:

- a. 500,000 BTU/hr using coal or other solid fuels with a sulfur content of 0.5% or less;
- b. 500,000 BTU/hr using waste or used oil meeting specifications in RCW 70.94.610;
- c. 1,000,000 BTU/hr using kerosene, fuel oil, or any other liquid fuel, except used or waste oil;
- d. 4,000,000 BTU/hr using gaseous fuels;
- e. 400,000 BTU/hr using wood, wood waste, or paper.
- 6. Graphic art systems - including lithographic and screen printing operations;
- 7. Incinerators and combustion units
 - a. Commercial and industrial solid waste incineration units, defined as per WAC 173-400-050(4);
 - b. Small municipal waste combustion units, defined as per WAC 173-400-050(5)
 - c. Wood waste incinerators;
 - d. Any other solid, liquid, or gaseous waste incinerators;
- 8. Stationary internal combustion engines rated at 500 horsepower or greater - including standby and backup operations
- 9. Organic vapor collection systems within commercial or industrial facilities;
- 10. Ovens/furnaces, kilns and curing, burnout - including, but not limited to, ovens/furnaces that heat clean automotive parts, paint hooks, electric motors, etc.;
- 11. Degreasing and solvent cleaners, not subject to 40 CFR 63 Subpart T - including vapor, cold, open top, and conveyor cleaners;
- 12. Sterilizing operations - including ethylene oxide (EtO) and hydrogen peroxide;
- 13. Storage tanks for organic liquids within commercial or industrial facilities with capacities of twenty thousand (20,000) gallons or greater;
- ~~((14. Utilities consisting of a combination of electric and natural gas.))~~
- C. Any source that has a potential to emit any pollutant equal to or greater than the following:
 - 1. 5.0 tons/yr of carbon monoxide (CO);
 - 2. 2.0 tons/yr of nitrogen oxides (NO_x);
 - 3. 2.0 tons/yr of sulfur dioxide (SO₂);
 - 4. 1.25 tons/yr of particulate matter (PM or TSP);
 - 5. 0.75 tons/yr of fine particulate matter (PM₁₀);
 - 6. 2.0 tons/yr of volatile organic compounds (VOC);
 - 7. 0.005 tons/yr of lead.
- D. Any source subject to a federally-enforceable emission limit under a Synthetic Minor Order.
- E. Any source that is subject to permitting requirements Chapter 173-400 or 173-460 WAC.
~~((Any source that is required to report periodically to demonstrate non-applicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.~~
- F. Any category of stationary source subject to a new source performance standard (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters).
- G. Any source subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61, other than Subpart M (National Emission Standard for Asbestos).

H. ~~Any source subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technology (MACT) standard) under 40 CFR Part 63.~~

I. ~~Any source, stationary source or emission unit with an emission rate defined as "significant" under WAC 173-400-112 or 173-400-113, as applicable.~~

J. ~~Any source that has a potential to emit toxic air pollutants as defined in WAC 173-460-020, which exceeds any small quantity emission rates under WAC 173-460-080 (2)(e).))~~

K. Any other source determined to be registerable by the BCAA.

D. Class 2. Sources whose actual annual emissions are greater than that listed in Section 9.03(B), but less than one hundred (100) tons/yr of CO, NO_x, SO₂, TSP, PM₁₀, VOCs, or lead, shall be classified as Class 2 Sources.

E. Class 2 Toxic Source. Toxic air pollutants are those listed in WAC 173-460-150 and 173-460-160. Sources whose actual emissions are greater than that listed in Section 9.03(C), but less than ten (10) tons/yr of any single toxic air pollutant or less than twenty-five (25) tons/yr of a combination of toxic air pollutants, shall be classified as Class 2 Toxic Sources:

F. Synthetic Minor Source. Sources that have requested and received a federally enforceable emissions limit to limit the total potential-to-emit of the facility to less than one hundred (100) tons/yr of any criteria pollutant, ten (10) tons/yr of any single hazardous air pollutant, or twenty-five (25) tons/yr of any combination of hazardous air pollutants are synthetic minor sources.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Benton Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 10

Fees and Charges

Section 10.04 General Administrative Fees

~~((A. Administrative fees shall be due and payable at the time service is rendered, unless otherwise specified by BCAA.~~

~~1. A fee of fifteen cents (\$0.15) per page shall be charged for photocopies.~~

~~2. A fee of twenty dollars (\$20.00) per hour shall be charged for research time for requests covering more than one hour of staff time.~~

~~3. A fee of ten dollars (\$10.00) shall be charged per copy of audio or video materials.~~

~~4. The actual cost of postage or shipping shall be charged for all material requested to be mailed.~~

~~B. For other administrative services requested and performed by BCAA staff persons that are not provided to the public generally, the Control Officer shall determine such charge as reasonably reimburses the BCAA for time and materials expended in providing the service.))~~

~~((C.)) A fifty dollar (\$50.00) fee will be assessed for any check written to the BCAA returned due to non-sufficient funds.~~

Section 10.05 Registered Source Fees

A. The BCAA shall charge an annual registration fee pursuant to RCW 70.94.151 for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the registration program. The Board shall review the registration program on an annual basis.

B. All air contaminant sources required by Section 9.04 or 9.05 to be registered are subject to the following fees:

1. Class 1 and Class 1 Toxic sources shall pay an annual registration fee of:

- a. A base fee of three hundred fifty dollars (\$350.00);
- b. Fifty dollars (\$50.00) per ton of criteria pollutant emitted;
- c. One hundred fifty dollars (\$150.00) per ton or prorated on fraction of a ton of toxic air pollutant emitted; and
- d. Fifty (\$50.00) dollars per emission process unit or emission point.

2. Class 2 and Class 2 Toxic sources shall pay an annual registration fee of:

- a. A base fee of seven hundred fifty dollars (\$750.00);
- b. Fifty dollars (\$50.00) per ton of criteria pollutant emitted;
- c. One hundred fifty dollars (\$150.00) per ton or prorated on fraction of a ton of toxic air pollutant emitted; and
- d. Fifty (\$50.00) dollars per emission process unit or emission point

3. Synthetic Minor sources shall pay an annual registration fee of:

- a. A base fee of fifteen hundred dollars (\$1,500.00);
- b. Fifty dollars (\$50.00) per ton of criteria pollutant emitted;
- c. One hundred fifty dollars (\$150.00) per ton or prorated on fraction of a ton of toxic air pollutant emitted; and
- d. Fifty (\$50.00) dollars per emission process unit or emission point

4. Gasoline facilities shall pay an annual registration fee of:

- a. Gasoline Loading Terminals: two thousand dollars (\$2,000.00) plus fifty dollars (\$50.00) per ton of pollutant emitted;
- b. Bulk Gasoline Plants: eight hundred dollars (\$800.00) plus fifty dollars (\$50.00) per ton of pollutant emitted; and
- c. Gasoline Dispensing Facilities:
 - i. Fee is determined by multiplying current annual gasoline throughput (greater than 400,000) in gallons times \$0.0005 per gallon.
 - ii. Fee for stations with annual throughput less than 400,000 gallons shall be two hundred dollars (\$200.00).

C. Fee Payment

1. Fee Payment. The annual registration fee shall be due and payable on ~~((February 28))~~ by April 15th of each year, unless otherwise specified in writing to the source by the BCAA.

2. Late Payment of Fees. A late fee shall be charged to a source for late payment of all or part of its annual registration fee at the following rates:

- a. Ten percent (10%) of the annual registration fee for payment received up to the thirtieth (30th) day past the due date;

b. Fifteen percent (15%) of the annual registration fee for payment received between the thirty-first (31st) day and the sixtieth (60th) day past the due date; and

c. Twenty-five percent (25%) of the annual registration fee for payment received between the sixty-first day (61st) and the ninetieth (90th) day past the due date.

d. Failure to pay all or part of an annual registration fee after the ninety-first (91st) day past the due date may result in the commencement of a formal enforcement action.

3. Transfer in Ownership. Transfer in ownership of a source shall not affect that source's obligation to pay registration fees. Any liability for fee payment, including payment of late payment and other penalties shall survive any transfer in ownership of a source.

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

Section 10.06 Fees for Application for Notice of Construction (NOC) and Application for Notice of Intent to Install and Operate a Temporary Source (NIO)

A. NOC or NIO Application Filing Fee. An application filing fee shall be due and payable at the time of filing the NOC or NIO application. The filing fee is non-refundable.

1. Permanent stationary source. The filing fee shall be four hundred dollars (\$400.00)

2. ~~((Temporary or))~~ P ~~((P))~~ ortable source. The filing fee shall be five hundred dollars (\$500.00).

3. Relocation of ~~((a temporary or))~~ portable or source. The filing fee shall be two hundred fifty dollars (\$250.00) and shall be charged each time the source relocates within the boundaries of Benton County. For Portable Rock Crushers, an additional PM fee shall apply per Table 10-1.

B. NOC or NIO Engineering Examination and Inspection Fee.

1. An examination and inspection fee shall be charged according to Table 10-1. The engineering and inspection fee shall be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the BCAA.

2. Emergency application or expedited review fee shall be two (2) times the normal application and review fee.

C. Additional Fees

Additional fees may be charged according to Table 10-2. Table 10-2 fees are cumulative. The additional fees shall be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the BCAA.

1. Fee amounts in Table 10-1 and 10-2 listed as "Actual" are based upon the BCAA's actual cost to complete a review or task and shall be determined using the actual or direct hours expended completing the specific review or task.

If the staff time required to review a permit application exceeds the listed amounts associated with the applicable review fee specified in Table 10-1 and 10-2, the applicant will be invoiced for each additional work hour at the current engineering charge rate in dollars per hour.

2. If an NOC or NIO applicability determination fee is received by the BCAA and an NOC or NIO is determined not to be required, the Engineering Examination and Inspection Fee shall be the actual time expended at the current engineering charge rate in dollars per hour.

D. Any NOC or NIO application received by the BCAA without the accompanying fee shall be rejected and returned to sender. Such action shall not constitute a determination of completeness or incompleteness as per WAC 173-400-110.

Table 10-1: NOC or NIO Engineering Examination and Inspection Fees

Fuel Burning Equipment with or without Air Pollution Equipment (million Btu/hr)	Spray Painting (per booth). \$500
5 or less \$500	Dry Cleaner (per machine) \$600
Greater than 5 to 10. \$600	Coffee Roaster \$700
Greater than 10 to 30. \$750	Asphalt Plant, Cement Plant, or Rock Crushing Plant (Non-Portable ((Temporary)) \$2,000
Greater than 30 to 50. \$900	Asphalt Plant or Concrete Plant, Plant (Portable) engineering fee \$500
Greater than 50 to 100. \$1,200	Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):
Greater than 100 to 250. \$2,500	Less than or equal to 10 \$600.00
Greater than 250 to 500. \$4,000	Greater than 10 to 50 \$1,000.00
Greater than 500 \$6,000	Greater than 50 to 100 \$1,500.00
Fuel change or new fuel 1/2 new installation fee	Greater than 100 to 250 \$2,500.00
Process Equipment, Air Pollution Control Device, and/or Uncontrolled Process Discharge (ft³/min)	Greater than 250 \$6,000.00
50 or less \$600	Diesel engine generators/pumps (Aggregate horsepower rating):
Greater than 50 to 5,000 \$700	Less than or equal to 100 \$600.00
Greater than 5,000 to 20,000 \$800	Greater than 100 to 500 \$700.00
Greater than 20,000 to 50,000 \$900	Greater than 500 to 2,000 \$1,000.00
Greater than 50,000 to 100,000 \$950	Greater than 2,000 to 5,000 \$1,500.00
Greater than 100,000 to 250,000 \$1,000	Greater than 5,000 to 10,000 \$3,000.00
Greater than 250,000 to 500,000 \$2,000	Greater than 10,000 \$6,000.00
Greater than 500,000 \$4,000	Soil Thermal Desorption Unit
Refuse Burning Equip (tons/day)	Initial \$3,000
0.5 or less \$700	Relocation of Unit \$1,000
Greater than 0.5 to 5 \$800	Odor Source \$500
Greater than 5 to 12. \$1,000	Composting Facility Actual
Greater than 12 to 50. \$3,000	Landfill Gas System Actual
Greater than 50 to 250. \$6,000	Soil and Groundwater Remediation Actual

Greater than 250 \$12,000	Review of projects under RCW 70.105D.090 Actual
Other Incinerators (pounds/hr)	Review of Ecology "Agreed Orders" and "Consent Orders" pursuant to RCW 70.105D.090(1) Actual
100 or less. \$300	All other sources not listed greater of \$1000 or Actual
Greater than 100 to 200 \$600	
Greater than 200 to 500 \$1,200	
Greater than 500 to 1000 \$2,400	
Greater than 1000 \$3,000	
Storage Tanks (gal)	
10,000 or less \$600	
Greater than 10,000 to 40,000 \$1000	
Greater than 40,000 to 100,000 \$1,500	
Greater than 100,000 \$2000	
Gasoline Dispensing Facilities	
Stage I \$500	
Stage II \$600	
Stage I and II Combined \$700	
Toxics review for gasoline facility \$1,500	
Removal of Stage II \$600	

Table 10-2: Additional Fees

CATEGORY	FEE	CATEGORY	FEE
Public Noticing	Actual	Variance Request.	Actual
Publishing of Public Notices	Actual	Alternative Opacity Limits Review.	Actual
Public Hearings.	Actual	Inspection of Source that began Construction/Operation without Approval/Permit	greater of \$500 or Actual
Air Toxics Screening as per WAC 173-460		Synthetic Minor Determination	Actual
Review of source supplied ASIL	\$300	Major Source, Major Modification, or PSD Thresholds	Actual
Review of source supplied risk analysis	\$1000	Emission Units subject to NSPS or NESHAP (except residential woodstoves, heaters, asbestos renovation or demolition and PCE dry cleaning)	Actual
BCAA conducted screening analysis	Actual	Construction or Reconstruction of a Major Source of Hazardous Air Pollutants	Actual
NOC/NIO Application Assistance.	Actual	Each CEM or Alternate Monitoring Device	Actual
NOC/NIO Applicability Determination.	Actual	Each Source Test Required in NOC	Actual
NOC-CEM or Alternate Monitoring Device Installed	Actual	Opacity/Gain Loading Correlation	Actual

CATEGORY	FEE	CATEGORY	FEE
SEPA Threshold Determination (lead agency) Actual	Bubble Application	Actual
Environmental Impact Statement Review	Actual	Netting Analysis	Actual
NOC Order of Approval Modification	lesser of 1/2 NOC/NIO fee or \$350		
RACT/BACT/MACT/BART/LAER Determination Actual		
Emission Offset Analysis Actual		
Emission Reduction Credit (ERC) Application	Actual		

Table 10-3: Asbestos Fees

Asbestos Projects at Residential Units	
Activity	Fee
Demolition	\$(40) 25.00
Renovation: Any amount in lin. ft or ft ²	\$(40) 25.00
Demolition or Renovation Amendment	\$(25) 30.00
Emergency Renovation Operation	\$(50) 60.00
Alternate Removal Methods	Two (2) times renovation fee

Asbestos Projects at Facilities	
Activity	Fee
Demolition	\$(40) 25.00
Renovation: 10 to 259 lin. ft or 48 to 159 ft ²	\$150 (25).00
260 to 999 lin. ft or 160 to 4,999 ft ²	\$300 (250).00
1,000 to 9,999 lin. ft or 5,000 to 49,999 ft ²	\$600 (500).00
Over 10,000 lin. ft or Over 50,000 ft ²	\$1800 (1,500).00
Annual Renovation	\$1800 (1,500).00
Demolition or Renovation Amendment	\$60 (50).00
Emergency Renovation Operation	Two (2) times renovation fee
Alternate Removal Methods	Two (2) times renovation fee

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

Section 10.09 Title 5 Air Operating Permit Fees

All eligible sources under WAC 173-401 shall be subject to the annual fees described in this section.

A. Permanent annual fee determination and certification

1. Fee Determination

a. Fee Determination. The BCAA shall develop a fee schedule using the process outlined below, according to which it will collect fees from permit program sources under

its jurisdiction. The fees shall be sufficient to cover all permit administration costs. The BCAA shall also collect its jurisdiction's share of Ecology's development and oversight costs. The fee schedule shall differentiate as separate line items the BCAA's and Ecology's fees. Opportunities for public participation shall be afforded throughout the fee determination process, as provided in Section 10.08 (A)(3)(a).

b. Fee Eligible Activities. The costs of permit administration and development and oversight activities are fee eligible.

i. Permit Administration. Permit administration costs are those incurred by BCAA in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Eligible permit administration costs are as follows:

(A) Pre-application assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(B) Source inspection, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(C) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(D) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(E) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(F) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(G) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(H) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(I) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(J) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(K) Training for permit administration and enforcement;

(L) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(M) Required fiscal audits, periodic performance audits, and reporting activities;

(N) Tracking of time, revenues and expenditures, and accounting activities;

(O) Administering the permit program including the costs of clerical support, supervision, and management;

(P) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the Federal Clean Air Act; and

(Q) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

ii. Ecology Development and Oversight. Development and oversight costs are those incurred by Ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are in Chapter 252, Laws of 1993 Section 6 (2)(b).

c. Workload Analysis.

i. The BCAA shall conduct an annual workload analysis of the previous years' work, to projecting resource requirements for the purpose of facilitating budget preparation for permit administration. The workload analysis shall include resource requirements for both the direct and indirect costs of the permit administration activities in Section 10.08 (A)(1)(b)(i).

ii. Ecology will, for the two-year period corresponding to each biennium, identify the development and oversight activities that it will perform during that biennium. The eligible activities are those referenced in Section 10.08 (A)(1)(b)(ii).

d. Budget Development. The BCAA shall annually prepare an operating permit program budget. The budget shall be based on the resource requirements identified in an annual workload analysis and shall take into account the projected fund balance at the start of the calendar year. The BCAA shall publish a draft budget for the following calendar year on or before May 31 and shall provide opportunity for public comment thereon in accordance with 10.08 (A)(3)(a). The BCAA shall publish a final budget for the following calendar year on or before June 30.

e. Allocation Method((ecology)).

i. Permit Administration Costs. The BCAA shall allocate its permit administration costs and its share of Ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered model based upon:

(A) the number of sources under its jurisdiction;

(B) the complexity of the sources under its jurisdiction, and

(C) the size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted. The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers shall be equally weighted.

ii. Ecology Development and Oversight Costs. Ecology will allocate its development and oversight costs among all permitting authorities, including the BCAA, based upon the number of permit program sources under the jurisdiction of each permitting authority. If Ecology determines that it has incurred extraordinary costs in order to oversee a particular permitting authority and that those costs are readily attributable to the particular permitting authority, Ecology may assess to that permitting authority such extraordinary costs.

f. Fee Schedule. The BCAA shall issue annually a fee schedule reflecting the permit administration fee and Ecology's

development and oversight fee to be paid by each permit program source under its jurisdiction. The fee schedule shall be based on the information contained in the final source data statements for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with Section 10.08 (A)(4).

2. Fee Collection - Ecology and BCAA.

a. Collection from Sources. The BCAA, as a delegated local authority, shall collect the fees from the permit program sources under its jurisdiction.

i. Permit Administration Costs. The BCAA shall collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its permit administration costs.

ii. Ecology Development and Oversight Costs. The BCAA shall collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its share of Ecology's development and oversight costs.

b. Dedicated Account.

i. All receipts from fees collected by the BCAA, as a delegated local authority, from permit program sources pursuant to RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993 shall be deposited in the dedicated accounts of its treasury. Expenditures from these dedicated accounts will be used only for the activities described in RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993.

ii. All receipts from fees collected by BCAA on behalf of Ecology from permit program sources pursuant to RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993 shall be deposited in the air operating permit account created under RCW 70.94.015. Expenditures from the air operating permit account may be used only for the activities described in RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993.

3. Accountability

a. Public Participation During Fee Determination Process. The BCAA shall provide for public participation in the fee determination process described under 10.08 (A)(1), which provision shall include but not be limited to the following:

i. The BCAA shall provide opportunity for public review of and comment on:

(A) each annual workload analysis;

(B) each annual budget; and

(C) each annual fee schedule

ii. The BCAA shall submit to Ecology for publication in the Permit Register notice of issuance of its draft annual workload analysis, issuance of its draft annual budget and issuance of its draft annual fee schedule.

iii. The BCAA shall make available for public inspection and to those requesting opportunity for review copies of its draft:

(A) annual workload analysis on or before March 31.

(B) annual budget on or before May 31.

(C) annual fee schedule on or before December 31.

iv. The BCAA shall provide a minimum of thirty (30) days for public comment on the draft annual workload analysis and draft annual budget. Such thirty-day period for comment shall run from the date of publication of notice in the Permit Register as provided in Section 10.08 (A)(3)(a)(ii).

b. Tracking of Revenues, Time and Expenditures.

i. Revenues. The BCAA shall track revenues on a source-specific basis.

ii. Time and Expenditures. The BCAA shall track time and expenditures on the basis of functional categories as follows:

- (A) application review and permit issuance;
- (B) permit modification;
- (C) permit maintenance;
- (D) compliance and enforcement;
- (E) business assistance;
- (F) regulation and guidance development;
- (G) management and training;
- (H) technical support.

iii. Use of Information Obtained from Tracking Revenues, Time and Expenditures. The BCAA shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during each calendar year's review provided for under Section 10.08 (A)(1)(d).

iv. The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

c. Periodic Fiscal Audits, Reports and Performance Audits. A system of regular, periodic fiscal audits, reports and performance audits shall be conducted in order to evaluate Ecology's and the BCAA's operating permit program administration, as follows:

i. Fiscal Audits. The BCAA shall contract with the State Auditor to perform a standard fiscal audit of its operating permit program every other year.

ii. Annual Routine Performance Audits. The BCAA shall be subject to annual routine performance audits, except that the routine audit shall be incorporated into the extensive performance audit, conducted pursuant to Section 10.08 (A)(3)(c)(v) in each year during which an extensive performance is conducted. Ecology shall issue guidance regarding the content of the routine performance audits and shall conduct the BCAA's audits.

iii. Annual Random Individual Permit Review. One permit issued by the BCAA shall be subject to review in conjunction with the annual routine performance. The permit to be reviewed shall be selected at random. Ecology shall issue guidance regarding the content of the random individual permit review and shall conduct the BCAA's review.

iv. Periodic Extensive Performance Audits. The BCAA shall be subject to extensive performance audits every five years. In addition, the BCAA may be subject to an extensive performance audit more frequently under the conditions of Section 10.08 (A)(3)(c)(v). Ecology shall issue guidance regarding the content of the extensive performance audits and shall conduct the audits of this BCAA.

v. Finding of Inadequate Administration or Need for Further Evaluation. If, in the process of conducting a fiscal audit, annual routine audit, or annual random individual permit review, the auditor or Ecology finds that the BCAA is

inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit shall be conducted, as provided in Section 10.08 (A)(3)(c)(iv).

vi. Annual Reports. The BCAA shall prepare an annual report evaluating its operating permit program administration. Such report shall include any findings of the auditor or Ecology resulting from the relevant fiscal audits, annual routine audits, annual random individual permit reviews or periodic extensive performance audits. The BCAA shall submit its report to its Board and to Ecology.

4. Administrative Dispute Resolution.

a. Preliminary Statement of Source Data. The BCAA shall provide to the permit program sources under their respective jurisdictions a preliminary statement of emissions and other data from that source upon which the BCAA intends to base its allocation determination under Section 10.08 (A)(1)(e). Such preliminary statement shall be provided to the permit program sources on or before September 30 of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under Section 10.08 (A)(4)(b) regarding the accuracy of the data contained therein.

b. Petition for Review of Statement. A permit program source or other individual under the jurisdiction of the BCAA, as a delegated local authority, may petition to review for accuracy the data contained in the preliminary source data statement provided for under Section 10.08 (A)(4)(a). Such petition shall be lodged on or before October 31 of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom the BCAA may direct inquiries regarding the request. Upon receipt of such a petition, the BCAA, as a delegated local authority, must issue its written response to the petitioner on or before November 30 of each year. Such response shall state the conclusions of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by the BCAA's response.

c. Final Source Data Statement. The BCAA shall provide to the permit program sources under its jurisdiction a final statement of emissions and other data from that source upon which the BCAA will base its allocation determination under Section 10.08 (A)(1) along with an invoice reflecting the fee billed to that source on or before December 31 of each year.

5. Fee Payment and Penalties

a. Fee Payment. Each permit program source shall pay a fee in the amount reflected in the invoice issued under Section 10.08 (A)(4)(c). Such fee shall be due on or before February 28 of each year.

b. Late Payment of Fees. BCAA shall charge a penalty to a permit program source under its jurisdiction for late pay-

ment of all or part of its operating permit fee at the following rates:

- i. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;
- ii. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and
- iii. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

c. Failure to Pay Fees. The BCAA shall charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee.

d. Other Penalties. The penalties authorized in Section 10.08 (A)(5)(b) and (c), are additional to and in no way prejudice the BCAA's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

e. Facility Closure. Sources that permanently cease operations shall be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid shall be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

f. Transfer in Ownership. Transfer in ownership of a source shall not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of late payment and other penalties shall survive any transfer in ownership of a source.

6. Development and Oversight Remittance by Local Authorities to Ecology

a. Ecology will provide to the BCAA a statement of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before December 31 of each year.

b. The BCAA shall remit to Ecology one-half of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and shall remit to Ecology the balance of its share of Ecology's development and oversight costs on or before June 30 of each year.

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

Section 10.11 Agricultural Burning Permit Fees

A. An application fee for an agricultural burning permit shall be due and payable at the time of submittal of the application. Refunds may be issued by the BCAA for acres or tons not burned under each permit provided the adjusted fee after subtracting refunds is no less than the minimum fee. (~~twenty-five dollars.~~)

~~((B. Upon approval of any agricultural burning permit application, the BCAA shall charge a fee at a maximum fee level as set by statute at two dollars and fifty cents per acre (RCW 70.94.650(2)) and as established by the agricultural burning practices and research task force (RCW 70.94.650(4)).~~

~~A portion of this fee shall go directly to Ecology to be divided among administration, oversight costs, and the research fund. The remainder of the fee shall go to the BCAA for local administration and implementation of the program. The permitting authority may set the fee as an amount per agricultural operation per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned.~~

~~The Ecology administration portion of the fee shall be used to off set the statewide administrative, education, and oversight costs of the department for the agricultural burning program.~~

~~The agricultural burning applied research portion of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. The agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.~~

~~C. The local portion of the agricultural burning permit fee shall be one dollar and twenty-five cents) per acre (\$1.25).~~

~~D. Minimum and variable fee levels are as follows:~~

~~1. Twenty-five dollars (\$25.00) per calendar year per agricultural operation based on burning up to ten acres or equivalent;~~

~~2. Fifty dollars (\$50.00) for orchard tear-out burning per calendar year per agricultural operation based on burning debris from up to twenty acres or equivalent.~~

~~3. The variable fee is two dollars and twenty-five cents per acre (\$2.25).~~

~~4. The chart below shows the permit fee break-out per category))~~

((Fee Level	Section	Local Administration	Research	Ecology Administration
\$25.00	WAC 173-430-040-(4)(a)(i)	\$12.50	\$12.50	0
\$50.00	WAC 173-430-040-(4)(a)(ii)	\$12.50	\$12.50	\$25.00
2008 and beyond—\$2.25 per-acre	WAC 173-430-040-(4)(b)(ii)	Up to \$1.25 per-acre	50 cents per-acre	50 cents per-acre

~~The agricultural burning practices and research task force may set acreage equivalents, for non-field style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage~~

districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.)

B. Permit Fee Schedule. Table 10-4 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042.

Table 10-4 Agricultural Burning Fee Schedule

Fee	Minimum Fee	Variable Fee
Field Burning	\$30 for the first 10 acres	\$3.00 for each additional acre
Spot Burning	\$30 for the first 10 acres or less	None
Pile Burning	\$80 for the first 100 tons	\$0.50 for each additional ton

ACRONYMS AND ABBREVIATIONS

- ACM.....Asbestos Containing Material
- ARP Application for Relief from Penalty
- BACT..... Best Available Control Technology
- BART..... Best Available Retrofit Technology
- BCAA.....Benton Clean Air ((~~Authority~~)) Agency Board
- Board Benton Clean Air ((~~Authority~~)) Agency Board of Directors
- BTU British Thermal Unit (unit of measure)
- CEM.....Continuous Emission Monitoring
- CFR..... U.S. Code of Federal Regulations
- Ecology..... Washington State Department of Ecology
- ERC Emission Recovery Credit
- LAER.....Lowest Achievable Emission Rate
- MACT..... Maximum Achievable Control Technology
- NESHAP..... National Emission Standards for Hazardous Air Pollutants
- NOC..... Notice of Construction
- NIO.....Notice of Intent to Install and Operate a Temporary Source
- NOI..... Notice of Intent to Demolish or Remove Asbestos
- NOP Notice of Penalty
- NSPS..... New Source Performance Standard
- PCHB..... Washington State Pollution Control Hearings Board
- PSD..... Prevention of Significant Deterioration
- RACM Regulated Asbestos Containing Material
- RACT..... Reasonably Available Control Technology
- RCW..... Revised Code of Washington
- SEPA..... State Environmental Policy Act
- USC United States Code
- WAC..... Washington Administrative Code

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

WSR 11-22-116

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 2, 2011, 11:54 a.m., effective December 3, 2011]

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

Purpose: The DSHS division of child support (DCS) is adopting new rules and amending existing sections in chapter 388-14A WAC to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations. The federal rules being implemented in this rule-making order are 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

DCS filed emergency rules with an effective date of March 31, 2011, under WSR 11-08-020; DCS filed a second emergency rule package under WSR 11-16-006, effective July 30, 2011, in order to maintain the status quo until after this CR-103P, Rule-making order, is filed and the thirty-day period required under RCW 34.08.380(2) has run.

Citation of Existing Rules Affected by this Order: New sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?; and amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS ((~~deny~~)) keep a support enforcement case open despite a request to close ((a support enforcement case)) it?, 388-14A-2090 Who ((~~is mailed~~)) receives notice ((of DCS' intent to close)) when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 ((~~If my information is confidential, can~~)) On what authority does DCS ((report me to)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a ((~~parent~~)) party makes a timely request for hearing on a support establishment notice?, 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7110 The division of child support may ((~~assess and collect~~)) enforce interest on amounts owed under support orders entered or established in

a jurisdiction other than Washington state, 388-14A-7115 Are there special rules for a hearing on a notice seeking to ~~((assess and collect))~~ enforce interest on a support order?, 388-14A-7120 When does DCS update the interest ~~((assessed))~~ on a case for enforcement?, 388-14A-7305 How ~~((do I))~~ does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order ((has been)) is going to be made?, and 388-14A-7335 What happens if someone objects to ~~((DCS' proposed))~~ a notice of support debt and registration which contains a determination of the presumed controlling order?

Statutory Authority for Adoption: RCW 26.23.120, 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.-310.

Other Authority: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

Adopted under notice filed as WSR 11-18-098 on September 7, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 19, 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 2, Amended 19, Repealed 0.

Date Adopted: October 31, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed? ~~((Once the division of child support (DCS) starts providing support enforcement services under RCW 26.23.045 and chapter 74.20 RCW, the case must remain open, unless DCS determines that:))~~

(1) ~~((There is no current support order, and the support debt owed by the noneustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;))~~ The circumstances under which the division of child support (DCS) may close a case depend on whether the application for services was made directly to DCS or to another governmental entity.

(2) ~~((The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;))~~ WAC 388-14A-2081 discusses closure of a case when one of the parties submitted an application for support enforcement ser-

VICES directly to DCS, which includes when DCS opened the case as the result of an application for public assistance in the state of Washington.

(3) ~~((The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:~~

~~(a) Institutionalized in a psychiatric facility;~~

~~(b) Incarcerated without possibility of parole; or~~

~~(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.~~

(4) ~~The applicant, agency or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;~~

(5) ~~DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;~~

(6) ~~DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;~~

(7) ~~DCS is unable to contact the applicant, agency or recipient of services for at least sixty days;~~

(8) ~~DCS documents failure to cooperate by the custodial parent (CP) or the initiating jurisdiction, and that cooperation is essential for the next step in enforcement;~~

~~(9) DCS cannot obtain a paternity order because:~~

~~(a) The putative father is dead;~~

~~(b) Genetic testing has excluded all putative fathers;~~

~~(c) The child is at least eighteen years old;~~

~~(d) DCS, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or~~

~~(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.~~

(10) ~~DCS, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);~~

(11) ~~DCS, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;~~

(12) ~~DCS has provided locate-only services in response to a request for state parent locator services (SPLS);~~

(13) ~~The NCP is a citizen and resident of a foreign country, and:~~

~~(a) NCP has no assets which can be reached by DCS; and~~

~~(b) The country where NCP resides does not provide reciprocity in child support matters.~~

(14) ~~The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or~~

(15) ~~Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation))~~ WAC 388-14A-2083 discusses closure of an intergovernmental case, which is what we call a case where the application for services was made to the child support enforcement agency of another state, tribe, territory, country

or political subdivision thereof, which then requested support enforcement services from DCS.

NEW SECTION

WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? When the application for services was made directly to the division of child support (DCS) by one of the parties, including when DCS opened the case as the result of an application for public assistance in the state of Washington, the case must remain open unless DCS determines that:

(1) There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;

(2) The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;

(3) The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:

(a) Institutionalized in a psychiatric facility;

(b) Incarcerated without possibility of parole; or

(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.

(4) The applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;

(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;

(7) DCS is unable to contact the applicant or recipient of services for at least sixty days;

(8) DCS or the prosecutor documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement;

(9) DCS cannot obtain a paternity order because:

(a) The putative father is dead;

(b) Genetic testing has excluded all putative fathers;

(c) The child is at least eighteen years old;

(d) DCS, the prosecutor, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or

(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.

(10) DCS, the prosecutor, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);

(11) DCS, the prosecutor, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or

enforce a support obligation cannot occur without a risk of harm to the child or the CP;

(12) DCS has provided locate-only services in response to a request for state parent locator services (SPLS);

(13) The NCP is a citizen and resident of a foreign country, and:

(a) NCP has no assets which can be reached by DCS; and

(b) The country where NCP resides does not provide reciprocity in child support matters.

(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or

(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation.

NEW SECTION

WAC 388-14A-2083 Under what circumstances can DCS close a case where the application for services was originally made to another state, tribe, territory or country, otherwise known as an intergovernmental case? (1) When the application for services was originally made by a party to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from the division of child support (DCS), DCS keeps the case open until:

(a) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that its case is closed.

(b) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that it no longer wants DCS to provide services.

(c) DCS documents failure to cooperate by the initiating jurisdiction, and that cooperation is essential for the next step in enforcement.

(2) DCS calls this type of case an "intergovernmental case."

(a) The state, tribe, territory, country or political subdivision thereof which referred the case to DCS is called the "initiating jurisdiction."

(b) In these cases, DCS is the "responding jurisdiction."

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2085 Under what circumstances may DCS (~~deny~~) keep a support enforcement case open despite a request to close ((a support enforcement case)) it? (1) The division of child support (DCS) may deny a request to close a support enforcement case when:

(a) There is a current assignment of support or medical rights on behalf of the children in the case;

(b) There is accrued debt under a support order which has been assigned to the state;

(c) Support or medical rights on behalf of the children have previously been assigned to the state; or

(d) The person who requests closure is not the recipient of support enforcement services(~~(a~~

~~e) A superior court order requires payments to the Washington state support registry (WSSR))~~).

(2) If DCS is the responding jurisdiction in an intergovernmental case DCS cannot deny a request from the initiating jurisdiction to close the intergovernmental portion of a DCS case.

(3) If there is no current assignment of support or medical rights, DCS may close the portion of the case which is owed to the custodial parent (CP), but if there is accrued debt under a support order which has been assigned to the state, DCS keeps that portion of the case open.

~~((3))~~ (4) If a superior court order specifies that the non-custodial parent (NCP) must make payments to the WSSR, but the CP does not want support enforcement services, DCS ~~((keeps the case open as))~~ changes the case status to a payment services only (PSO) case, which means that:

(a) DCS provides payment processing and records maintenance, and

(b) DCS does not provide enforcement services.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2090 Who ~~((is mailed))~~ receives notice ~~((of DCS' intent to close))~~ when DCS closes a case?

(1) ~~((Sixty days before closing a case the division of child support (DCS) sends a notice of intent to close, advising the parties why DCS is closing the case.~~

~~(a) DCS does not send a notice when closing a case under WAC 388-14A-2080 (11) or (12).~~

~~(b) DCS does not provide sixty days' prior notice when closing a case under WAC 388-14A-2080(4))~~ The reason for case closure determines whether the division of child support (DCS):

(a) Sends a notice of intent to close;

(b) Sends a notice of case closure; or

(c) Notifies the other jurisdiction.

(2) DCS mails a notice of intent to close by regular mail to the last known address of the custodial parent (CP) and the noncustodial parent.

(3) ~~((In an interstate case, DCS mails the notice to the CP by regular mail in care of the other state's child support agency))~~ If DCS is closing a case under WAC 388-14A-2081, DCS sends a notice of intent to close, advising the parties why DCS is closing the case. DCS sends the notice sixty days before closing the case, except:

(a) DCS sends a notice of case closure but does not send a notice of intent to close when the applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(b) DCS notifies the initiating jurisdiction in an intergovernmental case that DCS has closed the case after the initiating jurisdiction requests case closure; and

(c) DCS does not send a notice of intent to close or a notice of case closure when:

(i) DCS, the prosecuting attorney, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the custodial parent (CP); or

(ii) DCS has provided locate-only services in response to a request for state parent locator services (SPLS).

(4) If DCS is the responding jurisdiction and is closing an ~~((interstate))~~ intergovernmental case because of noncooperation by the initiating jurisdiction, DCS ~~((also mails the notice to))~~ notifies the other ~~((state's))~~ jurisdiction's child support agency sixty days before closing the case.

(5) When DCS is the initiating jurisdiction in an intergovernmental case and DCS closes its case, DCS notifies the responding jurisdiction that DCS has closed its case and provides the reason for closure.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2097 What happens to payments that come in after a case is closed? After support enforcement services are terminated, the division of child support (DCS) returns support money to the noncustodial parent except if the case remains open as a payment services only (PSO) case as described in WAC 388-14A-2000(1).

(2) If DCS, as the initiating jurisdiction in an intergovernmental case, closed a case without notifying the responding jurisdiction, DCS must attempt to locate the custodial parent (CP) and disburse any payments the CP is entitled to receive.

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

AMENDATORY SECTION (Amending WSR 06-06-076, filed 2/28/06, effective 3/31/06)

WAC 388-14A-2160 ~~((If my information is confidential, can))~~ On what authority does DCS ~~((report me to))~~ share my confidential information with a credit bureau?

(1) ~~((When a consumer reporting agency, sometimes called a credit bureau, requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information))~~ Under 42 USC §666 (a)(7), the division of child support (DCS) may report to consumer reporting agencies the name and identifying information of any noncustodial parent (NCP) who is delinquent in support and the amount of overdue support owed by that parent. Consumer reporting agencies are sometimes also called credit bureaus.

(2) ~~((In addition to responding to requests for information by consumer reporting agencies))~~ Once DCS has reported an NCP to the credit bureaus, DCS ~~((reports to those agencies information regarding overdue support owed by an NCP. DCS then))~~ updates the information on a regular basis as long as DCS continues to enforce the support order, even after the NCP brings the account current.

(3) Before releasing information to the consumer reporting agency, DCS sends a written notice to the NCP's last known address concerning the proposed release of the information ~~((to the NCP's last known address)).~~

(4) The notice gives the NCP ten days from the date of the notice to request a conference board under WAC 388-14A-6400 to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the

information until a conference board decision has been issued.

(5) ~~((A noncustodial parent (NCP)))~~ An NCP who disagrees with the information supplied by DCS to a consumer reporting agency or credit bureau may file a notice of dispute under the federal Fair Credit Reporting Act, 15 USC 1681.

(6) DCS reports to credit bureaus according to the requirements of federal IV-D program rules. In interstate or intergovernmental cases, DCS may report:

(a) As the responding jurisdiction; and

(b) As the initiating jurisdiction when the responding jurisdiction does not report.

AMENDATORY SECTION (Amending WSR 02-06-098, filed 3/4/02, effective 4/4/02)

WAC 388-14A-3130 What happens if a ~~((parent))~~ party makes a timely request for hearing on a support establishment notice? (1) A timely request for hearing is an objection made within the time limits of WAC 388-14A-3110. For late (or untimely) hearing requests, see WAC 388-14A-3135.

(2) If either ~~((parent))~~ party makes a timely request for hearing, the division of child support (DCS) submits the hearing request to the office of administrative hearings (OAH) for scheduling.

(3) OAH sends a notice of hearing by first class mail to all parties at their address last known to DCS, notifying each party of the date, time and place of the hearing. DCS, the non-custodial parent (NCP), and the custodial parent are all parties to the hearing.

(4) A timely request for hearing stops the support establishment notice from becoming a final order, so DCS cannot collect on the notice. However, in appropriate circumstances, the administrative law judge (ALJ) may enter a temporary support order under WAC 388-14A-3850.

(5) A hearing on an objection to a support establishment notice is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support? (1) When the division of child support (DCS) serves a notice under WAC 388-14A-3300 to advise a noncustodial parent (NCP) that DCS is enforcing a support order, DCS may serve a notice of support debt, a notice of support debt and registration, a notice of support owed, or any other appropriate notice as provided in this chapter.

(2) If the support order sets the amount of the support obligation in a sum certain amount, DCS may serve a notice of support debt on the NCP as provided in RCW 74.20A.040 and WAC 388-14A-3304.

(3) If DCS is registering a support order or income-withholding order issued in another state, DCS may serve a notice of support debt and registration on the NCP, as provided in RCW 26.21A.500, 26.21A.540 and WAC 388-14A-7100.

(4) Under RCW 26.23.110, DCS may serve a notice of support owed on an NCP or a custodial parent (CP), as appropriate, if the underlying support order:

(a) Does not state the monthly support obligation as a fixed dollar amount stated in U.S. dollars;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both;

(c) Provides that the NCP is responsible for a portion of nonmedical expenses incurred on behalf of the child, but does not reduce the amount owed to a fixed dollar amount; or

(d) Provides that either the NCP or the custodial parent (CP) must provide medical support as provided under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) As of the effective date of this section, DCS does not serve a notice of support owed under RCW 26.23.110 to determine the NCP's proportionate share of any nonmedical expenses other than daycare or child care expenses incurred on behalf of the child(ren) covered by the order.

(6) The fact that an NCP or CP's request that DCS act on his or her claim for unreimbursed nonmedical expenses is rejected by DCS does not mean that the NCP or CP cannot pursue reimbursement of those expenses by proceeding in court.

(a) If a CP obtains a judgment for unreimbursed non-medical expenses, DCS may enforce the judgment if the CP qualifies for services under WAC 388-14A-2000.

(b) If DCS served a notice of support owed to determine the NCP's proportionate share of nonmedical expenses at some time before the effective date of this section and either NCP or CP requests an annual review under RCW 26.23.110, DCS may continue to provide annual reviews for the support order which was the subject of the prior notice of support owed but only for the same nonmedical expenses addressed in the prior notice of support owed.

(7) See WAC 388-14A-3310 for the general rules for a notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed to:

(i) Determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation;

(ii) Implement an escalation clause or adjustment provision;

(iii) Convert a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars; or

(iv) Determine as a sum certain the NCP's proportionate share of daycare or child care expenses paid by the NCP.

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed to establish a parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(8) WAC 388-14A-3307 discusses how DCS proceeds when DCS decides that a determination of controlling order under chapter 26.21A RCW is required. Under that section,

DCS may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(9) WAC 388-14A-3315 provides that:

(a) When DCS serves a notice of support debt or a notice of support owed on the NCP, DCS notifies the CP and the payee under the order, if the CP is not the payee under the order; and

(b) When DCS serves a notice of support owed under WAC 388-14A-3312 on the CP, DCS notifies the NCP.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the children in the case.

(c) When there are multiple current support orders for the same obligor and children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, or within sixty days of service of the notice outside of Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign sup-

port order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

~~(6) ((A notice of support debt and demand for payment served in another state becomes final according to WAC 388-14A-7200))~~ RCW 26.21A.515 controls the calculation of the debt on a notice of support debt and demand for payment.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt and demand for payment on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt and demand for payment; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

~~(10) If the CP requests a hearing under subsection ((9))~~ (8)(b) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection ~~((8))~~ (7) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment? Once the division of child support has served a notice of support debt and demand for payment, either party may disagree with the notice.

(1) If either party objects to the enforcement of a non-Washington support order, that party may request that DCS register that order under chapter 26.21A RCW. DCS then serves a notice of support debt and registration as provided in WAC ~~((388-14A-7110))~~ 388-14A-7100.

(2) If the noncustodial parent (NCP) objects to the amount of current support or the amount of support debt stated in the notice, the NCP may request a conference board under WAC 388-14A-6400.

(a) The custodial parent (CP) may participate in the conference board under this section.

(b) The CP may choose to convert the proceeding to an administrative hearing. The NCP may participate in a hearing held under this section.

(3) If the custodial parent objects to the amount of current support or the amount of support debt stated in the notice, the CP may request an administrative hearing. The NCP may participate in a hearing held under this section.

(4) See WAC 388-14A-3304 for a more full description of the hearing process on the notice of support debt and demand for payment.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears? (1) After service of a notice of support debt and demand for payment as provided in WAC 388-14A-3304, the final administrative order determines the support debt as of the date of the order, and:

(a) The debt determination is not a final determination under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) ~~((Any party may request that a tribunal determine any amounts owed as interest on the support debt))~~ RCW 26.21A.515 controls in any computation and/or determination of accrued interest on arrearages under the support order.

(2) The final administrative order comes about by:

(a) Operation of law if nobody objects to the notice;

(b) Agreed settlement or consent order under WAC 388-14A-3600;

(c) Final conference board decision under WAC 388-14A-6400;

(d) Final administrative order entered after hearing or a party's failure to appear for hearing.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children? When more than one current child support order exists for the same obligor and children, the division of child support (DCS) may proceed as follows:

(1) When not acting as a responding jurisdiction, DCS decides whether or not a determination of controlling order is necessary, and which state has the authority to make a determination of controlling order (DCO) under UIFSA.

(2) The controlling order is the single order used for prospective enforcement and modification, determined according to the priority scheme set out in the Uniform Interstate Family Support Act (UIFSA).

(3) Using the criteria listed in RCW 26.21A.130, DCS ~~((decides))~~ may decide which child support order it should enforce and ~~((serves))~~ may serve a notice of support debt and demand for payment under WAC 388-14A-3304.

~~((2))~~ (4) ~~((If DCS decides that a determination of controlling order under chapter 26.21A RCW is required))~~ When a party objects to enforcement of the order selected for enforcement under subsection (1) of this section, or when the order that DCS decides to enforce is not the order presented by a party or another jurisdiction for enforcement of current support, DCS ((serves)) may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

~~((3))~~ (5) ~~((Upon request, DCS may do a determination of controlling order (DCO).~~

~~((a) See))~~ WAC 388-14A-7305 ~~((for))~~ describes how ~~((you))~~ either party or the initiating jurisdiction can ask for a DCO.

~~((b) See))~~ (6) WAC 388-14A-7315 ~~((for))~~ describes how DCS decides whether ~~((or not))~~ to ~~((do))~~ deny a request for a DCO.

~~((4))~~ (7) If DCS ~~((does))~~ reviews the orders in response to a request for a DCO and decides that a Washington order is the presumed controlling order, DCS refers the case to superior court.

~~((5))~~ (8) If DCS ~~((does))~~ reviews the orders in response to a request for a DCO and decides that a non-Washington order is the presumed controlling order, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7325.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order? (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount owed under a child support order that was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, including:

(i) The NCP's proportionate share of daycare or child care expenses incurred on behalf of the child(ren); and

(ii) Converting a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars, if necessary; and

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses and/or medical

support owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

- (a) The current and future support obligation;
- (b) Any support debt owed; or
- (c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The underlying support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) The underlying support order sets a support obligation stated in foreign currency and DCS seeks to convert that amount using the current rate of exchange to fix the amount of support stated in U.S. dollars;

(c) DCS is implementing the adjustment or escalation provision of a court order;

~~((e))~~ (d) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the child(ren), but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

~~((e))~~ (e) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110, DCS has developed two separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed.

(b) DCS developed a special form called the "notice of support owed - Medical support" which is used only for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington; or

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the children and to demand payment of the obligated parent's proportionate share when a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed" and "notice of support owed - Medical support."

(7) DCS serves a notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) WAC 388-14A-3315 provides that, when DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice that was served.

(a) After service on the NCP, DCS mails a notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) After service on the CP, DCS mails a notice to payee to the NCP.

(9) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed.

(10) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

(11) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(12) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(13) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

(14) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

(15) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

(16) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

(17) For the purposes of this section and WAC 388-14A-3311 through 388-14A-3330, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7100 The division of child support may register an order from another state for enforcement or modification. (1) A support enforcement agency, or a

party to a child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction, may register the order in this state for enforcement pursuant to chapter 26.21A RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A.550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7110 The division of child support may (~~assess and collect~~) enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state. (1) The division of child support (DCS) may accept an interstate request to (~~assess and collect~~) enforce interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) The party requesting that DCS (~~assess and collect~~) enforce interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to (~~assess and collect~~) enforce interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to (~~assess and collect~~) enforce interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to (~~assess and collect~~) enforce interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7125 and 388-14A-7115.

(a) WAC 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7115 Are there special rules for a hearing on a notice seeking to (~~assess and collect~~) enforce interest on a support order? (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a hearing, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency or a CPA must be accepted as evidence at a hearing on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payments made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done according to the law of the state issuing the order.

(4) If the administrative law judge (ALJ) finds that the party challenging the interest calculation has shown that the amount of principal is incorrect, the ALJ:

(a) Enters an order stating the correct amount of principal;

(b) Orders the party which submitted the original interest calculation to:

(i) Recalculate or have recalculated the interest based on the new principal amount; and

(ii) Submit the new certified calculation to the ALJ within a reasonable amount of time; and

(c) After receiving the new certified calculation, enters an order determining the amount of debt, including interest, for the period claimed in the notice.

(5) If the ALJ orders a new certified calculation, DCS may enforce any amounts of principal the ALJ found to be due and owing under the support order while the administrative order under subsection (4)(c) of this section is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency or a certified public accountant (CPA). The ALJ then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a hearing under this section.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7120 When does DCS update the interest (~~assessed~~) on a case for enforcement? (1) When the division of child support (DCS) accepts an interstate case for (~~assessment~~) enforcement of interest under WAC 388-14A-7110(1), DCS may, at any time after service of a notice of support debt and registration or a notice of support debt and demand for payment, update the amount of interest (~~assessed~~) to be enforced on the case.

(2) To notify the parties to the order that DCS has updated the amount of interest, DCS uses a form called the (~~Updated Interest Calculation Letter~~) interest enforcement letter.

(a) The (~~updated~~) interest (~~calculation~~) enforcement letter is based upon (~~a calculation of interest which has been certified by a~~) the annual notification of accrued interest from the IV-D agency or an updated interest calculation from a certified public accountant (CPA).

(b) DCS sends the (~~updated~~) interest (~~calculation~~) enforcement letter to the noncustodial parent (NCP), by first class mail to the NCP's last known address.

(3) The (~~updated~~) interest (~~calculation~~) enforcement letter (~~advises~~) may advise the NCP of:

(a) The new, updated amount of interest owed for the arrears period; and

(b) The updated total amount of support owed, including interest.

(4) An NCP who objects to an (~~updated~~) interest (~~calculation~~) enforcement letter (~~may request a conference board under WAC 388-14A-6400 to dispute the terms of the letter~~).

(5) ~~The calculation of the amount of interest which has been certified by a IV-D agency or CPA must be accepted as evidence at a conference board on an updated interest calculation letter.~~

~~(a) The certified calculation is prima facie evidence of the amount of interest owed by the NCP.~~

~~(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.) must contact the IV-D agency or the CPA who did the calculation to dispute the amount of interest claimed.~~

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7305 How ~~((do-I))~~ does a party, IV-D agency or jurisdiction ask ~~((DCS to do))~~ for a determination of controlling order? (1) When there are multiple current support orders covering the same obligor and the same children, a party to a support order may request that the division of child support (DCS) make a determination of controlling order under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

(2) When another state's IV-D agency or another jurisdiction has identified that there are multiple support orders in existence and DCS has personal jurisdiction over both of the parties to the orders, the IV-D agency or jurisdiction may request a determination of controlling order from DCS.

(3) A request for a determination of controlling order may be made at any time, unless there has already been a determination of controlling order for the same obligor and children.

~~((3))~~ (4) DCS can provide a form which contains all the required elements for a request for determination of controlling order. A request for a determination of controlling order:

- (a) Must be in writing;
- (b) Must contain copies of any child support orders known to the requesting party. DCS waives this requirement if DCS has a true copy of the order on file; and
- (c) ~~((State the reason the requesting party thinks DCS is enforcing the wrong))~~ Must identify the order that the requesting party believes should be the controlling order.

~~((4))~~ (5) A request for determination of controlling order does not constitute a petition for modification of a support order.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order is going to be made? (1) When the division of child support (DCS) decides that a determination of controlling order is required, or when a party, IV-D agency or jurisdiction asks for a determination of controlling order, DCS reviews the multiple child support orders for the same obligor and children to determine which order should be enforced.

(a) If DCS decides that the order that should be enforced is a Washington order, ~~((we immediately))~~ DCS refers the matter to the superior court for a determination of controlling order proceeding under chapter 26.21A RCW.

(b) If ~~((we))~~ DCS decides that the order that should be enforced is an order which was not entered in the state of Washington, DCS follows the procedures set out in subsections (2) through (4) of this section.

(2) DCS serves a notice of support debt and registration ~~((NOSDR))~~ as provided in WAC 388-14A-7100. DCS serves the ~~((NOSDR))~~ notice of support debt and registration on the obligor, the obligee, and on all identified interested parties. The ~~((NOSDR))~~ notice of support debt and registration includes a determination of controlling order.

(3) DCS serves the notice of support debt and registration on ~~((the nonrequesting))~~ a party who did not request the

determination of controlling order by certified mail, return receipt requested, or by personal service.

(4) DCS serves the notice on the ~~((requesting))~~ party who requested the determination of controlling order and on any other identified interested parties by first class mail to the last known address.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7335 What happens if someone objects to ~~((DCS' proposed))~~ a notice of support debt and registration which contains a determination of the presumed controlling order? (1) If any party, IV-D agency or jurisdiction objects to the ~~((proposed))~~ determination of presumed controlling order issued under WAC 388-14A-7325, that objection must be in writing and signed under penalty of perjury. The division of child support (DCS) provides an objection form with the notice of support debt and registration.

(2) ~~((The))~~ An objection to the determination of presumed controlling order must contain:

(a) The reason the party, IV-D agency or jurisdiction objects ~~((to the determination of controlling order))~~. Examples of reasons to object include, but are not limited to:

- (i) There is another order that was not considered in making the determination;
- (ii) The alleged controlling order has been vacated, suspended or modified by a later order, which is attached to the objection;
- (iii) The issuing tribunal lacked personal jurisdiction over the nonpetitioning party;
- (iv) The order was obtained by fraud; or
- (v) Any other legal defense available under chapter 26.21A RCW.

(b) A copy of the order which the party, IV-D agency or jurisdiction believes should be the controlling order, if that order was not included with the notice.

(c) A statement of facts in support of the ~~((party's))~~ objection.

~~((2))~~ (3) When DCS receives an objection to the proposed determination of controlling order, DCS refers the objection to the prosecuting attorney or attorney general to bring an action for determination of controlling order under RCW 26.21A.130 in the superior court.

WSR 11-23-011

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 7, 2011, 7:51 a.m., effective December 8, 2011]

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

Purpose: The department is amending WAC 388-310-1400 to expand the definition of WorkFirst community service to include a TANF/SFA recipient's self-initiated volunteer service at a childcare or preschool licensed under chapter

43.215 RCW, or at an elementary school in which their child is enrolled.

These changes are necessary to conform to ESSB 5921, section 8.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1400.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250.

Other Authority: ESSB 5921, Laws of 2011.

Adopted under notice filed as WSR 11-19-109 on July 1 [September 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 1, Repealed 0.

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

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

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

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

Date Adopted: November 4, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1400 WorkFirst—Community service. (1) What is community service?

Community service is unpaid work (such as the work performed by volunteer workers) that:

(a) You perform for a charitable nonprofit organization, federal, state, local or tribal government or district, including traditional activities that perpetuate tribal culture and customs; or

(b) You self-initiate at a childcare or preschool facility licensed under chapter 43.215 RCW, or at an elementary school in which your child is enrolled.

(2) What other activities may be approved, even though they are not considered community service, because they benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?

~~((The following types [of] activities may be approved, even though they are not considered community service, because they benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:))~~

(a) Caring for a disabled family member;

(b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);

(c) Providing childcare for another WorkFirst participant who is doing community service;

(d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;

(e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law);

(f) Participating in the pregnancy to employment pathway; and/or

(g) Job preparation.

WSR 11-23-013

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 7, 2011, 8:38 a.m., effective December 8, 2011]

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

Purpose: Due to recent legislation (ESHB 1548) signed by the governor (which delays implementation of the Initiative 1029 long-term care worker training requirements until January 1, 2014), the department must revert to the long-term care worker training requirements that were in effect on December 31, 2010. The department is submitting one change to these rules that were in effect on December 31, 2010.

Adding rules to chapter 388-71 WAC regarding safety training requirements for individual providers. Chapter 388-71 WAC refers to WAC 257-020 [257-05-020] through 257-040 [257-05-040] for specifying the safety training requirements (those requirements were part of the home care quality authority rules). Due to the elimination of funding for the home care quality authority, the home care referral registry is moved to the home and community services division effective July 1, 2010. The department proposing [proposed] moving requirements for safety training (that were in WAC 257-020 [257-05-020] through 257-040 [257-05-040]) into chapter 388-71 WAC.

Statutory Authority for Adoption: RCW 43.20A.710, 74.08.090, chapter 43.43 RCW.

Adopted under notice filed as WSR 11-18-101 on September 7, 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 4, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 2, Repealed 0.

Date Adopted: November 4, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-05832 What is safety training and is there a challenge test for safety training? ~~Safety training ((and applicable requirements are defined in WAC 257-05-020 through 257-05-240)) provides basic injury, illness and accident prevention information appropriate to the in-home setting and individuals served. No competency test is required.~~

There is no challenge test for safety training.

NEW SECTION

WAC 388-71-05833 What content must be included in safety training? Safety training may include the use of video tapes, audio tapes and other print or electronic media. Safety training consists of introductory information in the following areas:

- (1) Safety planning and accident prevention, including but not limited to:
 - (a) Proper body mechanics;
 - (b) Fall prevention;
 - (c) Fire safety;
 - (d) In-home hazards;
 - (e) Long-term care worker safety; and
 - (f) Emergency and disaster preparedness.
- (2) Standard precautions and infection control, including but not limited to:
 - (a) Proper hand washing;
 - (b) When to wear gloves and how to correctly put them on and take them off;
 - (c) Basic methods to stop the spread of infection;
 - (d) Protection from exposure to blood and other body fluids;
 - (e) Appropriate disposal of contaminated/hazardous articles;
 - (f) Reporting exposure to contaminated articles; and
 - (g) What to do when sick or injured, including whom to report this to.
- (3) Basic emergency procedures, including but not limited to:
 - (a) Evacuation preparedness;
 - (b) When and where to call for help in an emergency;
 - (c) What to do when a client is falling or falls;
 - (d) Location of any advanced directives and when they are given; and
 - (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-05834 When does a safety training attestation process need to be completed? All individual providers must contact the training partnership and follow their procedures to confirm that they have completed the training, once it is completed.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

WAC 388-71-05835 ((What is competency testing) Who is required to complete safety training, when, and how often must it be completed? ~~((Competency testing, including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning outcomes of a particular course)) (1) All individual providers must complete safety training within fourteen calendar days after beginning to work with their first DSHS consumer. Safety training must be provided by the training partnership.~~

(2) There is no requirement for periodic refresher safety training.

NEW SECTION

WAC 388-71-05836 Will DSHS deny payment of an individual provider who does not complete safety training? DSHS will deny payment of an individual provider who does not confirm through the training partnership that they completed safety training within fourteen calendar days after beginning to work with their first DSHS consumer.

NEW SECTION

WAC 388-71-05837 What is competency testing: Competency testing, including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning outcomes of a particular course.

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

WSR 11-23-014

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 7, 2011, 9:34 a.m., effective December 8, 2011]

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

Purpose: To make the rules clearer and to clarify and correct the definition regarding *impossible* to affix front license plate.

Citation of Existing Rules Affected by this Order:
Amending WAC 308-56A-500 Definitions.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 11-19-072 on September 16, 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: November 4, 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-113, filed 9/22/09, effective 10/23/09)

WAC 308-56A-500 Definitions. The following definitions apply to terms used in chapters 46.12 and 46.16A RCW and chapter 308-56A WAC:

(1) "Affidavit in lieu of title" is a written declaration confirming the certificate of ~~((ownership))~~ title is unavailable, lost, stolen, destroyed or mutilated. The affidavit in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the affidavit in lieu of title must be notarized or certified as described in WAC 308-56A-270.

~~(2) ("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 for 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.~~

~~(3))~~ "Affixed" means attached.

~~((4))~~ (3) "Brands" means a permanent notation on the electric vehicle record which prints on the certificate of ~~((ownership))~~ title and vehicle registration certificate that records a circumstance or condition involving a vehicle.

~~((5))~~ (4) "Brands incident date" is the date that a brand was first applied to a vehicle. For states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS), it's the date the brand was first reported. For all states or jurisdictions, it is established by using the date the current title was issued. Brands on Washington records prior to the effective date of this rule will reflect a brand incident date equal to the date the last Washington certificate of ~~((ownership))~~ title was issued.

~~((6))~~ (5) "Certificate of ~~((ownership))~~ title" (also referred to as "certificate of ~~((title))~~ ownership" or "title") is a legal document indicating proof of ownership and will establish a fact or sustain a judgment unless contradictory evidence is produced. A certificate of ~~((ownership))~~ title may be a document other than a title when a title document is not

issued by a jurisdiction. For example, for Canadian vehicles, the certificate of ~~((ownership))~~ title is the registration.

~~((7))~~ (6) "Comment" means an indication on the certificate of ~~((ownership))~~ title, vehicle title or registration application, or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type or ~~((a))~~ previous or current condition of the vehicle.

~~((8))~~ (7) "Commercial parking company" means any business directly engaged in providing vehicle parking upon property owned or controlled by the business and approved for public parking of vehicles.

~~((9))~~ (8) "Current license plate registration" means the current registration or one that has been expired less than one year.

~~((10))~~ "Department" means the same as described in RCW 46.04.162.

~~((11))~~ (9) "Department temporary permit" is a permit issued temporarily in lieu of ~~((permanent))~~ registration and license plates when required documentation is unavailable.

~~((12))~~ (10) "Electronic/electronically filing" is a method to transmit information to the department that may include, but is not limited to, the use of the internet or facsimile.

~~((13))~~ (11) "Involuntary divestiture" means a change in vehicle ownership without the registered owner's involvement.

~~((14))~~ (12) "Impossible ~~((to affix))~~" as used in RCW ~~((46.12.240))~~ 46.16A.200, means that there ~~((is))~~ was nothing made by the manufacturer ~~((to include, but not limited to, a bracket or the bumper of the vehicle))~~ for the originally manufactured vehicle which would allow the license plate to be affixed to the vehicle in the manner prescribed in RCW ~~((46.12.240))~~ 46.16A.200.

~~((15))~~ (13) "Joint tenancy with rights of survivorship" (JTWROS) means two or more people who own a vehicle in joint tenancy with the right to own individually if one of them dies.

~~((16))~~ (14) "Jurisdiction code" means an abbreviation used by the department that indicates state, province, district, or country.

~~((17))~~ "Legal owner" means the same as described in RCW 46.04.270.

~~((18))~~ (15) "Lien holder" means a person or entity that has a legal right or interest in another's property until a debt or duty that it secures is satisfied.

~~((19))~~ "Market value threshold amount" is the amount assigned to vehicles which includes a motor vehicle amount as defined in RCW 46.12.005 is required.

~~((20))~~ "Natural person" means a human being.

~~((21))~~ (16) "Not eligible for road use" (NEFRU) means a vehicle that does not meet Federal Motor Vehicle Safety standards, other federal or state standards for public road use as adopted, applied, and enforced by the Washington state patrol described in RCW 46.37.005.

~~((22))~~ (17) "A declaration under penalty of perjury" means a statement signed by the applicant to the effect - "I declare under penalty of perjury under the laws of the state of Washington that the information I have provided on this form is true and correct." Anyone who knowingly makes a false statement may be guilty of a crime under state law.

~~((23)) "Person" means the same as described in RCW 46.04.405.~~

~~(24)) (18) "Personal representative" means:~~

- (a) An individual appointed by the court; or
- (b) An individual named in the last will and testament and confirmed by the court to manage the estate of a deceased person.

Personal representative may also include executor, administrator, special administrator, and guardian or limited guardian and special representative as defined in RCW 11.02.005(1).

~~((25)) (19) "Registered owner" means the same as described in RCW 46.04.460.~~

~~((26) "Security interest" means a property interest created by agreement or by operation of law to secure performance of an obligation (repayment of a debt).~~

~~(27)) (20) "Security interest holders" means in this instance, the same as "lien holder" as defined in subsection ((18)) (15) of this section.~~

~~((28) "Secured party" means in this instance the same as "lien holder" as defined in subsection (18) of this section.~~

~~(29)) (21) "Standard brand" is a brand found on the brands list maintained by the National Motor Vehicle Title Information System (NMVTIS) program.~~

~~((30)) (22) "Transferee" means a person to whom a vehicle is transferred, by purchase, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee, when applicable.~~

~~((31)) (23) "Transferor" means a person who transfers ownership in a vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor, when applicable.~~

~~((32)) (24) "Unique brand" means a brand issued by a state that is not participating in the National Motor Vehicle Title Information System (NMVTIS) program and does not appear on the brands list maintained by NMVTIS.~~

~~((33)) (25) "(Vehicle seller's) Report of sale" is a document as required by RCW 46.12.650 or electronic record transaction that protects the seller of a vehicle from certain criminal and civil liabilities arising from use of the vehicle by another person after the vehicle has been sold or a change of ownership has occurred.~~

~~((34) A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.~~

~~(35)) (26) "Washington vehicle licensing office" means an office that is operated by the department or an agent or subagent appointed under RCW 46.01.140 for the purpose of carrying out the vehicle titling and registration provisions in Title 46 RCW.~~

WSR 11-23-045

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed November 9, 2011, 10:21 a.m., effective December 10, 2011]

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

Purpose: This rule making is the result of legislation that passed in the 2011 legislative session. SSB 5788, HB 1465, and SSB 5156 made changes to retail created additional allowances for some retail licenses and created a new VIP Airport Lounge liquor license. Current rules needed to be revised to reflect the changes and new rules were written to implement the new liquor license type. Retail liquor license fees revert back to what they were prior to the temporary increase passed in the 2009 legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-015, 314-02-020, 314-02-041, 314-02-0411, 314-02-042, 314-02-045, 314-02-060, 314-02-065, 314-02-070, 314-02-100, and 314-02-105.

Statutory Authority for Adoption: RCW 66.08.030, chapter 66.24 RCW.

Adopted under notice filed as WSR 11-19-111 on September 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 2, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 11, 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: November 9, 2011.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

- (a) Serve spirits by the individual glass for on-premises consumption;
- (b) Serve beer by the bottle or can or by tap for on-premises consumption;
- (c) Serve wine for on-premises consumption;
- (d) Allow patrons to remove recorked wine from the licensed premises;
- (e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and
- (f) Sell kegs of malt liquor with the appropriate endorsement. This endorsement also allows the sale of beer to a purchaser in a sanitary container brought to the premises by the

purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 8:00 a.m. and 11:00 p.m., five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.420, the annual fee for a spirits, beer, and wine restaurant license is graduated, as follows:

Amount of customer service area dedicated to dining	Annual fee
100%	\$(1,105) <u>1,000</u>
50 - 99%	\$(1,768) <u>1,600</u>
Less than 50%	\$(2,210) <u>2,000</u>

(2) In order for an area to qualify as a dedicated dining area it must be a separate and distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. Areas dedicated to live music or entertainment, such as dance floors or stages are not considered dedicated dining areas. Dedicated dining areas may not contain:

(a) Liquor bars (see definition under WAC 314-02-010(2)); or

(b) Areas dedicated to games or gaming devices.

(3) The fee for a spirits, beer, and wine restaurant license outside of an incorporated city or town will be prorated according to the calendar quarters the licensee is open for business. This proration does not apply in the case of a suspension or revocation of the license.

(4) A duplicate license is required in order to sell liquor from more than one site on your property. These sites must be located on the same property and owned by the same licensee. The following types of businesses may apply for a duplicate license:

Type of Business	Annual fee per duplicate license
Airport terminal	25% of annual license fee
Civic center (such as a convention center)	\$(11) <u>10</u>
Privately owned facility open to the public	\$20

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

(a) Serve spirits by the individual serving for consumption on the licensed premises;

(b) Serve beer, including strong beer, and wine for consumption on the licensed premises;

(c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;

(d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;

(e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; ~~(and)~~

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container; and

(h) Sell beer to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale.

(2) The annual fee for a hotel license is two thousand dollars.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-0411 What are the food service requirements for a hotel license? (1) A hotel licensee must have the ability to serve at least eight complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5)(a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow excep-

tions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-042 Spirits, beer and wine restaurant restricted—Qualifications. (1) Spirits, beer and wine restaurant restricted licensees shall govern their operations in selling liquor in accordance with the regulations set forth in Title 66 RCW. Such licensees may sell liquor in accordance with these regulations, only to members, invited guests, and holders of cards as authorized by chapter 314-40 WAC.

(2)(a) Applications for new spirits, beer and wine restaurant restricted licenses shall be accompanied by proof that:

(i) The business has been in operation for at least one year immediately prior to the date of its application. Such proof should include records of membership as well as an indication as to numbers and types of membership.

(ii) Membership or admission will not be denied to any person because of race, creed, color, national origin, sex or the presence of any sensory, mental or physical handicap.

(b) Spirits, beer and wine restaurant restricted applicants and licensees must meet the provisions of WAC 314-02-035.

(3) Under RCW 66.24.450, the board may issue an endorsement allowing the club to hold (~~up to forty~~) nonclub, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(4) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

(5) See chapter 314-40 WAC for additional rules on clubs.

NEW SECTION

WAC 314-02-043 What is a VIP airport lounge license? (1) Per RCW 66.24.XXX, a VIP airport lounge liquor license allows a VIP airport lounge licensee to sell or provide spirits, wine, and beer for on-premises consumption as a retail licensed premises.

(a) A VIP airport lounge is a retail establishment in an international airport, beyond security checkpoints.

(b) The VIP airport lounge liquor licensee must be the entity in control of the day-to-day operations of the VIP airport lounge.

(c) Spirits, beer, and wine to be sold or provided complimentary by the individual serving for on-premises consumption to persons at least twenty-one years of age or older.

(d) Customers may not remove spirits, beer, and wine from the premises at any time.

(e) The VIP airport lounge licensee may only serve liquor from a service bar. A service bar is a work station primarily used to prepare and sell alcoholic beverages that are picked up by the customer. Customers are not permitted to mix their own drinks, sit or consume food or alcohol at the service bar.

(f) All alcohol servers must have a valid MAST permit.

(2) The annual fee for this license is two thousand dollars.

NEW SECTION

WAC 314-02-044 Application process and guidelines for a VIP airport lounge liquor license. (1) RCW 66.24.010 states the board will only issue licenses and permits to applicants and locations that meet certain qualifications. Please see chapter 314-07 WAC for liquor license qualifications and application process.

(2) An applicant for a VIP airport lounge license must include a sketch of the VIP airport lounge area including the service bar area and where the alcohol inventory will be stored.

(3) All alcohol inventory must be stored on the VIP airport lounge licensed premises.

(4) All spirits must be purchased from the board at the assigned liquor store. Beer and wine must be purchased from a licensed distributor or retail outlet. A VIP lounge licensee may purchase wine directly from a licensed manufacturer if the licensee holds an endorsement to receive direct shipments from a manufacturer.

(5) Access to a VIP airport lounge is generally limited to:

(a) Ticketed airline passengers of any age who have first class, executive, or business class tickets;

(b) Qualified members or guests of loyalty incentive programs, members or guests of enhanced amenities programs;

(c) Passengers or airline employees issued a pass by the airline for access; and

(d) Airport, airline employees, government officials, and attendees of airport authority or airlines for business promotion with controlled access by the VIP airport lounge licensee.

(6) Between the hours of 2 a.m. and 6 a.m., licensees or employees may not:

(a) Provide, offer, or sell liquor;

(b) Deliver liquor (except that beer and/or wine distributors may deliver beer and/or wine to retail licensees between the hours of 2 a.m. and 6 a.m.);

(c) Allow liquor to be consumed on the premises; or

(d) Possess liquor, except that persons working on the premises may possess liquor between the hours of 2 a.m. and 6 a.m. while in the performance of their official duties.

(7) A local government subdivision may fix later opening hours or earlier closing hours than those specified in this rule, so long as the hours apply to all licensed premises in the local government subdivision's jurisdiction. See WAC 314-12-215(3) for exceptions when a premises is in a board recognized alcohol impact area.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$ ((221)) <u>200</u>
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$ ((221)) <u>200</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$ ((133)) <u>120</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30).

(a) Minimum food service is required, as defined in WAC 314-02-010~~((14))~~.

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, five days a week. The board may consider written requests to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-060 What is a caterer's endorsement?

(1) A spirits, beer, and wine restaurant and a beer and/or wine restaurant applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at approved locations other than the licensed premises. See RCW 66.24.420(6) and RCW 66.24.320(2) for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred ~~((eighty-seven))~~ fifty dollars.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-065 What is a snack bar license? (1) Per RCW 66.24.350, a snack bar license allows a licensee to serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(15), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is one hundred ~~((thirty-eight))~~ twenty-five dollars.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$ ((221)) <u>200</u>
(b) Serve wine for on-premises consumption.	\$ ((221)) <u>200</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$ ((133)) <u>120</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred (~~sixty-six~~) fifty dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(6) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(7) A grocery store applicant or licensee may apply for a beer and wine tasting endorsement which allows beer and wine tastings on the grocery store premises. The annual fee for this endorsement is two hundred dollars.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred (~~eleven~~) dollars.

(3) Qualifications for license—To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample—A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary busi-

ness is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

(a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(7) A beer and/or wine specialty store licensee may receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale under the following conditions:

(a) The beer and/or wine specialty store sales must exceed fifty percent of their total sales; or

(b) The board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty store maintains a wholesale alcohol inventory that exceeds fifteen thousand dollars.

WSR 11-23-046

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed November 9, 2011, 10:24 a.m., effective December 10, 2011]

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

Purpose: Clarification was needed in WAC 314-05-025 on what documentation the board requires; revisions to WAC

314-05-030 were needed to implement SSB 5788 from the 2011 legislative session.

Citation of Existing Rules Affected by this Order: Amending WAC 314-05-025 and 314-05-030.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 11-19-113 on September 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 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 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: November 9, 2011.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 04-22-078, filed 11/2/04, effective 12/3/04)

WAC 314-05-025 Application process for a special occasion license. (1) Special occasion applications normally take forty-five days to process. The liquor control board may not be able to process your application in time for your event if you do not apply at least forty-five days before the event.

(2) Per RCW 66.24.010(8), when the board receives a special occasion application, it must send a notice to the local authority. The local authority has twenty days to respond with any input, and they may request an extension for good cause.

(3) The liquor control board may run a criminal history check on the organization's officers and/or managers.

(4) The liquor control board (~~((may request))~~) requires documentation to verify the organization is a bona-fide non-profit, who the true party(ies) of interest are in the organization, and that the organization meets the guidelines outlined in WAC 314-05-020 and 314-05-025.

(5) See chapter 314-07 WAC regarding possible reasons for denial of a special occasion license. Denials are subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 09-02-013, filed 12/29/08, effective 1/29/09)

WAC 314-05-030 Guidelines for special occasion license events. (1) The special occasion license must be posted at the event.

(2) Special occasion licensees may get alcohol for the event only from the following sources:

(a) Spirits must be purchased from a Washington state-run or contract liquor store;

(b) Beer and wine must be purchased at retail from a licensed retailer, from a beer or wine distributor, from a domestic brewery, microbrewery, or winery, acting as a distributor of its own product, or from a certificate of approval holder with a direct shipping to Washington retailer endorsement. Special occasion licensees are allowed to pay for beer or wine used for the special occasion event immediately following the end of the special occasion event; and

(c) Per RCW 66.28.040, in state breweries and wineries (~~((and))~~), out-of-state breweries and wineries holding a certificate of approval license, domestic distillers or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate beer (~~((and))~~), wine, and spirits to special occasion licensees that are nonprofit 501 (c)(3) charitable organizations or nonprofit 501 (c)(6) organizations. Spirits donated to a special occasion licensee must be purchased from a state or contract liquor store.

(3) Special occasion licensees may not advertise or sell alcohol below cost. If donated product is sold by the special occasion licensee, it may not be advertised or sold below the manufacturers' cost.

(4) Per RCW 66.28.010, alcohol manufacturers, importers and distributors may provide advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, but may not provide money, goods, or services to special occasion licensees.

(a) Wineries and distilleries may pour at any special occasion event.

(b) Wineries or breweries that are participating in a special occasion event may pay reasonable booth fees to the special occasion licensee. Booth fees must be uniform for all participating wineries and breweries.

(5) Per RCW 66.24.380, the sale, service, and consumption of alcohol must be confined to a designated location(s).

(6) If a special occasion license function is held at an establishment that has a liquor license:

(a) The special occasion function must be held in an area of the premises separate from areas open to the general public during the time the special occasion function is occurring, and the licensed premises' liquor cannot be sold or served in the same area(s) as the special occasion license function.

(b) The liquor licensee cannot charge for the liquor purchased by the special occasion licensee for service at the special occasion event, but can charge for room usage, services, etc. The liquor licensee must sign the special occasion application giving permission for the special occasion licensee to bring and sell their alcohol (~~((ont))~~) at the liquor licensed premises.

(c) The special occasion license will not be issued for use at premises whose liquor license will be suspended on the date(s) of the scheduled event.

WSR 11-23-048
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed November 9, 2011, 10:35 a.m., effective December 10, 2011]

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

Purpose: Revisions were needed to WAC 314-40-095 to implement SSB 5788 from the 2011 legislative session. Revisions to WAC 314-40-040 and 314-40-050 were requested by stakeholders to clarify the WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 314-40-040, 314-40-050, and 314-40-095.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.450.

Adopted under notice filed as WSR 11-19-110 on September 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 3, Repealed 0.

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

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

Date Adopted: November 9, 2011.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 10-16-056, filed 7/28/10, effective 8/28/10)

WAC 314-40-040 Guest and courtesy cards—Visitors. (1) Guest cards are intended for invited guests residing outside of the immediate area.

(a) Guest cards shall be issued no more than three times per year for a period not to exceed fourteen consecutive days, and must be numbered serially, with a record of the issuance of each such card to be filed in a manner as to be readily accessible to the agents of the board;

(b) Contestants in golf or tennis tournaments conducted on the grounds of a licensed club will be considered a visitor for the day(s) of the event.

(2) Visitors may be introduced when accompanied at all times by a member, who is not an on duty employee, and may remain as long as such member is present in the club. Any such visitor may only enjoy the privileges of the club six times in any one calendar year unless a different number of times is allowed in the club by-laws.

(3) Persons who are members in good standing of a national veterans organization may enjoy the privileges of any licensed club affiliated with any national veterans organization, and persons who are members in good standing of a national fraternal organization may enjoy the privileges of

any club affiliated with that particular national fraternal organization if the bylaws of such clubs authorize reciprocal privileges. Subsections (1) and (2) of this section shall not apply to members of such organizations.

(4) Persons who are members in good standing of organizations licensed as private nonfraternal clubs may enjoy the privileges of other licensed nonfraternal clubs if the bylaws of such clubs authorize reciprocal privileges. Subsections (1) and (2) of this section shall not apply to members of such clubs.

(5) Courtesy cards may be issued to the adult members of the immediate family of any member with or without charge upon application being made to the club by the member.

(6) In order to recruit new members and build club membership, a private club may hold a public membership function for two days per calendar year where club liquor may be given or sold to those attending as a part of the membership drive activities. The function must be advertised as a membership drive. Membership drives may not be held on consecutive days.

(7) A person issued a guest card by the club manager pursuant to subsection (1) of this section may introduce visitors into the club provided:

(a) The visitors are accompanied at all times by the sponsoring guest card holder;

(b) The visitors remain in the club only as long as the sponsoring guest card holder is present; and

(c) The house rules or bylaws of the club provide guest card holders the privilege of introducing visitors into the club.

AMENDATORY SECTION (Amending WSR 10-16-056, filed 7/28/10, effective 8/28/10)

WAC 314-40-050 Records. (1) In addition to the requirements of WAC 314-16-160, clubs shall maintain a complete system of bookkeeping covering all operations of the club, with the operations thereof pertaining to liquor being kept separate in a manner prescribed by the board. All such records shall be accessible and be available for inspection and audit by agents of the board. Board agents shall be entitled to make copies or abstracts or, upon furnishing a proper receipt, remove the originals for such purposes as the board deems necessary.

(2) After initial licensure, house rules and bylaws shall be submitted to the board whenever changes are made. A copy of the house rules and/or bylaws must be available for inspection by any law enforcement officer or agent of the board during any premises check of the club.

(3) In addition to WAC 314-40-040 visitor records with date and time and sponsoring member must be kept for a minimum of ~~((two))~~ three years.

(4) In addition to WAC 314-40-040 guest records must contain the full name, date of birth, and address of the guest receiving the temporary membership card.

AMENDATORY SECTION (Amending WSR 10-16-056, filed 7/28/10, effective 8/28/10)

WAC 314-40-095 Endorsements to private club licenses. (1) Under RCW 66.24.450, the board may issue an endorsement allowing the club to hold ~~((up to forty))~~ non-club, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(2) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

**WSR 11-23-052
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed November 10, 2011, 8:52 a.m., effective December 13, 2011]

Effective Date of Rule: December 13, 2011.

Purpose: In response to the passage of ESSB 5860 (three percent temporary salary reduction (TSR) and TSR leave), we adopted rules on an emergency basis which were effective July 1, 2011. The permanent rule changes were adopted effective October 24, 2011. As part of the emergency and permanent adoptions we added language to WAC 357-31-390 which stated that accrued TSR leave must be used before an employee can use shared leave.

We inadvertently did not include a change to WAC 357-31-435 which also addresses which types of leave must be used before an employee can use shared leave. Staff is now proposing a change to WAC 357-31-435.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-435.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 11-20-108 on October 5, 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; and Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: November 10, 2011.

Eva N. Santos
State Human
Resources Director

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-435 Must employees use their own leave before using shared leave? Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, accrued temporary salary reduction leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave. Employees who qualify for shared leave under WAC 357-31-390 (1)(e) must first use all compensatory time, recognition leave as described in WAC 357-31-565, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave.

**WSR 11-23-054
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed November 10, 2011, 12:16 p.m., effective December 13, 2011]

Effective Date of Rule: December 13, 2011.

Purpose: Part IV of ESSB 5931 (consolidation bill) transfers powers and duties from the department of personnel (DOP) to the office of financial management (OFM) or to the department of enterprise services (DES). Some of the proposed modifications below reflect the necessary changes to transfer these powers and duties. We searched Title 357 WAC for all references to "department," "department of personnel," and "director." We have determined which references to "department" and "department of personnel" should

be changed to OFM, director's office (meaning office of the state human resources director within OFM), or to DES, or if the rule should be moved under the jurisdiction of one of these agencies. We are changing the definition of "director" to reflect the new definition found in RCW 41.06.020 therefore it is not necessary to change all references to "director" found in Title 357 WAC. We are also cleaning up references to RCWs that have been repealed or decodified by ESSB 5931. These rule changes were adopted on an emergency basis effective October 1, 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-01-100, chapter 357-07 WAC, Public records, chapter 357-10 WAC, Classification plan, WAC 357-16-025, 357-19-510, 357-19-515, 357-28-125, 357-34-025 and 357-34-035; and amending WAC 357-01-015, 357-01-110, 357-04-065, 357-04-070, 357-13-025, 357-13-075, 357-13-080, 357-13-085, 357-13-090, 357-16-005, 357-16-010, 357-16-015, 357-16-020, 357-16-030, 357-16-155, 357-16-160, 357-16-175, 357-19-525, 357-22-025, 357-25-015, 357-25-020, 357-25-025, 357-25-030, 357-28-029, 357-28-130, 357-31-230, 357-31-645, 357-34-090, 357-34-100, 357-34-105, 357-34-110, 357-34-115, 357-34-120, 357-46-100, 357-46-135, 357-46-145, 357-49-010, 357-52-030, 357-58-015, 357-58-032, 357-58-050, 357-58-055, 357-58-065, 357-58-075, 357-58-080, 357-58-085, 357-58-105, 357-58-130, 357-58-135, 357-58-140, 357-58-395, 357-58-430, 357-58-435, 357-58-515, 357-58-546, and 357-58-565.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 11-20-110 on October 5, 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 1, Amended 56, Repealed 9.

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 1, Amended 56, Repealed 9.

Date Adopted: November 10, 2011.

Eva N. Santos
State Human
Resources Director

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-015 Affirmative action plan. Results-oriented programs to which employers commit their good faith efforts to attain and maintain equal employment opportunity. Guidelines for development of affirmative action plans are established by the ~~((department))~~ director's office and are consistent with requirements set forth by federal

Executive Order 11246 and Affirmative Action Guidelines issued by the U.S. Departments of Labor and Justice.

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-110 Director. ~~((Director of the department of personnel.))~~ State human resources director within the office of financial management.

AMENDATORY SECTION (Amending WSR 04-15-017, filed 7/8/04, effective 7/1/05)

WAC 357-04-065 What are the duties of the board?

The board is composed of three members appointed by the governor and confirmed by the senate as provided in RCW 41.06.110.

(1) The board must annually elect a chair and vice chair from among its members to serve one year.

(2) The board must conduct business in accordance with RCW 41.06.120.

(3) The board is responsible for:

(a) ~~((Adopting rules that establish goals for the classification plan, define))~~ Defining criteria for exemption from the civil service rules ~~((, and establish a training requirement for employees appointed to a supervisory or management position))~~ as provided in RCW 41.06.070(1).

(b) Hearing and determining employee appeals in accordance with chapter 357-52 WAC.

~~((c) Prioritizing and adopting class studies and salary adjustments under the provisions of RCW 41.06.152(2).))~~

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

WAC 357-04-070 What are the powers and duties of the director? (1) The director ~~((of personnel))~~ is appointed by the governor under the provisions of ~~((RCW 41.06.130))~~ chapter 43, Laws of 2011.

(2) The director ~~((directs and supervises all the department of personnel's administrative and technical activities in accordance with the provisions of chapter 41.06 RCW and the civil service rules))~~ may delegate to any general government agency the authority to perform administrative and technical personnel activities if the general government agency requests such authority and the director is satisfied that the general government agency has the personnel management capabilities to effectively delegate activities.

(3) The director shall prescribe standards and guidelines for the performance of delegated activities.

(4) The director is responsible for:

(a) Adopting rules consistent with the purposes and provisions of the state civil service law and the best standards of personnel administration.

(b) Auditing and reviewing the personnel administration and management at each agency, institution of higher education, and related higher education board periodically and at other such times as may be necessary.

(c) Adopting and revising as necessary a comprehensive classification plan for all positions in the classified service. In adopting the revisions, the director must comply with RCW

41.06.152, ~~((41.06.150(4)))~~ chapter 43, Laws of 2011, and chapter 43.88 RCW.

~~((d) Adopting and revising as necessary a state salary schedule in accordance with RCW 41.06.133(10).))~~

NEW SECTION

WAC 357-04-130 What rules ensure that the director's office complies with the provisions of the State Public Records Act? Chapter 82-48 WAC are the rules which ensure the office of financial management complies with the State Public Records Act. These rules apply to the director's office.

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan? (1) The following ~~((three))~~ criteria must be met for the director to adopt revisions or salary adjustments to the classification plan:

(a) ~~((Implementation of the proposed revision or salary adjustment will result in net cost savings, increased efficiencies, or improved management of personnel or services;))~~

~~((b))~~ The office of financial management has reviewed the fiscal impact statement of the affected employer and concurs that the biennial cost of the revision or salary adjustment is absorbable within the employer's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia; and

~~((c))~~ (b) The revision or salary adjustment is due to one of the following causes, as defined by the director in the classification and pay guidelines:

- (i) Documented recruitment or retention difficulties;
- (ii) Salary compression or inversion;
- (iii) Classification plan maintenance;
- (iv) Higher level duties and responsibilities; or
- (v) Inequities.

(2) The provisions of subsection (1)~~((b) and (1)(c))~~ of this section do not apply to the higher education hospital special pay plan or to any adjustments to the classification plan that are due to emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare.

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-075 Must the notice of reallocation inform the employee of the right to request a director's review of the reallocation? Notice of reallocation must include information regarding the employee's right to request a director's review of the reallocation per WAC 357-13-080. ~~((This requirement does not apply when the employee is being reallocated to a class with the same salary range maximum based upon the director taking action to implement a new classification plan under the provisions of RCW 41.06.136.))~~

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-080 Can an employee request a director's review of a position review or reallocation of the employee's position? ~~((1))~~ An employee may request a director's review of the results of a position review or reallocation of the employee's position, per WAC 357-49-010. The employee must request the director's review within thirty calendar days of being provided the results of a position review or the notice of reallocation.

~~((2) When an employee's position is reallocated to a class with the same salary range maximum based upon the director implementing a new classification plan under the provisions of RCW 41.06.136, an employee does not have the right to request a director's review. The employee may request a position review in accordance with the provisions of WAC 357-13-065. Following the position review, the employee may request a director's review of the results of the position review per WAC 357-49-010.))~~

AMENDATORY SECTION (Amending WSR 10-23-042, filed 11/10/10, effective 12/13/10)

WAC 357-13-085 How is the effective date of a reallocation determined? The effective date of a reallocation is determined as follows:

(1) The effective date of a reallocation resulting from the director's ~~((implementation or))~~ revisions to the classification plan is the effective date of the director's action.

(2) The effective date of an employer-initiated reallocation is determined by the employer. Notice of a reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(3) The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer unless the result of the position review is a reallocation to a class with a lower salary range maximum. Notice of reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(4) The effective date of a reallocation to a class with a lower salary range maximum resulting from a director's review determination to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the director's determination unless the review determination is appealed to the ~~((personnel resources))~~ board. The effective date of a reallocation to a class with a lower salary range maximum resulting from a board order to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the board's order.

AMENDATORY SECTION (Amending WSR 06-23-090, filed 11/14/06, effective 12/18/06)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>⇒ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>⇒ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>⇒ The employee remains in the position and retains existing appointment status.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>⇒ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p>
	<p>⇒ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>⇒ The employer's layoff procedure applies.</p>	

	<p>closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p> <p>Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed the top step of the range as provided in WAC 357-28-115.</p>	<p>⇒ The employer's layoff procedure applies.</p>	
<p>The director (implementing a new classification plan under provisions of RCW 41.06.136 or) revising the classification plan.</p>	<p>The employee remains in the position and keeps existing appointment status. See WAC (357-28-125 and) 357-28-130 for determining the employee's salary.</p>		

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-005 What is the ~~((department's))~~ department of enterprise services' role in recruiting applicants and assessing candidates for positions in the classified service? On the behalf of employers, the department of enterprise services may recruit applicants, assess candidates, create candidate pools, and assist with the certification of candidates for positions in the classified service.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-010 What authority do general government employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration? Under the authority of the director, general government employers may carry out the activities detailed in chapter 357-16 WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. At anytime, the director may designate the department of enterprise services to carry out any of these activities on the employer's behalf.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-015 What authority do higher education employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration? Higher education employers are authorized under RCW 41.06.133 and 41.06.150 to carry out the activities detailed in chapter 357-16 WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. (~~Upon the request of a higher education employer, the director may designate the department to act on the employer's behalf.~~)

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-020 Who is responsible for determining what recruitment methods are appropriate to meet the hiring needs of the employer? ~~((The department and))~~ Employers may use the recruiting methods that they determine to be most appropriate for their hiring needs when soliciting job seekers or establishing pools of eligible applicants.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-030 For affirmative action purposes, may ~~((the department or))~~ employers add job seekers who are affected group members to applicant pools? For affirmative action purposes, ~~((the department or))~~ employers may at any time recruit and screen persons with disabilities, Vietnam era veterans, disabled veterans, and persons age ~~((40))~~ forty and over for placement in eligible applicant pools in those areas where goals exist.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all classes in a class series? An employer or the ~~((department))~~ director's office may disqualify an individual by removing or directing the removal of the individual's name from an applicant and/or candidate pool for a class or all classes in a class series at anytime for good and sufficient reason.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-16-160 Must an applicant or candidate who has been removed for good and sufficient reason per WAC 357-16-155 be notified of the removal? When an applicant or candidate is removed from an applicant or candi-

date pool for good and sufficient reason per WAC 357-16-155, the employer or the ~~((department))~~ director's office must notify the applicant or candidate at the time of the removal. The notice must be in writing and specify the reason for the removal. The notice must explain the right to request a review of the removal under the provisions of WAC 357-16-170, 357-16-175 and 357-16-180. For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-01-187, filed 12/21/04, effective 7/1/05)

WAC 357-16-175 To whom and by when must an applicant or candidate request a review of the results of an examination or removal from an applicant or candidate pool? (1) If the employer is responsible for the assessment process, requests for reviews of examination results under the provisions of WAC 357-16-170 must be made to the employer. If the department of enterprise services is responsible for the assessment process, requests for reviews of examination results under the provisions of WAC 357-16-170 must be made ~~((to the director))~~ under the provisions of WAC 357-49-010.

(2) If the employer is responsible for the removal of an individual's name from an applicant or candidate pool for good and sufficient reason, the request for review under the provisions of WAC 357-16-170 must be made to the employer. If the director's office is responsible for the removal of an individual's name from an applicant or candidate pool for good and sufficient reason, the request for review will be under the provisions of WAC 357-49-010.

(3) The request for a review must be received at the employer's office or the director's office within twenty calendar days following notice of the action for which a review is requested.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-525 What are the employer's responsibilities for return-to-work? Each employer must:

(1) Adopt a written return-to-work policy ~~((and submit a copy to the department))~~.

(2) Designate an employer representative to be responsible for coordinating the employer's return-to-work program.

(3) Provide information on the employer's return-to-work policy to employees.

(4) Provide training of appropriate supervisors on implementation of the employer return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; general knowledge of available return-to-work options ~~((;))~~ and resources available ~~((; and awareness that the return-to-work program expects cooperation and participation by all employers))~~.

(5) Coordinate participation of applicable employee assistance programs, as appropriate.

(6) If possible, provide time-limited opportunities to employees who are in the return-to-work program.

AMENDATORY SECTION (Amending WSR 05-01-198, filed 12/21/04, effective 7/1/05)

WAC 357-22-025 What information must be sent from one employer to another when an employee changes employers within state government? When an employee accepts an appointment with a different employer, the most recent former employer must provide employee information to the new employer in a transmittal package ~~((developed))~~ specified by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

WAC 357-25-015 Who administers the statewide affirmative action program? The ~~((department))~~ director's office is responsible for administering the statewide affirmative action program ~~((The department provides))~~ and providing technical assistance to employers in the development and implementation of affirmative action plans, updates, and programs.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

WAC 357-25-020 What are the administrative responsibilities of the ~~((department))~~ director's office? In accordance with state and federal laws, the ~~((department))~~ director's office:

(1) Establishes guidelines to assist in developing and implementing affirmative action plans;

(2) Provides the essential data for determining availability of affected groups;

(3) Reviews and approves the technical aspect of affirmative action plans and updates;

(4) ~~((Assists in recruiting affected group members, including targeted recruitment when the representation of affected group members is less than its availability;~~

~~((5)))~~ Reviews the progress of employers in meeting goals and addressing problems identified in affirmative action plans and programs; and

~~((6)))~~ (5) Reviews statewide employment trends for general government such as appointment, promotion, transfer, terminations, and formal disciplinary actions for adverse impact, as necessary.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC? (1) All employers must maintain:

(a) An affirmative action and equal employment opportunity policy statement; and

(b) Policy statements on sexual harassment and reasonable accommodation.

(2) The employer's affirmative action and equal employment opportunity policy statement must be reviewed and approved by the head of the agency, institution, or related higher education board each year. The policy statements on

sexual harassment and reasonable accommodation must be updated as needed.

~~((3) Agencies as defined in RCW 41.06.020 must submit their sexual harassment policy as follows:~~

~~(a) Agencies with fifty or more full-time equivalent employees must submit their policy to the department with the employer's affirmative action plan and affirmative action plan update.~~

~~(b) Agencies with twenty-five to forty-nine full-time equivalent employees must submit their policy to the department with their small agency workforce profile.~~

~~(c) Agencies with fewer than twenty-five full-time equivalent employees must submit their policy to the department at least every two years.)~~

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

WAC 357-25-030 What are the affirmative action reporting requirements that employers must comply with for purposes of chapter 357-25 WAC? Employers must report affirmative action information to the ~~((department))~~ director's office as follows:

(1) If an employer has federal affirmative action reporting obligations, the employer must submit an affirmative action plan on a two-year cycle as set by the ~~((department))~~ director's office.

(2) If the employer does not have federal affirmative action reporting obligations, the reporting requirements depend upon the employer's size.

(a) Employers with 25 - 49 full-time equivalent (FTE) employees must submit a small agency/institution workforce profile annually.

(b) Employers with 50 or more FTE employees must submit an affirmative action plan on a four-year cycle as set by the ~~((department))~~ director's office, with an update to the affirmative action plan two years into the cycle.

AMENDATORY SECTION (Amending WSR 07-03-050, filed 1/12/07, effective 2/15/07)

WAC 357-28-029 When making a special pay request for higher education, what information must the requesting party provide ~~((department of personnel staff))~~? It is the responsibility of the requesting party to provide ~~((department of personnel))~~ the director's staff with information necessary to make a recommendation to the director. Information to be provided must include:

(1) Data supporting the pay practice in the locality of the institution for which the request is being made; ~~((and))~~

(2) Rationale supporting the request; and

(3) When applicable, data showing recruitment/retention difficulty.

AMENDATORY SECTION (Amending WSR 07-11-100, filed 5/16/07, effective 7/1/07)

WAC 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class ~~((after the initial implementation of the classification plan))~~? When reallocation is necessary because the director

creates, abolishes, or revises a class ~~((after the initial implementation of the classification plan))~~, an employee's base salary is determined as follows:

(1) An employee occupying a position reallocated to a class with the same or lower salary range must be paid an amount equal to his/her previous base salary.

(2) An employee occupying a position reallocated to a class with a higher salary range must have his/her base salary adjusted to the same step in the new range as held in the previous range unless otherwise determined by the director.

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-230 When can an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider ~~((the work requirements of the department))~~ their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

AMENDATORY SECTION (Amending WSR 07-17-123, filed 8/20/07, effective 10/1/07)

WAC 357-31-645 Who will administer the uniformed service shared leave pool? The military department, in consultation with the ~~((department of personnel and the))~~ office of financial management, shall administer the uniformed service shared leave pool.

AMENDATORY SECTION (Amending WSR 06-19-062, filed 9/19/06, effective 10/20/06)

WAC 357-34-090 Who provides the required supervisory or managerial training? The department of enterprise services provides training activities to fulfill the requirement in WAC 357-34-055 and/or consultative services, as requested, to assist employers in development of their own programs. Employer-developed training must satisfy the requirements of WAC 357-34-060 and 357-34-065.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-115 What must be included in the required sexual harassment awareness and prevention training? The requirements of the sexual harassment awareness and prevention training will be published by the ~~((department. All training must satisfy the requirements by July 1, 2008))~~ director's office.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-120 Who provides the required sexual harassment awareness and prevention training? Either the department of enterprise services or the agency may provide the sexual harassment awareness and prevention training.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training? General government employees ~~((of agencies defined in RCW 41.06.020))~~ are required to complete sexual harassment awareness and prevention training at least every five years. For new employees sexual harassment awareness and prevention training should be completed within the first six months of employment, or earlier if required by the employer's sexual harassment policy.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment awareness and prevention training? Effective July 1, 2008, in addition to the training described in WAC 357-34-100, all managers and supervisors of general government agencies ~~((defined in RCW~~

~~41.06.020))~~ are required to complete training on managers' roles and responsibilities regarding sexual harassment every three years. For new supervisors and managers, training on roles and responsibilities should be completed within the first six months of becoming a manager or supervisor.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee? ~~((Agencies as defined in RCW 41.06.020))~~ General government employers may waive the sexual harassment awareness and prevention training or the managers' roles and responsibilities training required for a new employee if the employee can show proof of attending training given by another state agency, within the time frame that satisfies the requirements of this chapter.

If the sexual harassment awareness and prevention training is waived for a new employee the agency must review their sexual harassment policy with the new employee. The employee must take the next training within five years of completion of the sexual harassment awareness and prevention training or within three years of completion of the managers' roles and responsibilities training with their former state agency.

AMENDATORY SECTION (Amending WSR 07-03-053, filed 1/12/07, effective 2/15/07)

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department of enterprise services administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) General government employers must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the

internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different class series.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer or the director's office determines good and sufficient reason exists.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-46-145 To whom and by when must an individual request a review of the removal from an internal or statewide layoff list? (1) Requests for review of removal from a layoff list must be made to the employer when:

(a) The removal is based on the employer's determination that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d); or

(b) The employer is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(b) or (c).

If the individual is not in agreement with the results of the employer's review, he/she may request a director's review of the removal.

(2) Requests for review of removal from a layoff list must be made ~~((to the director))~~ in accordance with WAC 357-49-010 when:

(a) The removal is based on the ~~((department's))~~ determination by the director's office that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d);

(b) The department of enterprise services is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(a), (b) or (c); or

(c) The individual is not in agreement with the results of the employer's review of the removal.

(3) The request for a review must be received at the employer's office within twenty ~~((20))~~ calendar days or the director's office within thirty ~~((30))~~ calendar days following notice of the action for which a review is requested.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-49-010 For what actions may an individual request a director's review? (1) If the department of enterprise services is responsible for the assessment process, an applicant or candidate may request a director's review of his/her examination results ~~((or))~~. If the director's office is responsible for the removal of his/her name from an applicant or candidate pool as specified in WAC 357-16-175 the individual may request a director's review. Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are final and not subject to further review or appeal.

(2) An individual may request a director's review of the removal of his/her name from a layoff list as specified in WAC 357-46-145.

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080; or

(b) Performance evaluation process or procedure per WAC 357-37-080.

(4) In addition to the subject listed in ~~((section))~~ subsection (2) of this ~~((rule))~~ section, an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later. An employee may not request a director's review of:

(a) ~~((Allegations arising from the development and adoption of the classification plan under the provisions of WAC 357-10-020;~~

~~((b)))~~ An alleged violation of civil service laws or rules pertaining to layoff, except for removal of his/her name from a layoff list as provided in subsection (2) of this section; or

~~((c)))~~ (b) The actions of reduction, dismissal, suspension, demotion or separation.

(5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules.

AMENDATORY SECTION (Amending WSR 05-01-190, filed 12/21/04, effective 7/1/05)

WAC 357-52-030 Are standardized forms available for filing appeals? The ~~((department))~~ director's office makes standardized forms available for filing appeals. Appellants may prepare and use their own appeal documents. Appellants' documents must contain all of the information required by WAC 357-52-020.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-015 Who is authorized to adopt rules for the WMS? The director ~~((of the department of personnel))~~ adopts the WMS rules after consultation with state agencies.

AMENDATORY SECTION (Amending WSR 10-11-076, filed 5/14/10, effective 6/15/10)

WAC 357-58-050 What chapters of civil service rules apply to WMS positions? Other chapters of civil service rules do not apply to WMS positions or employees except for the chapters listed below. If a WMS issue is identified that the director ~~((of the department of personnel))~~ has not specifically addressed in the adoption of the WMS rules, the other civil service rules do not apply or take precedence in addressing the issue.

Except where specifically stated otherwise, the following chapters apply to positions or employees included in the WMS.

~~((WAC))~~ chapter 357-04 WAC General provisions
~~((WAC 357-07 Public records~~
~~WAC))~~ chapter 357-22 WAC Personnel files
~~((WAC))~~ chapter 357-25 WAC Affirmative action program
~~((WAC))~~ chapter 357-26 WAC Reasonable accommodation
~~((WAC))~~ chapter 357-31 WAC Leave
~~((WAC))~~ chapter 357-34 WAC Employee training and development
~~((WAC))~~ chapter 357-37 WAC Performance management
~~((WAC))~~ chapter 357-40 WAC Discipline
~~((WAC))~~ chapter 357-43 WAC Employee business units
~~((WAC))~~ chapter 357-52 WAC Appeals

AMENDATORY SECTION (Amending WSR 07-11-092, filed 5/16/07, effective 7/1/07)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

(1) **Competencies.** Those measurable or observable knowledge, skills, abilities, and behaviors critical to success in a key job role or function.

(2) **Director.** State human resources director within the office of financial management.

(3) **Dismissal.** The termination of an individual's employment for disciplinary purposes.

~~((3))~~ (4) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((4))~~ (5) **Evaluation points.** Evaluation points are the points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((5))~~ (6) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

~~((6))~~ (7) **Management bands.** Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position.

~~((7))~~ (8) **Performance management confirmation.** Approval granted by the director ~~((of the department of personnel))~~ to an employer allowing the employer to link individual employee performance to compensation or layoff decisions.

~~((8))~~ (9) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions, or circumstances associated with the job.

~~((9))~~ (10) **Reassignment.** A reassignment is an employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and its incumbent from one section, department, or geographical location to another section, department, or geographical location.

~~((10))~~ (11) **Review period.** The review period is a period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~((11))~~ (12) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~((12))~~ (13) **Separation.** Separation from state employment for nondisciplinary purposes.

~~((13))~~ (14) **Suspension.** An absence without pay for disciplinary purposes.

~~((14))~~ (15) **Transfer.** A WMS transfer is an employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~((15))~~ (16) **Washington general service (WGS).** Washington general service is the system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((16))~~ (17) **Washington management service (WMS).** Washington management service is the system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-080 How are positions assigned to the management bands? Each agency must evaluate its WMS positions using a managerial job value assessment chart developed by the ~~((department of personnel))~~ director's office. The number of points resulting from the evaluation determines the management band to which a position is assigned.

AMENDATORY SECTION (Amending WSR 05-21-060, filed 10/13/05, effective 11/15/05)

WAC 357-58-085 Can WMS salaries be set outside the maximum of an assigned management band? Compensation for a WMS position may be set outside the maximum of the assigned management band when allowed under any provision of this chapter or when approved by the ~~((department of personnel))~~ director.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-105 When can exceptions to the progression increase limits be made? Only the director ~~((of the department of personnel))~~ may grant requests for exception to the progression increase limit.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-130 Do salary increases greater than five percent for a group of employees need approval? Salary changes greater than five percent proposed for any group of employees must be reviewed and approved by the director ~~((of the department of personnel))~~.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-135 Who can provide lump sum performance recognition payment to employees? The director ~~((of the department of personnel))~~ or an agency that has received performance management confirmation for decentralized compensation administration may provide additional pay to employees on a lump sum basis. Such payment to an individual or group of employees is to recognize outstanding performance or the achievement of predefined work goals. Any pay granted under this section is a premium that is not part of the base salary.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay? Over an annual period, performance recognition pay may not exceed fifteen percent of an employee's annual base salary unless approved by the director ~~((of the department of personnel))~~.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-395 What will be the role of the department of ~~((personnel))~~ enterprise services? The department of ~~((personnel))~~ enterprise services shall assist state agencies by providing a quality developmental and leadership training program and consultative and technical assistance to help agencies address the development needs of their managers.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-430 How does an employer receive performance management confirmation which enables them to factor performance into compensation and layoff decisions for WMS employees? Employers may request performance management confirmation from the director ~~((of the department of personnel))~~ for WMS employees. The director ~~((of the department of personnel))~~ will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor performance into compensation, recognition leave and layoff decisions. If the director ~~((of the department of personnel))~~ determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted performance management confirmation.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-435 What elements will the director ~~((of the department of personnel))~~ evaluate to determine if an employer should be granted performance management confirmation? The director ~~((of the department of personnel))~~ will evaluate the following elements to determine if an employer should receive performance management confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures, and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based compensation;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

AMENDATORY SECTION (Amending WSR 05-12-072, filed 5/27/05, effective 7/1/05)

WAC 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken? Each agency will develop procedures to reconsider agency actions at the request of the employee. The agency's procedure must identify those actions for which an employee may request reconsideration. At a minimum, the agency's procedure must allow an employee to request reconsideration of the following:

- (1) Salary adjustment (or lack thereof) when the responsibilities of the permanent employee's position have been changed.
- (2) Placement following reversion of a permanent employee.
- (3) Decisions about whether or not a position is included in the WMS. When reconsidering decisions concerning inclusion in WMS the following apply:
 - (a) The final agency internal decision must be made by the agency director or designee.
 - (b) If the incumbent disagrees with the agency director/designee's decision, he/she may request a director's review by the director ~~((of the department of personnel))~~, as long as such request is made within fifteen calendar days of notification of the decision. Such review will be limited to relevant documents and information and will be final.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

WAC 357-58-546 What is the ~~((department's))~~ director's authority to review actions taken by an agency under chapter 357-58 WAC or to audit an agency's WMS processes? (1) Under the authority of ~~((RCW 41.06.130 and))~~ chapter 43, Laws of 2011 and RCW 41.06.500, the director ~~((of the department of personnel))~~ retains the right to review:

- (a) Any action taken by an agency under chapter 357-58 WAC; and
- (b) An agency's administration of the WMS program.
- (2) An agency's compliance with WMS procedures and rules will be audited. Audit requirements will be prescribed by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands? (1) Each agency must develop a WMS inclusion and evaluation procedure consistent with this chapter and guidelines established by the ~~((department))~~ director's office.

- (2) The inclusion and evaluation procedure must be approved by the director.
- (3) The procedure must include processes for requesting and determining inclusion and evaluating and ~~((re-evaluating))~~ reevaluating positions for placement within management bands. The procedure must require, at a minimum:
 - (a) Appointment of a human resource professional as the agency's WMS coordinator who serves as the single point of contact for the ~~((department))~~ director's office regarding WMS issues.
 - (b) Use of a form prescribed by the director or an alternate form approved by the director for requests to establish or ~~((re-evaluate))~~ reevaluate WMS positions.
 - (c) Approval of the request for inclusion or evaluation by the position's agency head or designee.
 - (d) Inclusion determination and position evaluation must be performed by a committee of three or more people, which must include:
 - ~~((i))~~ (i) The agency's WMS coordinator;
 - ~~((ii))~~ (ii) A manager from the agency who has comprehensive knowledge of the agency's business; and
 - ~~((iii))~~ (iii) A management representative from another agency or human resource professional from another agency.
 - (e) Only those who have successfully completed training may participate on a WMS committee. The training must satisfy the core curriculum as defined by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-055 What civil service rules do not apply to WMS? Except where specifically stated otherwise,

the following WAC chapters do not apply to positions or employees included in the Washington management service:

- ~~((WAC))~~ Chapter 357-01 WAC, Definitions
- ~~((WAC 357-10 Personnel resources board classification WAC))~~ Chapter 357-13 WAC, Classification
- ~~((WAC))~~ Chapter 357-16 WAC, Recruitment, assessment, and certification
- ~~((WAC))~~ Chapter 357-19 WAC, Appointments and reemployment
- ~~((WAC))~~ Chapter 357-28 WAC, Compensation
- ~~((WAC))~~ Chapter 357-46 WAC, Layoff and separation
- ~~((WAC))~~ Chapter 357-49 WAC, Director's reviews

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-075 What is the requirement for agencies to develop compensation policies? Each agency must develop salary administration policies that are consistent with this chapter and guidelines established by the ~~((department))~~ director's office for WMS positions.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities? (1) Agencies must submit their WMS activity reports to the ~~((department))~~ director's office and make them available as prescribed by the ~~((department))~~ director's office.

(2) A roll-up of all agencies' WMS activities will be made available to agencies.

REPEALER

Chapter 357-07	Public Records
Chapter 357-10	Classification Plan
WAC 357-01-100	Department
WAC 357-16-025	How must employers and the department inform prospective applicants of recruitments?
WAC 357-19-510	Who is responsible for administering the return-to-work initiative program?
WAC 357-19-515	Who is eligible to participate in the return-to-work initiative program?
WAC 357-28-125	How is an employee's base salary affected when the employee's position is allocated to a new class as a result of the director taking action to implement the new classification plan as required by WAC 357-10-010(1)?

- WAC 357-34-025 What are the director's training and development responsibilities?
- WAC 357-34-035 Can an employee get a copy of the employer's training and development plan?

WSR 11-23-068
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed November 14, 2011, 3:48 p.m., effective March 31, 2012]

Effective Date of Rule: March 31, 2012.

Purpose: Adopting new chapter 170-296A WAC, Licensed family home child care standards, and repealing all sections of chapter 170-296 WAC.

See Reviser's note below.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 170-296-0010, 170-296-0020, 170-296-0110, 170-296-0120, 170-296-0125, 170-296-0130, 170-296-0140, 170-296-0160, 170-296-0170, 170-296-0180, 170-296-0200, 170-296-0210, 170-296-0215, 170-296-0220, 170-296-0230, 170-296-0240, 170-296-0250, 170-296-0260, 170-296-0270, 170-296-0280, 170-296-0290, 170-296-0300, 170-296-0315, 170-296-0320, 170-296-0330, 170-296-0340, 170-296-0350, 170-296-0360, 170-296-0370, 170-296-0380, 170-296-0390, 170-296-0400, 170-296-0410, 170-296-0420, 170-296-0430, 170-296-0440, 170-296-0450, 170-296-0460, 170-296-0470, 170-296-0480, 170-296-0490, 170-296-0500, 170-296-0510, 170-296-0520, 170-296-0530, 170-296-0540, 170-296-0550, 170-296-0560, 170-296-0570, 170-296-0580, 170-296-0590, 170-296-0600, 170-296-0610, 170-296-0620, 170-296-0630, 170-296-0640, 170-296-0650, 170-296-0700, 170-296-0710, 170-296-0720, 170-296-0730, 170-296-0740, 170-296-0750, 170-296-0760, 170-296-0770, 170-296-0780, 170-296-0790, 170-296-0800, 170-296-0810, 170-296-0820, 170-296-0830, 170-296-0840, 170-296-0850, 170-296-0860, 170-296-0870, 170-296-0880, 170-296-0890, 170-296-0900, 170-296-0910, 170-296-0920, 170-296-0930, 170-296-0940, 170-296-0950, 170-296-0960, 170-296-0970, 170-296-0980, 170-296-0990, 170-296-1000, 170-296-1010, 170-296-1020, 170-296-1030, 170-296-1040, 170-296-1050, 170-296-1060, 170-296-1070, 170-296-1080, 170-296-1090, 170-296-1100, 170-296-1110, 170-296-1120, 170-296-1130, 170-296-1140, 170-296-1150, 170-296-1160, 170-296-1170, 170-296-1180, 170-296-1190, 170-296-1200, 170-296-1210, 170-296-1220, 170-296-1230, 170-296-1240, 170-296-1250, 170-296-1260, 170-296-1280, 170-296-1290, 170-296-1300, 170-296-1320, 170-296-1330, 170-296-1340, 170-296-1350, 170-296-1360, 170-296-1370, 170-296-1380, 170-296-1390, 170-296-1400, 170-296-1410, 170-296-1420, 170-296-1430, 170-296-1440, and 170-296-1450.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070 are authority for each new WAC section adopted in this order; RCW 43.43.832(6) and chapter 293, Laws of 2011 (HB 1903) are additional authority for the following new WAC 170-296A-0010, 170-296A-1200, 170-296A-

1250, 170-296A-1325, 170-296A-1450, 170-296A-1975, 170-296A-2075, 170-296A-2100, and 170-296A-8175.

Other Authority: Chapter 43.215 RCW is other authority for all new WAC sections adopted in this order; chapter 50, Laws of 2011, 1st sp. sess. (ESHB 1087, subsection 617(2)) is additional other authority for new WAC 170-296A-1325; chapter 299, Laws of 2011 (SB 5005) is additional other authority for new WAC 170-296A-3300; chapter 296, Laws of 2011 (SB 5504) is additional other authority for new WAC 170-296A-8050, 170-296A-8350 and 170-296A-8375; chapter 297, Laws of 2011 (SB 5625) is additional other authority for new WAC 170-296A-1200, 170-296A-1250, 170-296A-1325, 170-296A-1430, 170-296A-1450 and 170-296A-2175; chapter 293, Laws of 2011 (HB 1903) is additional other authority for new WAC 170-296A-1200, 170-296A-1250, 170-296A-1450, 170-296A-1525, 170-296A-1975, 170-296A-2075, 170-296A-2100, and 170-296A-8175.

Adopted under notice filed as WSR 11-09-081 on April 20, 2011.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 230, Amended 0, Repealed 131.

Number of Sections Adopted Using Negotiated Rule Making: New 241, Amended 0, Repealed 131; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 14, 2011.

Beth Hyde
Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-01 issue of the Register.

WSR 11-23-070
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 15, 2011, 9:29 a.m., effective December 16, 2011]

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

Purpose: These rules assist in the implementation of HB 1726 (chapter 291, Laws of 2011) by updating existing language to reference the additional days allowed under certain circumstances for workers to select a vocational training option and for employers to develop a valid return to work offer. HB 1726 also clarifies the start date of vocational training plan development.

Citation of Existing Rules Affected by this Order:
Amending WAC 296-19A-030 and 296-19A-600.

Statutory Authority for Adoption: Chapter 51.32 RCW.

Adopted under notice filed as WSR 11-17-109 on August 23, 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 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 2, Repealed 0.

Date Adopted: November 15, 2011.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-030 What are the responsibilities of the parties? The attending health care provider, department, self-insured employer, employer, worker and vocational rehabilitation provider have the following responsibilities in assisting the worker to become employable at gainful employment:

(1) **Attending health care provider.** The attending health care provider must:

(a) Maintain open communication with the worker's assigned vocational rehabilitation provider and the referral source.

(b) Respond to any request for information which is necessary to evaluate a worker's:

(i) Ability to work;

(ii) Need for vocational services; and

(iii) Ability to participate in a vocational retraining plan.

(c) Do all that is possible to expedite the vocational rehabilitation process, including making an estimate of the physical or mental capacities that affect the worker's employability. If unable to provide an estimate, refer the worker for the appropriate consultation or evaluation.

(2) **Department.**

(a) **State fund claims.** For state fund claims, the department must:

(i) Obtain medical information required to initiate vocational rehabilitation services before a referral is made to a vocational rehabilitation provider.

(ii) Notify the chargeable employer(s), if any, at the time any referrals are made to a vocational rehabilitation provider.

(iii) Provide the vocational rehabilitation provider with access to all reports and any other relevant documentation

generated during prior vocational rehabilitation services including plans that have been provided on any claim.

(iv) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(v) Notify all parties of the eligibility determination in writing. When the worker is eligible for plan development services, the notification letter must advise that the chargeable employer(s), if any, has fifteen calendar days from the date of the letter to make a valid return to work offer. However, should the employer attempt to make a valid return-to-work offer within the fifteen calendar days, the department may grant up to ten additional calendar days to modify the offer if it does not meet all of the requirements for approval.

(vi) Assign plan development services to the vocational rehabilitation provider that completed the assessment report unless the department decides the provider cannot complete the required report.

(vii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(viii) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification must advise the worker that he or she has fifteen calendar days from the date of the notification letter to decline vocational services and elect option 2 benefits as defined in RCW 51.32.099. However, the department may approve an election submitted in writing within twenty-five days of the date the plan is approved or is determined valid following a dispute if the worker provides a written explanation of why he or she was unable to submit the election of option 2 benefits within fifteen days.

(b) **Self-insured claims.** For self-insured claims, the department must:

(i) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(ii) Notify all parties of the eligibility determination in writing.

When the worker is eligible for plan development services, the notification letter must advise the employer it has fifteen calendar days from the date of the letter to make a valid return to work offer; and

(iii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(iv) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification letter must advise the worker that he or she has fifteen calendar days from the date of the letter to elect option 2 benefits as defined in RCW 51.32.099. However, the department may approve an election submitted in writing within twenty-five days of the date the plan is approved or is determined valid following a dispute if the worker provides a written explanation of why

he or she was unable to submit the election of option 2 benefits within fifteen days.

(3) **Employer.** The employer must:

(a) Assist the vocational rehabilitation provider in any way necessary to collect data regarding the worker's gainful employment at the time of the injury.

(b) Assist the vocational rehabilitation provider and attending health care provider to determine whether a job could be made available for employment of the worker.

(4) **Worker.** The worker must fully participate and cooperate in all aspects of their vocational services including determination of physical capacities, development of vocational goals, and implementation of the rehabilitation process. Examples include but are not limited to:

- Providing accurate and complete information regarding his or her work history and educational background.
- Attending all scheduled appointments.
- Cooperating with return to work efforts when it is determined return to work opportunities exist.
- Actively participating and cooperating in selecting a job goal when it is determined retraining is necessary.

(5) **Vocational rehabilitation provider.** In assisting the worker to become employable at gainful employment, the vocational rehabilitation provider must:

(a) Follow the priorities in RCW 51.32.095 and the requirements in this chapter.

(b) For state fund claims, immediately inform the department orally if the worker:

- (i) Returns to work;
- (ii) Is released for work without restrictions;
- (iii) Returns to work and is unsuccessful; or
- (iv) Fails to cooperate.

Note: Written notification and documentation must follow oral notification within two working days.

(c) Identify all vocational rehabilitation counselors and interns who provided services in each reporting period.

(d) Provide copies of reports and attachments submitted to the referral source to the employer (if different than the referral source) and the worker or the worker's representative when requested.

(e) Prior to a determination of eligibility, work with the employer, if necessary, to develop job analyses for work the employer is offering or has available and provide other assistance necessary to facilitate return to work with the employer.

(f) When providing plan development services, the vocational rehabilitation provider should, whenever possible and appropriate, focus on identifying goals and occupations that are considered high demand in the workforce. High demand occupations, as determined by the employment security department, means the number of job openings in the labor market for the occupation or with the required skill set exceeds the supply of qualified workers.

(g) Should the employer choose to make a valid return to work offer within fifteen calendar days of the date of the notification letter approving plan development services, the vocational rehabilitation provider may provide assistance necessary to facilitate return to work with the employer. The department may approve up to an additional ten days for an employer to modify a job offer if it does not meet all of the requirements. When this occurs, the vocational rehabilitation

provider may assist the employer in making the necessary modifications.

AMENDATORY SECTION (Amending WSR 10-07-054, filed 3/12/10, effective 4/12/10)

WAC 296-19A-600 How does an eligible injured worker elect vocational option 2 benefits? Within fifteen days of the approval of a retraining plan ((by the department) or determination that a disputed plan is valid, the worker submits to the department or self-insurer the retraining plan option form indicating they select option 2 and choose not to participate in their retraining plan. However, the department may approve an option 2 selection submitted within twenty-five calendar days if the worker provides a written explanation establishing that he or she was unable to submit his or her election within fifteen calendar days. This election means the worker's claim will be closed, and the worker will receive the vocational option 2 award and access to the option 2 training funds.

WSR 11-23-073

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 15, 2011, 10:32 a.m., effective December 16, 2011]

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

Purpose: Amending WAC 181-78A-125 clarifying that only educators without current certification seeking field placement must meet requirements of RCW 28A.410.010 (finger printing).

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-125].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-20-084 on October 10 [4], 2011.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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: November 10, 2011.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 09-24-047, filed 11/24/09, effective 12/25/09)

WAC 181-78A-125 Field placement agreements.

Beginning September 1, 2010, all educator preparation programs approved or authorized by the professional educator standards board or programs approved in other states operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement.

Each field placement agreement shall include, but not be limited to:

(1) Assurances that:

(a) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate; and

(b) Candidates will not be placed in settings in which personal relationships or previous experiences could interfere with objective evaluation of candidates.

(2) Qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(3) Clear description by institution of duties and responsibilities of site supervisor and cooperating educator/administrator;

(4) Anticipated length and nature of field experience;

(5) Signatures from district representative.

WSR 11-23-077

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed November 15, 2011, 4:29 p.m., effective December 16, 2011]

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

Purpose: Eliminating the Social Security number requirement for premium-based apple health [for] kids medical coverage is necessary to comply with federal "maintenance of effort" requirements under Patient Protection and Affordable Care Act (PPACA); adding description of lawfully present aliens to comply with Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA); and creating new WAC section identifying the order of Title XXI payments under the premium-based apple health for kids program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-505-0210 and 388-505-0211.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.057, and 74.09.500.

Other Authority: PPACA; §2102 (b)(1)(A) of the Social Security Act; and Public Law 111-3 (CHIPRA).

Adopted under notice filed as WSR 11-20-052 on September 29, 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 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 1, Amended 2, Repealed 0.

Date Adopted: November 15, 2011.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-03-001, filed 1/5/11, effective 2/5/11)

WAC 388-505-0210 Apple health for kids and other children's medical assistance programs.

Funding for coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI (CHIP), or through state-funded programs. There are no resource limits for the apple health for kids programs. Apple health for kids coverage is free to children in households with incomes of no more than two-hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three-hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The newborn is a resident of the state of Washington.

(b) The newborn's mother is eligible for medical assistance:

(i) On the date of the newborn's birth, including a retroactive eligibility determination; or

(ii) Based on meeting a medically needy (MN) spend-down liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received Supplemental Security Income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for SSI.

(3) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

~~(b) ((A Social Security number or application as described in chapter 388-476 WAC;~~

~~(c))~~ Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

~~((d))~~ (c) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

~~((e))~~ (d) They do not have other creditable health insurance as described in WAC 388-542-0050; and

~~((f))~~ (e) They pay the required monthly premiums as described in WAC 388-505-0211.

(5) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premium as described in WAC 388-505-0211.

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Are ineligible for other federally matched CN programs;

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown liability as described in WAC 388-519-0100 and 388-519-0110.

(7) Children under the age of nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids healthcare coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for healthcare coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care" for more information.

(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, Social Security number, and citizenship as described in subsection (2)(a), (b) and (c) of this section are eligible for federally matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally matched CN coverage.

(11) Children under the age of nineteen not eligible for apple health for kids programs listed above may be eligible for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100;

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e) of this section; and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL;
or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.

(12) Except for a child described in subsection (7) of this section, an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any apple health for kids program.

AMENDATORY SECTION (Amending WSR 11-03-001, filed 1/5/11, effective 2/5/11)

WAC 388-505-0211 Premium requirements for premium-based healthcare coverage under programs included in apple health for kids. (1) For the purposes of this chapter, "premium" means an amount paid for healthcare coverage under programs included in apple health for kids as described in WAC 388-505-0210 (4) and (5).

(2) Payment of a premium is required as a condition of eligibility for premium-based coverage under programs included in apple health for kids, as described in WAC 388-505-0210 (4) and (5), unless the child is:

- (a) Pregnant; or
- (b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

(4) The premium amount for the assistance unit (AU) is based on the net countable income as described in WAC 388-450-0210 and the number of children in the ((assistance unit)) AU. If the household includes more than one ((assistance unit)) AU, the premium amount billed for the ((assistance units)) AUs may be different amounts.

(5) The premium amount is limited to a monthly maximum of two premiums for households with two or more children.

(6) The premium amount for each ((eligible)) U.S. citizen or lawfully present alien child ((shall be)) described in WAC 388-505-0210(4) is:

(a) Twenty dollars per month per child for households with income above two hundred percent FPL, but not above two hundred and fifty percent FPL; or

(b) Thirty dollars per month per child for households with income above two hundred and fifty percent FPL, but not above three hundred percent FPL(~~;~~ and

(c) Limited to a monthly maximum of two premiums for households with two or more children).

((6)) (7) The premium amount for each noncitizen child described in WAC 388-505-0210(5) who is not a lawfully present qualified or nonqualified alien is no greater than the average of the state-share of the per capita cost for state-funded children's health coverage. The premium amount is set every two years, based on the forecasted per capita costs for that period.

(8) All children in an ((assistance unit)) AU are ineligible for healthcare coverage when the head of household fails

to pay required premium payments for three consecutive months.

~~((7))~~ (9) When the ((department)) agency or the agency's designee terminates the medical coverage of a child due to nonpayment of premiums, the child's eligibility is restored only when the:

(a) Past due premiums are paid in full prior to the end of the certification period; or

(b) The child becomes eligible for coverage under a non-premium-based CN healthcare program.

~~((8))~~ (10) The ((department)) agency or the agency's designee writes off past-due premiums after twelve months.

~~((9))~~ (11) If all past due premiums are paid after the certification period is over:

(a) Eligibility for prior months is not restored; and
(b) Children are not eligible for premium-based coverage under apple health for kids until:

(i) The month the premiums are paid or the ((department)) agency writes off the debt; ~~((or))~~ and

(ii) The family reapplies and is found eligible.

~~((10))~~ (12) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the ((assistance unit)) AU. The full premium amount is the obligation of the head of household of the ((assistance unit)) AU. A family can decide to request healthcare coverage only for certain children in the ((assistance unit)) AU, if they want to reduce premium obligation.

~~((11))~~ (13) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((12))~~ (14) A sponsor or other third party may pay the premium on behalf of the child or children in the ((assistance unit)) AU. The premium payment requirement remains the obligation of head of household of the ((assistance unit)) AU. The failure of a sponsor or other third party to pay the premium does not eliminate the obligation of the head of household to pay past due premiums.

NEW SECTION

WAC 182-505-0235 Order of payments under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act. The agency administers the programs included in apple health for kids that provide premium-based coverage through a combination of state and federal funding sources. For expenditures funded by Title XXI of the Social Security Act, also known as the children's health insurance program (CHIP), federal financial participation will be sought in compliance with section 2105 of the act in the following order:

(1) For medical assistance for targeted low-income children from birth through age eighteen, as described in section 4 of the Title XXI state plan.

(2) For medical assistance for unborn children, as described in section 4.1.2.1 of the Title XXI state plan.

(3) For medical assistance for medicaid-eligible children, as described in CHIPRA, section 214.

(4) For medical assistance for medicaid-eligible children, as described in section 2105 (g)(4)(A) and (B) of the act.

(5) For allowable administrative expenditures under the ten percent cap, as defined in section 2105 (a)(1)(D) of the act in the following order:

(a) First, for reasonable expenditures necessary to administer the plan, including staffing for eligibility determinations, plan administration, quality assurance, and similar costs.

(b) Second, for a toll-free 800 telephone number providing information regarding the Washington apple health for kids program.

(c) Third, for health services initiatives, such as the funding of the Washington poison center, to the extent that state funds are appropriated by the legislature.

(d) Fourth, for translation or interpretation services in connection with the enrollment, retention, or use of services under this title by individuals for whom English is not their primary language, but only to the extent that state-matching funds are made available.

(e) Fifth, for outreach services for the Washington apple health for kids program, to the extent that appropriated state-matching funds are available.

(f) Sixth, for other CMS-approved activities to the extent that federal matching funds are available, and where such activities do not duplicate efforts conducted under this subsection.

WSR 11-23-083

PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-299—Filed November 16, 2011, 3:16 p.m., effective December 17, 2011]

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

Purpose: This proposal updates the rules regarding restrictions on the importation of deer, elk, and moose from states known to harbor chronic wasting disease in wild game populations.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-021.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 11-19-097 on September 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: November 4, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 10-214, filed 8/20/10, effective 9/20/10)

WAC 232-12-021 Importation and retention of dead nonresident wildlife. It is unlawful:

(1) To import or possess dead wildlife, taken in another state or country, into Washington unless such wildlife was acquired lawfully. Proof of legal acquisition must be retained during the period of retention of the carcass or edible parts. Violation of this subsection is punishable under RCW 77.15.290.

(2) For a person who imports a dead mountain sheep, mountain goat, cougar or bear to fail to report such importation to the department in writing within ten days of the importation. The report must contain the name and address of the importer, the location where the dead wildlife is being stored and general information describing where and how the wildlife was obtained. Violation of this subsection is punishable under RCW 77.15.290.

(3) To import or possess deer, elk, or moose, or parts thereof, harvested in Colorado, Wyoming, Utah, New Mexico, Wisconsin, Illinois, South Dakota, Nebraska, Kansas, New York, West Virginia, Virginia, North Dakota, Alberta, Maryland, Minnesota, and Saskatchewan with the following exceptions:

(a) Meat that has been deboned in the state or province where it was harvested and is imported as boned out meat;

(b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;

(c) Hides or capes without heads attached;

(d) Tissue imported for use by a diagnostic or research laboratory;

(e) Finished taxidermy mounts.

Violation of this subsection is punishable under RCW 77.15.290.

(4) To fail to notify the department within twenty-four hours if an importer or receiver of deer or elk is notified by a state or province that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160.

WSR 11-23-087

PERMANENT RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Economic Services Administration)

[Filed November 17, 2011, 9:30 a.m., effective December 18, 2011]

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

Purpose: The division of child support (DCS) is adopting new and amended sections in chapter 388-14A WAC in order to implement sections 9, 10 and 11 of ESSB 5921 (chapter 42, Laws of 2011), under which recipients of "child

care subsidies or working connections child care (WCCC) subsidies" are required to seek child support enforcement services and cooperate with the department of social and health services DCS unless granted good cause not to do so. Emergency rules were adopted under WSR 11-22-038, and will maintain the status quo until the permanent rules are final.

New sections WAC 388-14A-2007 Does an application for subsidized child care automatically become an application for support enforcement services?, 388-14A-2042 What happens if I don't cooperate with DCS while I receive a child care subsidy? and 388-14A-2093 Who receives notice of DCS' intent to close a case when the custodial parent receives a child care subsidy or a working connections child care subsidy?; and amending WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, 388-14A-2041 What happens if I don't cooperate with DCS while I receive public assistance?, 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?, 388-14A-2050 Who decides if I have good cause not to cooperate?, and 388-14A-2075 What happens if the division of child support determines that I am not cooperating?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-2040, 388-14A-2041, 388-14A-2045, 388-14A-2050, and 388-14A-2075.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220, 74.08.090, 74.20.040 and ESSB 5921 (chapter 42, Laws of 2011).

Adopted under notice filed as WSR 11-20-098 on October 5, 2011.

Changes Other than Editing from Proposed to Adopted Version: At the request of DEL, added a phrase regarding "good cause" to subsection (4) of new WAC 388-14A-2093.

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 3, Amended 5, 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 3, Amended 5, Repealed 0.

Date Adopted: November 15, 2011.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-14A-2007 Does an application for subsidized child care automatically become an application for support enforcement services? (1) As a condition of receiving a child care subsidy, which includes any subsidy under

chapter 43.215 RCW, including working connections child care (WCCC) or seasonal childcare (SCC), the applicant or recipient must seek child support enforcement services, unless the department or the department of early learning (DEL) finds that the applicant or recipient has good cause not to cooperate.

(a) An application for a child care subsidy does not automatically become an application for support enforcement services.

(b) The person receiving the child care subsidy must file a signed application for support enforcement services as described in WAC 388-14A-2000 and 388-14A-2010, unless the person is also receiving cash assistance.

(2) Payment for subsidized child care services constitutes an authorization to DCS to provide the recipient of the child care subsidy with support enforcement services, but the recipient must submit a signed application, as provided in subsection (1)(b) of this section.

(3) DCS collects, but does not retain, child support payments unless there is also an assignment of rights based on receipt of cash assistance or medical assistance.

(4) If DCS documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement, DCS closes the child support enforcement case under WAC 388-14A-2080(8) or as that section may hereinafter be amended.

(5) If the person receiving the child care subsidy requests that DCS stop providing services and there is no current assignment of medical or support rights, DCS closes the child support enforcement case under WAC 388-14A-2080(4) or as that section may hereinafter be amended.

(6) If DCS closes a case as provided in subsection (4) or (5) of this section, DCS notifies the community services division (CSD) that the recipient of the child care subsidy has failed to cooperate with DCS. Any sanctions for failure to cooperate are determined by CSD or DEL.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020.

(2) You must cooperate with the division of child support (DCS) when you receive a child care subsidy, unless the department determines there is good cause not to cooperate under WAC 388-422-0020 or another rule of the department of early learning (DEL).

(3) As described in WAC 388-14A-2080, DCS may close a nonassistance case if the custodial parent (CP) fails to cooperate, if cooperation is essential for the next step in enforcement.

(4) For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at

issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

~~((2))~~ (5) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

- (a) Identify and locate the responsible parent;
- (b) Establish the paternity of the child(ren) on assistance in the CP's care; and
- (c) Establish or collect support payments or resources such as property due the CP or the child(ren).

~~((3))~~ (6) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

~~((4))~~ (7) The cooperation requirements of subsections (1), (4) and ~~((2))~~ (5) above, but not subsection ~~((3))~~ (6), apply to a recipient of medicaid-only assistance.

(8) The cooperation requirements of subsections (2), (4) and (5) above, but not subsection (6), apply to a recipient of a child care subsidy.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2041 What happens if I don't cooperate with DCS while I receive public assistance? (1) If you receive public assistance, there may be penalties, called sanctions, for not cooperating with the division of child support (DCS). These sanctions and the noncooperation process are described in WAC 388-14A-2075. You may be sanctioned if:

- (a) You do not go to scheduled interviews and answer questions;
 - (b) There is credible evidence showing that you could have given the information but did not;
 - (c) You have been giving inconsistent or false information without a good reason; or
 - (d) You refuse to sign or honor a repayment agreement under WAC 388-14A-2040(3).
- (2) You must be given the opportunity to swear you do not have the information.
- (3) You cannot be sanctioned because you provided information on a possible parent who was then excluded by genetic testing. In this event you must continue to cooperate in naming other possible parents and taking part in any resulting genetic testing.

(4) You may not be able to help DCS if you do not know, do not possess, or cannot reasonably obtain the requested information. To avoid a sanction, you must, under penalty of perjury, swear or attest to your lack of information in an interview held by DCS or its representative.

(5) If you fear that cooperation may cause harm to you or your children, you may contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020.

NEW SECTION

WAC 388-14A-2042 What happens if I don't cooperate with DCS while I receive a child care subsidy? (1) If the division of child support (DCS) closes your nonassistance case either at your request or based on your failure to cooperate while you are a recipient of a child care subsidy, DCS notifies the community services division (CSD) that your case was closed.

(2) Any sanctions for your failure to cooperate are determined by CSD or the department of early learning (DEL).

(3) If you fear that cooperation may cause harm to you or your children, you may contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020 or under DEL rules.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children? (1) If a custodial parent (CP) receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP may be excused from the cooperation requirements. ~~((You can))~~ The CP must contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020. ~~((Go to the community services office (CSO) to claim good cause.))~~ The CP may claim good cause:

- (a) At the time of application for public assistance; or
- (b) At any time thereafter.

(2) If a CP who is not receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP should tell the division of child support (DCS) that family violence is an issue in the case, so that DCS may take appropriate action. The CP may ask DCS to close the nonassistance support enforcement case.

(3) If a CP who receives a child care subsidy but does not receive public assistance claims good cause not to comply with the requirement to seek support enforcement services, the department of early learning (DEL) or CSD may grant good cause, either under WAC 388-422-0020 or under DEL rules.

(a) If the CP does not claim good cause at the time the child care subsidy is granted, the CP may later claim good cause by contacting CSD.

(b) If the CP requests DCS to close a nonassistance case, DCS notifies CSD that the case has been closed. The CP may claim good cause if CSD takes action to sanction the CP for closing the DCS case.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2050 Who decides if I have good cause not to cooperate? (1) The community services ~~((office (CSO)))~~ division (CSD) decides whether you have good cause not to cooperate with the division of child support (DCS). You must tell CSD if you want to claim good cause.

(a) CSD determines good cause under WAC 388-422-0020 or under the rules adopted by the department of early learning (DEL).

(b) You may claim good cause at the time you apply for public assistance or for a child care subsidy, or at any time thereafter.

(2) When you make a claim of good cause not to cooperate, DCS does not take any action on ~~((the))~~ your case while ~~((the CSD))~~ CSD is reviewing your good cause claim.

(3) If you are not receiving public assistance but are applying for a child care subsidy, you may be granted good cause and not be required to apply for child support enforcement services.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating? (1) When the division of child support (DCS) or its representatives believe ~~((you are))~~ that a custodial parent (CP) who receives cash assistance or medical assistance is not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to ((you)) the CP and to the community ((service office (CSO) stating)) services division (CSD) about the noncooperation ((and explaining)).

(a) The notice contains the following information:

~~((a))~~ (i) How the noncooperation was determined, including what actions were required;

~~((b))~~ (ii) What actions ~~((you))~~ the CP must take to resume cooperation;

~~((c))~~ (iii) That this notice was sent to ~~((the CSO))~~ CSD;

~~((d))~~ (iv) That ~~((you))~~ the CP may contact ~~((the CSO))~~ CSD immediately if ~~((you))~~ the CP disagrees with the notice, needs help in order to cooperate, or believes the actions required are unreasonable; and

~~((e))~~ (v) That ~~((the CSO))~~ CSD may sanction ~~((you))~~ the CP by either reducing or terminating the grant.

~~((2))~~ (b) ~~((The CSO))~~ CSD sends a notice of planned action to ~~((you))~~ the CP as provided by WAC 388-472-0005 (1)(i).

~~((3))~~ (c) Either the notice of alleged noncooperation or ~~((the CSO's))~~ CSD's notice of planned action may serve as the basis for a sanction.

~~((4))~~ (d) If the noncooperation was due to missing an interview without reasonable excuse, ~~((you))~~ the CP will be considered to be cooperating when ~~((you))~~ the CP appears for a rescheduled interview and either provides information or attests to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date ~~((you))~~ the CP contacts them to reschedule an interview.

~~((5))~~ (e) If the noncooperation was due to not taking a required action, cooperation resumes when ~~((you))~~ the CP takes that action.

~~((6))~~ (2) There is no hearing right for a notice of noncooperation, but ~~((you can))~~ the CP may request a hearing on the sanction imposed by ~~((the CSO))~~ CSD.

(3) When DCS or its representatives believe that a CP who does not receive public assistance but does receive a

child care subsidy is not cooperating, and that cooperation is essential for the next step in establishment or enforcement, DCS sends a notice of case closure to the CP.

(a) The notice of case closure contains the following information:

(i) That DCS cannot take the next step in establishment or enforcement because of the CP's failure to cooperate;

(ii) What actions the CP must take to resume cooperation;

(iii) The DCS will notify CSD of case closure;

(iv) That DCS may close the nonassistance case if the CP does not cooperate within sixty days; and

(v) That CSD may sanction the CP. Any sanctions for failure to cooperate are determined by CSD.

(4) If the CP takes the actions required to resume cooperation within sixty days, DCS leaves the case open and continues to establish or enforce the support obligation.

(5) The CP may request a hearing to contest case closure, as described in WAC 388-14A-2095.

(6) If DCS closes the case due to noncooperation, a CP who does not receive public assistance but does receive a child care subsidy may request a hearing on the sanction imposed by CSD.

NEW SECTION

WAC 388-14A-2093 Who receives notice of DCS' intent to close a case when the custodial parent receives a child care subsidy? (1) Unless the department finds good cause not to require it, a recipient of a child care subsidy who does not receive cash assistance or medical assistance must apply for support enforcement services.

(2) If the division of child support (DCS) intends to close the case because the custodial parent (CP) who receives a child care subsidy fails to cooperate as described in WAC 388-14A-2075(3), DCS sends a copy of the notice of intent to close the case to the CP. DCS also notifies the community services division (CSD).

(3) As provided in WAC 388-14A-2090, DCS does not send a notice of intent to close when the CP requests case closure. When DCS closes a case at the request of a CP who receives a child care subsidy, DCS sends a copy of the case closure notice to the CP, and also notifies CSD.

(4) Requesting case closure while receiving a child care subsidy counts as a failure to cooperate with DCS, except in cases where the recipient requests case closure due to good cause as determined by the department or under DEL rules for working connections child care or other child care subsidy programs under chapter 43.215 RCW.

**WSR 11-23-094
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY**

[Filed November 17, 2011, 2:31 p.m., effective December 18, 2011.]

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

Purpose: To readopt specific rule sections to ensure that they refer to most recent versions of chapters 173-400 and

173-401 WAC. Also to adopt the General Order provisions under WAC 173-400-560 by reference to allow the NWCAA to issue General Orders.

Citation of Existing Rules Affected by this Order: Amending Sections 104, 200, 300, 301, 305, 321, and 322 of the Regulation of the Northwest Clean Air Agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-19-080 on October [September] 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 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: November 17, 2011.

Mark Buford
Assistant Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-24 issue of the Register.

WSR 11-23-101

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed November 18, 2011, 10:40 a.m., effective December 19, 2011]

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

Purpose: This rule adopts into the Washington Administrative Code, the 2009 Edition of the Federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). Part 655.603 of the Code of Federal Regulations requires the states to adopt traffic control device standards that are substantially compliant with the MUTCD published by the Federal Highway Administration.

Citation of Existing Rules Affected by this Order: Repealing WAC 468-95-015, 468-95-027, 468-95-132, 468-95-133, 468-95-134, 468-95-135, 468-95-147, 468-95-150, 468-95-180, 468-95-303 and 468-95-350; and amending WAC 468-95-010, 468-95-033 - 468-95-131, 468-95-140, 468-95-143, 468-95-148, 468-95-160, 468-95-190 - 468-95-280, 468-95-29003, 468-95-29007, 468-95-29011, 468-95-29013, 468-95-29017, 468-95-300, 468-95-306, 468-95-310 - 468-95-340, and 468-95-360.

Statutory Authority for Adoption: RCW 47.36.030 Traffic control devices.

Adopted under notice filed as WSR 11-20-073 on October 3, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 20, Amended 34, Repealed 11; 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: November 17, 2011.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-010 General. The ((2003)) 2009 Edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation. Revisions are incorporated into the ((November 2003)) December 2009 Edition of the MUTCD, except as may be modified herein, when published by the Federal Highway Administration. The manual includes in part many illustrations, some of which depend on color for proper interpretation. The code reviser has deemed it inexpedient to convert these regulations and illustrations to the prescribed form and style of WAC and therefore excludes them from publication. The document is available for public inspection at the headquarters office and all region offices of the Washington state department of transportation. Further, each city, town, and county engineering office in the state will have either a hard copy or an electronic copy of the MUTCD, with revisions and modifications for Washington, in its possession.

NEW SECTION

WAC 468-95-017 Engineering study and engineering judgment. Add the following Guidance to the end of paragraph 04 in MUTCD Section 1A.09:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this manual provides Standards, Guidance, and Options for the design and application of traffic control devices, this manual should not be considered a substitute for engineering judgment.

Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in

the location and design of the roads and streets that the devices complement.

NEW SECTION

WAC 468-95-019 Definitions of headings, words, and phrases used in this manual. Add the following Standard to the end of Paragraph 01, Subsection A, in MUTCD Section 1A.13:

Site-specific conditions may lead agencies to determine that it is impossible or impractical to comply with a Standard and that they must deviate from the requirement of a particular Standard at that location or others having the same condition. In such limited specific cases, the deviation is allowed provided that the agency or official having jurisdiction fully documents the engineering reasons for the deviation.

The FHWA can also be requested to review the site-specific condition and the proposed deviation and, if appropriate, issue an Official Interpretation to clarify the application of the Standard to that condition.

NEW SECTION

WAC 468-95-022 Definitions of headings, words, and phrases used in this manual. Pursuant to RCW 46.04.220, amend MUTCD Section 1A.13, definition number 94, Intersections, Subsection (b) to read:

The junction of an alley with a street or highway shall not constitute an intersection.

NEW SECTION

WAC 468-95-024 Definitions of headings, words, and phrases used in this manual. Add the following to the end of MUTCD Section 1A.13, Paragraph 03:

For the purposes of defining a raised median, the use of block traffic curb (by itself, i.e., along a center line or a lane line) does not create a raised median.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-033 In-street pedestrian crossing sign (R1-6a). Delete signs R1-5, R1-5a, R1-6, and R1-9 from MUTCD Figure 2B-2, and amend MUTCD Section 2B.12 to read:

Option:

The In-Street Pedestrian Crossing (R1-6a) sign (see Figure 2B-2) or the Overhead Pedestrian Crossing (R1-9a) sign (see Figure 2B-2) may be used to remind road users of laws regarding right of way at an unsignalized pedestrian crossing. The legend STATE LAW may be shown at the top of the R1-6a and R1-9a signs if applicable. On the R1-5b and R1-5c signs, the legend STOP FOR may be used ~~(in conjunction with)~~ instead of the appropriate STOP sign symbol.

Highway agencies may develop and apply criteria for determining the applicability of In-Street Pedestrian Crossing signs.

Standard:

If used, the In-Street Pedestrian Crossing sign shall be placed in the roadway at the crosswalk location on the

center line, on a lane line, or on a median island. The In-Street Pedestrian Crossing sign shall not be post-mounted on the left-hand or right-hand side of the roadway.

If used, the Overhead Pedestrian Crossing sign shall be placed over the roadway at the crosswalk location.

An In-Street or Overhead Pedestrian Crossing sign shall not be placed in advance of the crosswalk to educate road users about the State law prior to reaching the crosswalk, nor shall it be installed as an educational display that is not near any crosswalk.

Guidance:

If an island (see Chapter ((3G)) 3I) is available, the In-Street Pedestrian Crossing sign, if used, should be placed on the island.

Option:

If a Pedestrian Crossing (W11-2) warning sign is used in combination with an In-Street or an Overhead Pedestrian Crossing sign, the W11-2 sign with a diagonal downward pointing arrow (W16-76P) plaque may be post-mounted on the right-hand side of the roadway at the crosswalk location.

Standard:

The In-Street Pedestrian Crossing sign and Overhead Pedestrian Crossing sign shall not be used at signalized locations.

The STOP FOR legend shall only be used in States where the State law specifically requires that a driver stop for a pedestrian in a crosswalk.

~~((If used, the In-Street Pedestrian Crossing sign shall have a black legend (except for the red STOP sign symbol) and border on either a white and/or fluorescent yellow-green background.~~

If the In-Street Pedestrian Crossing sign is placed in the roadway, the sign support shall comply with the breakaway requirements of the latest edition of AASHTO's "Specification for Structural Supports for Highway Signs, Luminaries, and Traffic Signals" (see Page i-)) **The In-Street Pedestrian Crossing sign shall have a black legend (except for the red STOP sign symbol) and border on a white background, surrounded by an outer yellow or fluorescent yellow-green background area (see Figure 2B-2). The Overhead Pedestrian Crossing sign shall have a black legend and border on a yellow or fluorescent yellow-green background at the top of the sign and a black legend and border on a white background at the bottom of the sign (see Figure 2B-2).**

Unless the In-Street Pedestrian Crossing sign is placed on a physical island, the sign support shall be designed to bend over and then bounce back to its normal vertical position when struck by a vehicle.

Support:

The provisions of Section 2A.18 concerning mounting height are not applicable for the In-Street Pedestrian Crossing sign.

Standard:

The top of an In-Street Pedestrian Crossing sign shall be a maximum of 4 feet above the pavement surface. The top of an In-Street Pedestrian Crossing sign placed in an island shall be a maximum of 4 feet above the island surface.

Option:

The In-Street Pedestrian Crossing sign may be used seasonally to prevent damage in winter because of plowing operations, and may be removed at night (~~(where)~~) if the pedestrian activity at night is minimal.

In-Street Pedestrian Crossing signs, Overhead Pedestrian Crossing signs, and Stop Here for Pedestrian signs may be used together at the same crosswalk.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-045 Speed limit sign (R2-1). Revise MUTCD Section 2B.13 to read:

Standard:

Speed Limits (R2-1) signs (see Figure 2B-1) shall display the speed limit established by statute; or, by an ordinance or regulation adopted by the authorized agency, based on the engineering study or traffic investigation required by RCW 46.61.405, 46.61.410, and 46.61.415. The speed limit shall be set in multiples of ~~((40 km/h or))~~ 5 mph.

Guidance:

Authorized agencies should reevaluate speed limits on segments of their roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review.

No more than three speed limits should be posted on any one Speed Limit sign or assembly.

When evaluating speed limits, the following factors should be considered:

~~((A-))~~ • The 85th percentile speed of vehicles traveling on the road;

~~((B-))~~ • Road characteristics, shoulder condition, grade, alignment, and sight distance;

~~((C-))~~ • The pace speed;

~~((D-))~~ • Roadside development and environment;

~~((E-))~~ • Parking practices and pedestrian activity;

~~((F-))~~ • Reported crash experience for at least a 12 month period; and

~~((G-))~~ • Other factors such as route development or comprehensive plans.

Option:

Two types of Speed Limit signs may be used: One to designate passenger car speeds, including any nighttime information or minimum speed that may apply; and, the other to show any special speed limits for trucks and other vehicles.

A changeable message sign that changes the speed limit for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times.

A changeable message sign that displays to drivers the speed at which they are traveling may be installed in conjunction with a Speed Limit sign.

Guidance:

If a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX ~~((km/h))~~ (mph) or such similar legend should be shown. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.

Support:

Advisory Speed signs are discussed in Sections ~~((2C.36))~~ 2C.08, 2C.14, and ~~((2C.46))~~ 2C.15. Temporary Traffic Control Zone Speed signs are discussed in Part 6.

NEW SECTION

WAC 468-95-075 Higher fines signs and plaque (R2-6P, R2-10, and R2-11). Pursuant to RCW 46.61.527, amend Paragraph 01 to Option in MUTCD Section 2B.17 to read:

Option:

If increased fines are imposed for traffic violations within a designated zone of a roadway, a BEGIN HIGHER FINES ZONE (R2-10) sign (see Figure 2B-3) or a FINES HIGHER (R2-6P) plaque (see Figure 2B-3) may be used to provide notice to road users. If used, the HIGHER FINES plaque shall be mounted below an applicable regulatory or warning sign in a temporary traffic control zone, a school zone, or other applicable designated zone.

NEW SECTION

WAC 468-95-085 Two-way left turn only signs (R3-9a, R3-9b). Pursuant to RCW 46.61.290(3), amend Paragraph 01 to Option and Paragraph 03 Support in MUTCD Section 2B.24 with the following:

Option:

Two-way left turn only (R3-9a or R3-9b) signs (see Figure 2B-6) may be used in conjunction with the required pavement markings where a nonreversible lane is reserved for the exclusive use of left-turning vehicles in either direction, or turning into the roadway, and is not used for passing, overtaking, or through travel.

Support:

Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles may turn left from any other lane. No vehicle may travel further than three hundred feet within the lane. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-120 Traffic signal signs. Pursuant to RCW 46.61.055, amend the second Standard of MUTCD Section ~~((2B.45))~~ 2B.54 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit any right turn on red; or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-125 Hill blocks view sign. Delete Section ~~((2C.14))~~ 2C.18 and sign W7-6 from the MUTCD.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-131 Bridge ices before road sign. Delete Section ((~~2C-28~~)) 2C.32 and sign W8-13 from the MUTCD.

NEW SECTION

WAC 468-95-136 Advance traffic control signs (W3-1, W3-2, W3-3, W3-4). Add the following **Option, Guidance, and Standard at the end of MUTCD Section 2C.36:**

Option:

A RAMP METER AHEAD (W3-7) sign (see Figure 2C-6) may be used to warn road users that a freeway entrance ramp is metered and that they will encounter a ramp control signal (see Chapter 4I).

Guidance:

When ramp control signals are operated only during certain periods of the day, a RAMP METERED WHEN FLASHING (W3-8) sign (see Figure 2C-6) should be installed near the entrance to the ramp in advance of the ramp control signal, or on the arterial on the approach to the ramp, to alert road users to the presence and operation of ramp meters.

Standard:

The RAMP METERED WHEN FLASHING sign shall be supplemented with a warning beacon (see Section 4L.03) that flashes when the ramp control signal is in operation.

NEW SECTION

WAC 468-95-138 Advance ramp control signal signs (W3-7 and W3-8). Delete MUTCD Section 2C.37.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-140 Signing to regional shopping centers. Pursuant to RCW 47.36.270, a regional shopping center may be signed as a supplemental guide sign destination from state highways in accordance with the applicable sections of MUTCD Part ((~~H-D~~)) 2 Chapter 2D, Guide Signs - Conventional Roads, and MUTCD Part ((~~H-E~~)) 2 Chapter 2E Guide Signs - Freeways and Expressways, and in accordance with subsections (1) through (8) of this section.

(1) There shall be at least 500,000 square feet of ((~~feasible~~)) retail floor space;

(2) There shall be at least three major department stores owned by national or regional retail chain organizations;

(3) The center shall be located within one highway mile of the state highway;

(4) The center shall generate at least 9,000 daily one-way vehicle trips to the center;

(5) Sufficient sign space as specified in the MUTCD shall be available for installation;

(6) Supplemental follow-through directional signing is required on county roads or city streets at key motorist decision points, if the center is not clearly visible from the point of exit from the state highway. The required supplemental follow-through directional signs shall be installed by the city or county prior to the installation of signs on the state highway;

(7) Signing on the state highway to a county road or city street that bears the name of the regional shopping center fulfills the statutory requirements for signing to those centers;

(8) The costs of materials and labor for fabricating, installing, and maintaining regional shopping center signs shall be borne by the center.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-143 Street name sign (D3-1). Amend the fourth guidance, paragraph 07 of MUTCD Section ((~~2D-38~~)) 2D.43 to read:

In urban or suburban areas, especially where Advanced Street name signs are not used, the use of overhead Street Name signs should be considered. If overhead Street Name signs are used, the lettering should be at least ((~~300 mm (12 in)~~)) high in capital letters, or 300 mm (12 in)) 12 inch upper-case with ((~~225 mm (9 in)~~)) 9 inch lower case letters where posted speeds are 40 mph or greater. For roads with posted speeds less than 40 mph, lettering should be 8 inch ((~~capital~~)) upper case letters with 6 inch lower case letters or greater for overhead Street Name signs. New construction should include the larger size letters for overhead signs. Internally illuminated signs may use smaller letter size.

NEW SECTION

WAC 468-95-145 Regulatory signs for preferential lanes—General. Amend MUTCD Section 2G.03, Paragraph 14, to read:

Where lateral clearance is limited, preferential lane regulatory signs that are post mounted on a median barrier and that are 72 inches or less in width may be skewed up to 45 degrees in order to fit with the barrier width, or may be mounted higher such that the vertical clearance to the bottom of the sign, light fixture, or structural support, whichever is lowest, is not less than twelve feet above any portion of the pavement and shoulders.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-148 Event signs, banners, and decorations. Add a new MUTCD Chapter ((~~2J~~)) 2O to read:

Chapter ((~~2J~~)) 2O, Event Signs, Banners, and Decorations

Pursuant to RCW 47.36.030(3) and 47.42.020(8), the department may permit signs, banners, or decorations visible to state highways that promote a local agency sponsored event in accordance with the applicable following criteria:

Standard:

A. Signs, banners, and decorations shall not interfere or obstruct the view of any traffic control device or impair the operation of transportation management systems or street illumination.

B. The sign, banner, or decoration shall not include commercial advertising as determined by the department.

C. Signs, banners, or decorations shall be mounted not less than 20 vertical feet above the roadway surface measured at any point.

D. Signs, banners, or decorations shall not be visible from Interstate highways, or other state highways having a posted speed limit of 50 miles per hour or greater.

E. Signs, banners, or decorations shall be installed no more than 30 days before and removed no more than 3 days after the local agency sponsored event.

Option:

Along multi-lane state highways a sign, banner, or decoration may be mounted vertically on luminaire posts subject to meeting wind load requirements specified by the department.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-160 Other yellow longitudinal markings. Pursuant to RCW 46.61.150, amend ~~((the second Standard))~~ paragraph 06 of MUTCD Section 3B.03 to read:

If a continuous median island formed by pavement markings separating travel in opposite directions is used, the island may be formed by two single normal solid yellow lines, a combination of two single normal solid yellow lines with yellow crosshatching between the lines with a total width not less than eighteen inches, two sets of double solid yellow lines, or a solid yellow line not less than eighteen inches in width. All other markings in the median island area shall be yellow, except crosswalk markings, which shall be white (see Section ~~((3B-17))~~ **3B.18**).

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-190 Pavement edge lines and raised pavement markers supplementing other markings. Pursuant to RCW 47.36.280, the Standard in MUTCD Section 3B.07, is revised to read:

Edge lines shall be used on all interstate highways, rural multilane divided highways, all principal arterials and minor arterials within urbanized areas, except when curb or sidewalk exists, and may be used on other classes of roads. A jurisdiction shall conform to these requirements at such time that it undertakes to renew or install permanent markings on new or existing roadways. The edge lines shall be white, except that the edge lines shall be yellow on the left edge of each roadway of divided streets and highways and one-way roadway in the direction of travel.

Edge line markings shall also be placed on paved rural arterials with a traveled way of ~~((6.1 m (20 ft)))~~ **20 feet** or more in width and an ADT of 6,000 or greater vehicles per day.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

AMENDATORY SECTION (Amending WSR 03-06-053, filed 2/28/03, effective 3/31/03)

WAC 468-95-200 Approach markings for obstructions. Amend ~~((the first Standard))~~ paragraph 01 of MUTCD Section 3B.10 to read:

Pavement markings shall be used to guide traffic away from fixed obstructions within a paved roadway. Approach markings for bridge supports, refuge islands, median islands, toll plazas, and channelization islands (except channelization islands formed by paint stripes or raised pavement markers) shall consist of a diagonal line or lines extending from the ~~((centerline))~~ **center line** or the lane line to a point ~~((0.3 to 0.6 m (1) to 2 (ft)))~~ **1 to 2 feet** to the right side, or to both sides, of the approach end of the obstruction (see Figure ~~((3B-13))~~ **3B-15**).

Amend ~~((the third Standard))~~ paragraph 07 of MUTCD Section 3B.10 to read:

If traffic is required to pass only to the right of the obstruction, the markings shall consist of a no-pass marking, approaching the obstruction, at least twice the length of the diagonal portion as determined by the appropriate taper formula (see Figure ~~((3B-13))~~ **3B-15**).

Modify MUTCD Figure ~~((3B-13))~~ **3B-15**, Item a - Center of two-lane road, to show a single no-pass marking on the approach to the obstruction.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-205 Raised pavement markers supplementing other markings. Pursuant to RCW 47.36.280, amend ~~((the first))~~ paragraph 03 of the Option in MUTCD Section 3B.13 to read:

Raised pavement markers may also be used to supplement other markings for channelizing islands or approaches to other objects. The general use of raised pavement markers along right edge lines is strongly discouraged because the markers can cause steering difficulties and make bicyclists lose control of their vehicles. Raised or recessed pavement markers may be used along right edge lines on the taper in lane transition sections, on approaches to objects, and within channelization at intersections. Raised or recessed pavement markers can only be used along right edge lines at other locations where an engineering study has determined that the markers are essential to preserving pedestrian, bicycle, and motor vehicle safety. At the initiation of the engineering study, local bicycling organizations, the regional member of the state bicycle advisory committee, or the WSDOT bicycle and pedestrian program manager shall be notified of the study for review and comment. Positioning and spacing of the markers in such cases must be determined by engineering judgment taking into consideration their effect on bicycle, pedestrian, and motor vehicle safety; and, where used, are spaced closely enough (no greater than ~~((3 m (10 ft)))~~ **10 feet** apart) to approximate the appearance of a solid line. Other applications of raised or recessed pavement markers along right edge lines of arterials are considered to be nonconforming with this section. Cities and counties shall remove their nonconforming raised or recessed pavement markers at the

time that they prepare to resurface roadways, or earlier at their option.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-210 Raised pavement markers substituting for pavement markings. Amend the first sentence in ~~((the first Standard))~~ paragraph 03 of MUTCD Section 3B.14 to read:

If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than N/8 (see Section ~~((3B-11))~~ 3B.11), or at the one-third points of the line segment if N is other than ~~((12 m (40 ft)))~~ 40 feet, with ~~((a))~~ at least one retroreflective or internally illuminated marker used per group.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-220 Stop and yield lines. Amend ~~((the second Guidance))~~ paragraphs 10 and 12 of MUTCD Section 3B.16 to read:

If used, stop ~~((and yield))~~ line(s) should be placed a minimum of ~~((1.2 m (4 ft)))~~ 4 feet in advance of the nearest crosswalk line at controlled intersections ~~((, except for))~~. Yield lines at roundabout intersections as provided ~~((for))~~ in Section ~~((3B-24 and at midblock crosswalks))~~ 3C.04. In the absence of a marked crosswalk, the stop line or yield line should be placed at the desired stopping or yielding point, in no case less than 4 feet from the nearest edge of the intersecting roadway. Stop lines should be placed to allow sufficient sight distance to all other approaches to an intersection.

If used at an unsignalized midblock crosswalk, ~~((yield))~~ stop lines should be placed adjacent to the ~~((Yield))~~ Stop Here ~~((to))~~ for Pedestrians sign located ~~((6.1 to 15 m (20 to 50 ft)))~~ 20 to 50 feet in advance of the nearest crosswalk line, and parking should be prohibited in the area between the ~~((yield))~~ stop line and the crosswalk (see Figure ~~((3B-15))~~ 3B-17). ~~((Stop lines at midblock signalized locations should be placed at least 12 m (40 ft) in advance of the nearest signal indication (see Section 4D.15).))~~

AMENDATORY SECTION (Amending WSR 03-06-053, filed 2/28/03, effective 3/31/03)

WAC 468-95-230 Crosswalk markings. Amend ~~((the second Guidance))~~ paragraph 15 in MUTCD Section ~~((3B-17))~~ 3B.18 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to

avoid the wheel paths and should be oriented parallel with the wheel paths.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-235 Preferential lane word and symbol markings. ~~((Add a guidance statement following the first Standard of MUTCD))~~ Amend Section ~~((3B-22))~~ 3D.01 to ~~((read))~~ include:

~~((Guidance:))~~ Option:

Preferential lane word and symbol markings may be offset up to a maximum of 1'0" from the center of the preferred-use lane to avoid vehicle wheel paths.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-250 Meaning of signal indications. Pursuant to RCW 46.61.055, amend ~~((the second))~~ paragraph ~~((of))~~ 03 in the Standard of MUTCD Section 4D.04, item C.1, to read:

Vehicle operators facing a steady circular red signal may, after stopping, proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

Pursuant to RCW 46.61.055, amend the Standard of MUTCD Section 4D.04, item C.2, to read:

Vehicle operators facing a steady red arrow indication may, after stopping, proceed to make a right turn from a one-way or two-way street or into a one-way street carrying traffic in the direction of the right turn, or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn, unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-260 Application of steady signal indications. Pursuant to RCW 46.61.055, amend the Standard of MUTCD Section 4D.05, item D, to read:

~~((A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from~~

entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area-)) **A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.**

NEW SECTION

WAC 468-95-265 Application of freeway entrance ramp control signals. Add the following Guidance to the end of paragraph 03 in MUTCD Section 4I.01:

Capacities and demand/capacity relationships should be determined for each freeway section. The locations and causes of capacity restrictions and those sections where demand exceeds capacity should be identified. From these and other data, estimates should be made of desirable metering rates, probable reductions in the delay of freeway traffic, likely increases in delay to ramp traffic, and the potential impact on surface streets. The study should include an evaluation of the ramp's storage capacities for vehicles delayed at the signal, stopping sight distance approaching the ramp control signal, the impact of queued traffic on the local street intersection, and the availability of suitable alternate surface routes having adequate capacity to accommodate any additional traffic volume.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-270 Meaning of lane-use control indications. Pursuant to RCW 46.61.072, amend the Standard of MUTCD Section ((4J.02)) **4M.02**, paragraph B, to read:

A steady YELLOW X or a flashing RED X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady RED X is displayed.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-280 Operation of lane-use control signals. Pursuant to RCW 46.61.072, in MUTCD Section ((4J.04)) **4M.04**, amend the first sentence of the first paragraph after item G in the first Standard to read:

A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-29003 Traffic control devices for low-volume roads—Design. Change the Guidance of MUTCD Section 5A.03, Design, to become an Option and amend to read:

((Oversized sign sizes)) The sizes shown under the oversized column in Table 5A-1 may be used where engineering judgment indicates a need based on high vehicle operating speeds, driver expectancy, traffic operations, or roadway conditions.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-29007 Traffic control devices for low-volume roads—One lane bridges. Change the Guidance of MUTCD Section 5C.06, One Lane Bridges, to become an Option and amend to read:

A ONE LANE BRIDGE (W5-3) sign (see Figure 5C-2) may be used on low-volume two-way roadways in advance of any bridge or culvert:

A. Having a clear roadway width of less than ((4.9 m)) 16 ((ft)) feet; or

B. Having a clear roadway width of less than ((5.5 m)) 18 ((ft)) feet when commercial vehicles constitute a high proportion of the traffic; or

C. Having a clear roadway width of ((5.5 m)) 18 ((ft)) feet or less where the approach sight distance is limited on the approach to the structure.

Additional warning may be provided on the approach to a one lane bridge or culvert by the use of object markers and/or delineators.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-29011 Traffic control devices for low-volume roads—((Centerline)) Center Line markings. Change the Guidance of MUTCD Section 5E.02, Centerline Markings, to become an Option and amend to read:

((Centerline)) Center line markings may be used on paved low-volume roads where engineering judgment or an engineering study indicates a need for them.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-29013 Traffic control devices for low-volume roads—((Edgeline)) Edge Line markings. Change the Guidance of MUTCD Section 5E.03, Edgeline Markings, to become an Option and amend to read:

((Edgeline)) Edge line Markings may be considered for use on paved low-volume roads based on engineering judgment or an engineering study.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-29017 Traffic control devices for low-volume roads—Object markers. Change the Guidance of MUTCD Section (~~(5E-05)~~) 5C.14, Object Markers, to become an Option and amend to read:

The end of a low-volume road may be marked with an end-of-roadway marker in conformance with Section (~~(3C-04)~~) 2C.66.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-300 Temporary traffic control. Amend MUTCD Table 6C-1 to read:

Sign Spacing (1)

Freeways and Expressways	55/70 MPH	1500' ± ((or per MUTCD))
Rural Highways	60/65 MPH	800' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads and Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Arterials, Residential, Business Districts	25/30 MPH	200' ± (2)
Urban Streets	25 MPH or less	100' ± (2)

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

NEW SECTION

WAC 468-95-301 Tapers. Add a new MUTCD Table 6C-5, Channelization Device Spacing, to Section 6C.08 to read:

Channelizing Device Spacing (Feet)

MPH	Taper	Tangent
50/70	40	80
35/45	30	60
25/30	20	40

NEW SECTION

WAC 468-95-3015 Flagger procedures. Add a new Standard to MUTCD Section 6E.07 to read:

Standard:

Flagger directions at signalized intersections shall not be in conflict with signal displays and the signal must be either shut down or placed in flash mode as appropriate for the intersection operation except during emergencies.

NEW SECTION

WAC 468-95-302 Flagger stations. Add a new Standard to MUTCD Section 6E.08 to read:

Standard:

A flagger shall not flag traffic within an intersection, except for an emergency or law enforcement flagging.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-306 Motorcycles use extreme caution supplemental plaque. Pursuant to RCW 47.36.200, amend MUTCD Section 6F.54 to read:

A supplemental plaque displaying the message MOTORCYCLES USE EXTREME CAUTION is added to MUTCD Figure 6F-4. Delete the Motorcycle symbol (W8-15P) plaque from Figure 6F-4.

~~((The plaque may supplement primary condition warning signs.))~~ The MOTORCYCLES USE EXTREME CAUTION (W21-1701P) plaque (see Figure 6F-4) may be mounted below a LOOSE GRAVEL (W8-7) sign, a GROOVED PAVEMENT (W8-15) sign, a ABRUPT LANE EDGE (W21-801), a METAL BRIDGE DECK (W8-16) sign, or a STEEL PLATE AHEAD (W8-24) sign if the warning is intended to be directed primarily to motorcyclists.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-310 Temporary pavement markings. Amend MUTCD Section (~~(6F-66)~~) 6F.78 to read:

Standard:

All temporary pavement markings shall conform to the requirements of Chapters 3A and 3B. All temporary broken-line pavement markings shall use the same cycle length as permanent markings and be at least ~~((0.6 m (2 (ft))))~~ 2 ((ft)) feet long.

Support:

Temporary pavement markings are those that may be used until it is practical and possible to install permanent markings.

Option:

Half-cycle lengths with a minimum of ~~((0.6 m (2 (ft))))~~ 2 ((ft)) feet stripes may be used on roadways with severed curvature (see Section 3A.05) for center lines in passing zones and for lane lines.

For temporary situations, for a two-lane or three-lane road, no-passing zones may be identified by using DO NOT PASS (R4-1), PASS WITH CARE (R4-2), and NO PASSING ZONE (W14-3) signs rather than pavement markings.

Guidance:

When used, the DO NOT PASS, PASS WITH CARE, and NO PASSING ZONE signs should be placed in accordance with Sections (~~(2B.29, 2B.30, and 2C.35)~~) 2B.28, 2B.29, and 2C.45.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-317 Temporary traffic control. Amend MUTCD Table 6H-3 to read:

Sign Spacing ⁽¹⁾		1500' ± (per MUTCD)
Freeways and Expressways	55/70 MPH	800' ±
Rural Highways	60/65 MPH	500' ±
Rural Roads	45/55 MPH	350' ±
Rural Roads and Urban Arterials	35/40 MPH	200' ± ⁽²⁾
Rural Roads, Urban Arterials, Residential, Business Districts	25/30 MPH	100' ± ⁽²⁾
Urban Streets	25 MPH or less	

⁽¹⁾All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.
⁽²⁾This spacing may be reduced in urban areas to fit roadway conditions.

NEW SECTION

WAC 468-95-322 School bus turn signs. In Figure 7B-1 replace the SCHOOL BUS TURN AHEAD (S3-2) sign with the SCHOOL BUS TURN AROUND (S3-201) sign.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-325 In-street signs in school areas. Delete signs R1-6 and R1-6b from MUTCD Figure ~~(7B-4)~~ 7B-6 and amend the first Option of MUTCD Section 7B.08 to read:

A ~~((300 mm (12 in)))~~ 12 inch reduced size in-street School Advance Warning (S1-1) sign (see Figure 7B-4), installed in compliance with the mounting height and break-away requirements for In-Street Pedestrian Crossing (R1-6a) signs (see Section 2B.12), may be used in advance of a school crossing to supplement the ground-mounted school warning signs. A ~~((300 mm x 150 mm (12 in x 6 in)))~~ 12 inch x 6 inch reduced size AHEAD (W16-9p) plaque may be mounted below the reduced size in-street School Advance Warning (S1-1) sign.

NEW SECTION

WAC 468-95-327 Higher fines zone signs (R2-10, R2-11) and plaques. Pursuant to RCW 46.61.440(3), replace the paragraph 01 Standard in MUTCD Section 7B.10 with the following Option:

Option:

Where increased fines are imposed for traffic violations within a designated school zone, a BEGIN HIGHER FINES ZONE (R2-10) sign (see Figure 7B-1) or a FINES HIGHER (R2-6P), FINES DOUBLE (R2-6aP), or \$XX FINE (R2-6bP) plaque (see

Figure 2B-3) may be installed as a supplement to the School Zone (S1-1) sign to identify the beginning point of the higher fines zone (see Figures 7B-2 and 7B-3).

NEW SECTION

WAC 468-95-328 School crossing assembly. Pursuant to RCW 46.61.235(1), replace Option paragraphs 04 and 06 and Standard paragraph 07 in MUTCD Section 7B.12 with the following:

Option:

The In-Street Pedestrian Crossing (R1-6a) sign (see Section 2B.12 and Figure 7B-6) or the In-Street Schoolchildren Crossing (R1-6c) sign (see Figure 7B-6) may be used at unsignalized school crossings. If used at a school crossing, a 12 inch x 4 inch SCHOOL (S4-3P) plaque (see Figure 7B-6) may be mounted above the sign. The STATE LAW legend on the R1-6 series signs may be omitted.

A 12 inch reduced size in-street School (S1-1) sign (see Figure 7B-6) may be used at an unsignalized school crossing instead of the In-Street Pedestrian Crossing (R1-6a) sign or the In-Street Schoolchildren Crossing (R1-6c) sign. A 12 inch x 6 inch reduced size diagonal downward pointing arrow (W16-7P) plaque may be mounted below the reduced size in-street School (S1-1) sign.

Standard:

If an In-Street Pedestrian Crossing sign, an In-Street Schoolchildren Crossing sign, or a reduced size in-street School (S1-1) sign is placed in the roadway, the sign support shall comply with the mounting height and special mounting support requirements for In-Street Pedestrian Crossing (R1-6a) signs.

NEW SECTION

WAC 468-95-3285 In-street signs in school areas. Delete signs R1-6 and R1-6b from MUTCD Figure 7B-6.

NEW SECTION

WAC 468-95-329 School bus turnaround ahead (S3-201) sign. Replace the paragraph 01 Option in MUTCD Section 7B.14 with the following:

Option:

The SCHOOL BUS TURN AROUND (S3-201) sign (see Figure 7B-1) may be installed in advance of locations where a school bus turns around on a roadway at a location not visible to approaching road users for a distance determined by Condition B "0" + 100 feet of Table 2C-4, and where there is no opportunity to relocate the school bus turn around to provide as a minimum the distance determined from Table 2C-4.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-330 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Pursuant to RCW 46.61.440, ~~((the first Guidance))~~ paragraph 07 in MUTCD Section ~~((7B-1))~~ 7B.15 is replaced with a Standard to read:

Applicable to state highways, county roads, or city streets, the reduced school or playground speed zone shall

extend for 300 feet in either direction from the marked crosswalk when the marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs.

Applicable to county roads or city streets, the school or playground speed zone may extend up to 300 feet from the border of the school or playground property when fully posted with standard school speed limit signs or standard playground speed limit signs. However, the speed zone may only include the area consistent with active school or playground use.

No school or playground speed zone may extend less than 300 feet from a marked school or playground crosswalk, but may extend by traffic regulation beyond 300 feet based on a traffic and engineering investigation.

((Pursuant to RCW 46.61.440;)) **The speed limit signs** ((distance note)) **shown in Figure** ((7B-3 is replaced with:

See WAC 468-95-330 for school or playground speed limit placement distances)) **7B-5 shall be located per RCW 46.61.440.**

NEW SECTION

WAC 468-95-335 When children are present. Amend MUTCD Section 7B.15 by adding the following to paragraph 07:

The supplemental or lower panel of a School Speed Limit 20 sign which reads When Children are Present shall indicate to the motorist that the 20 mile per hour school speed limit is in force under any of the following conditions:

- (1) School children are occupying or walking within the marked crosswalk.
- (2) School children are waiting at the curb or on the shoulder of the roadway and are about to cross the roadway by way of the marked crosswalk.
- (3) School children are present or walking along the roadway, either on the adjacent sidewalk or, in the absence of sidewalks, on the shoulder within the posted school speed limit zone extending 300 feet, or other distance established by regulation, in either direction from the marked crosswalk.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

WAC 468-95-340 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Amend ((the second Standard of)) paragraphs 08 and 09 of the standard in MUTCD Section ((7B-14)) **7B.15** to read:

The School Speed Limit assembly shall be either a fixed-message sign assembly or a changeable message sign. The fixed-message School Speed Limit assembly shall consist of a top plaque (S4-3) with the legend SCHOOL, a Speed Limit (R2-1) sign, and a bottom plaque (S4-1, S4-2, S4-4, S4-6, or S4-501) indicating the specific periods of the day and/or days of the week that the special school speed limit is in effect (see Figure 7B-1).

Amend Figure 7B-1 to include the WHEN FLAGGED (S4-501) sign.

AMENDATORY SECTION (Amending WSR 03-06-053, filed 2/28/03, effective 3/31/03)

WAC 468-95-360 Crosswalk markings. Amend ((the second Guidance of)) paragraph 04 of MUTCD Section ((7C-03)) **7C.02** to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

NEW SECTION

WAC 468-95-365 Light rail transit signals. Amend the MUTCD Figure 8C-3 notes to read:

Notes:

All aspects (or signal indications) are either white or amber.

- (1) Could be in single housing.
- (2) "Go" lens may be used in flashing mode to indicate "prepare to stop."

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-95-015	Compliance dates.
WAC 468-95-027	Stop sign placement.
WAC 468-95-132	Advisory exit, ramp, and curve speed signs (W13-2, W13-3, and W13-5).
WAC 468-95-133	Intersection warning signs (W2-1 through W2-6).
WAC 468-95-134	Advisory speed plaques (W13-1).
WAC 468-95-135	Cross traffic does not stop plaque (W4-4p).
WAC 468-95-147	General design requirements for recreational and cultural interest area symbol signs.
WAC 468-95-150	No passing zone markings.
WAC 468-95-180	Other white longitudinal pavement markings.
WAC 468-95-303	Sign placement.
WAC 468-95-350	When children are present.

WSR 11-23-106
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 18, 2011, 2:40 p.m., effective December 19, 2011]

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

Purpose: Long-term care (LTC) partnership program. WAC 388-513-1400, 388-513-1405, 388-513-1410, 388-513-1415, 388-513-1420, 388-513-1425, 388-513-1430, 388-513-1435, 388-513-1440, 388-513-1445, 388-513-1450, and 388-513-1455 regarding long-term care partnerships approved by the Washington state insurance commissioner based on the Deficit Reduction Act (DRA) of 2005.

Citation of Existing Rules Affected by this Order: Amending [new sections] WAC 388-513-1400, 388-513-1405, 388-513-1410, 388-513-1415, 388-513-1420, 388-513-1425, 388-513-1430, 388-513-1435, 388-513-1440, 388-513-1445, 388-513-1450, and 388-513-1455.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, section 6014 of the Deficit Reduction Act (DRA) of 2005.

Other Authority: WAC 284-83-140, 284-83-400, 284-83-405, 284-83-410, 284-83-415 and 284-83-420, chapter 48.83 RCW.

Adopted under notice filed as WSR 11-20-097 on October 5, 2011.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 0, Repealed 0.

Date Adopted: November 17, 2011.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-513-1400 Long-term care (LTC) partnership program (index). Under the long term care (LTC) partnership program, individuals who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining financial eligibility. These special rules generally allow the individual to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently be subject to estate recovery for medicaid and long-term care services paid. The

Washington long term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

(1) WAC 388-513-1405 Definitions.

(2) WAC 388-513-1410 What qualifies as a LTC partnership policy?

(3) WAC 388-513-1415 What assets can't be protected under the LTC partnership provisions?

(4) WAC 388-513-1420 Who is eligible for asset protection under a LTC partnership policy?

(5) WAC 388-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy that does not have exhausted benefits?

(6) WAC 388-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?

(7) WAC 388-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?

(8) WAC 388-513-1440 How many of my assets can be protected?

(9) WAC 388-513-1445 How do I designate a protected asset and what proof is required?

(10) WAC 388-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?

(11) WAC 388-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

NEW SECTION

WAC 388-513-1405 Definitions. For purposes of this section, the following terms have the meanings given them. Additional definitions can be found at Chapter 388-500 WAC and WAC 388-513-1301.

"Issuer" means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

"Long-term care (LTC) insurance" means a policy described in Chapter 284-83 WAC.

"Long-term care services" means services received in a medical institution, or under a home and community based waiver authorized by home and community services or division of developmental disabilities. Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter 388-513 or 388-515 WAC.

"Protected assets" means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility described in WAC 388-513-1315. The protected or excluded amount is up to the dollar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf. The assets are also protected or excluded for the purposes of estate recovery described in chapter 388-527 WAC, in up to the amount of

benefits paid by the qualifying policy for medical and long-term care services.

"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

"Reciprocity Agreement" means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by an individual while residing in another state and that state has a reciprocity agreement with the state of Washington.

NEW SECTION

WAC 388-513-1410 What qualifies as a LTC partnership policy? A LTC partnership policy is a LTC policy that has been approved by the office of insurance commissioner as a LTC partnership policy described in chapter 284-83 WAC.

NEW SECTION

WAC 388-513-1415 What assets can't be protected under the LTC partnership provisions? The following assets cannot be protected under a LTC partnership policy.

(1) Resources in a trust described in WAC 388-561-0100 (6) and (7).

(2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as described in WAC 388-561-0201.

(3) Home equity in excess of the standard described in WAC 388-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.

(4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.

(5) The unprotected value of any partially protected asset (an example would be the home) is subject to estate recovery described in chapter 388-527 WAC.

NEW SECTION

WAC 388-513-1420 Who is eligible for asset protection under a partnership policy? (1) The LTC partnership policy must meet all the requirements in chapter 284-83 WAC. For existing LTC policies which are converted to a LTC partnership policy via an exchange or through the addition of a policy rider or endorsement, the conversion must take place on or after December 1, 2011 unless the policy is paying out benefits at the time the policy is exchanged.

(2) You meet all applicable eligible requirements for LTC medicaid and:

(a) Your LTC partnership policy benefits have been exhausted and you are in need of LTC services.

(b) Your LTC partnership policy is not exhausted and is:
(i) Covering all costs in a medical institution and you are still in need for medicaid; or

(ii) Covering a portion of the LTC costs under your LTC partnership policy but does not meet all of your LTC needs.

(c) At the time of your LTC partnership policy has paid out more benefits than you have designated as protected. In this situation your estate can designate additional assets to be excluded from the estate recovery process up to the dollar amount the LTC partnership policy has paid out.

NEW SECTION

WAC 388-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy in pay status? You are not eligible for LTC medicaid when the following applies:

(1) The income you have available to pay toward your cost of care described in WAC 388-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver described in chapter 388-515 WAC, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

NEW SECTION

WAC 388-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care? You must report changes described in WAC 388-418-0005 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the LTC partnership policy upon request by the department, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

NEW SECTION

WAC 388-513-1435 Will Washington recognize a LTC partnership policy purchased in another state? The Washington long term care partnership program provides reciprocity with respect to qualifying long-term care insur-

ance policies covered under other state long-term care insurance partnerships. This allows you to purchase a partnership policy in one state and move to Washington without losing your asset protection. If your LTC policy is in pay status at the time you move to Washington and you are otherwise eligible for LTC medicaid, Washington will recognize the amount of protection you accumulated in the other state.

NEW SECTION

WAC 388-513-1440 How many of my assets can be protected? You can protect assets based on the amount paid by your LTC partnership policy. Assets are protected in both LTC eligibility and estate recovery. If the partnership for long-term care program is discontinued, an individual who purchased an approved plan before the date the program is discontinued remains eligible to receive dollar-for-dollar asset disregard and asset protection under the long-term care (LTC) medicaid program.

NEW SECTION

WAC 388-513-1445 How do I designate a protected asset and what proof is required? (1) Complete a DSHS LTCP asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for LTC medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A professional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found in: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCOappendix2.shtml>.

(c) If you own an asset with others, you can designate the value of your pro-rata equity share.

(d) If the dollar amount of the benefits paid under a LTCP policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid you may designate additional assets for protection under this section. The DSHS LTCP asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should they need medicaid long-term care services during your lifetime or after your death. If your surviving spouse has their own LTC partnership policy he or she may designate assets based on the dollar amount paid under his or her own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties described in WAC 388-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTCP policy of the current dollar value paid toward long-

term care benefits. This verification is required at application and each annual eligibility review.

(4) Any individual or the personal representative of the individual's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by clear and convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

NEW SECTION

WAC 388-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility? (1) If you transfer an asset within the sixty months prior to the medicaid application or after medicaid eligibility has been established, we will evaluate the transfer based on WAC 388-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets whose values are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

NEW SECTION

WAC 388-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

Assets designated as protected prior to death are not subject to estate recovery for medical or LTC services paid on your behalf as described in chapter 388-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing proof as described in chapter 388-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative must use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

**WSR 11-23-109
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed November 18, 2011, 3:42 p.m., effective December 19, 2011]

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

Purpose: WAC 246-826-100 is being adopted to allow only health care assistants certified in categories C or E to administer certain over-the-counter and prescription drugs. The adopted rule reflects the change in the law.

Citation of Existing Rules Affected by this Order: Amending WAC 246-826-100.

Statutory Authority for Adoption: Chapter 18.135 RCW, SHB 1304 (chapter 43, Laws of 2011).

Adopted under notice filed as WSR 11-18-033 on August 30, 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 1, Repealed 0.

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

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

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

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

Date Adopted: November 18, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 10-19-044, filed 9/13/10, effective 10/14/10)

WAC 246-826-100 Health care assistant classification. (1) There are seven categories of health care assistants. The table in this subsection outlines the tasks authorized for each category of health care assistant. ~~((The administration of drugs under RCW 18.135.130 expires on July 1, 2013.))~~

Categories	A	B	C	D	E	F	G
May perform:	Venous and capillary invasive procedures for blood withdrawal	Arterial ((invasive)) <u>invasive</u> procedures for blood withdrawal	Intradermal, subcutaneous and intramuscular injections for diagnostic agents and administer skin tests	Intravenous injections for diagnostic agents	Intradermal, subcutaneous and intramuscular injections for therapeutic agents and administer skin tests	Intravenous injections for therapeutic agents	Hemodialysis
Injection	Not authorized	Not authorized	V, I	I	V, I	I	***
Oral	V	V	D, V	V	D, V	V	V
Topical	((D;)) V	((D;)) V	D, V	((D;)) V	D, V	((D;)) V	((D;)) V, ***
Nasal	((D;)) V	((D;)) V	D, V	((D;)) V	D, V	((D;)) V	((D;)) V, ****
Rectal	((D)) Not authorized	((D)) Not authorized	D	((D)) Not authorized	D	((D)) Not authorized	((D)) Not authorized
Otic	((D)) Not authorized	((D)) Not authorized	D	((D)) Not authorized	D	((D)) Not authorized	((D)) Not authorized
Ophthalmic	((D)) Not authorized	((D)) Not authorized	D	((D)) Not authorized	D	((D)) Not authorized	((D)) Not authorized
Inhaled	((D)) Not authorized	((D)) Not authorized	D	((D)) Not authorized	D	((D)) Not authorized	((D)) ****

D - Drugs administered under RCW 18.135.130.
I - Drugs by injection under WAC 246-826-200.
V - Vaccines administered under RCW 18.135.120.
*** - Drugs by injection listed under WAC 246-826-303 (2)(c).
**** - Oxygen administration listed under WAC 246-826-303 (3)(a).

~~(2) ((A written order from a supervising health care practitioner authorizing the administration of drugs listed in RCW 18.135.130 must be provided to the health care assistant.))~~
The administration of drugs under RCW 18.135.130 expires on July 1, 2013, and only applies to a health care assistant certified in category C or E.

(3) A health care assistant certified in category C or E must have a written order from a supervising health care practitioner authorizing the administration of drugs listed in RCW 18.135.130.

(4) A health care assistant((s)) may perform supervised delegated functions as provided under WAC 246-826-020 and 246-826-030.

~~((4))~~ (5) A health care assistant((s)) certified in category C or E must be able to demonstrate initial and ongoing competency to the supervisor or delegator on the administration of authorized drugs listed in RCW 18.135.130. Competency may be demonstrated by:

- (a) Practicing techniques in a simulated situation; or
- (b) Observing and performing procedures on patients until the health care assistant demonstrates proficiency to administer authorized drugs identified in the table in subsection (1) of this section; or
- (c) Documenting all training on a checklist appropriate to the facility of the administration of drugs by the health care assistant. The health care assistant must complete and sign the form, have the form signed by the supervisor and the delegator, and have the form placed in their employee personnel file; or
- (d) Other methods determined by the delegator.

~~((S))~~ (6) The supervisor or delegator is responsible for the patient's care. The tasks delegated to any category of health care assistant must be based on the health care assistant's individual education and training.

WSR 11-23-113

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed November 21, 2011, 9:34 a.m., effective December 22, 2011]

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

Purpose: These rules add clarity to the existing chapter by focusing more directly on the intended scope and applicability of the chapter. The proposed revisions are intended to bring these rules up to date with current practices and to remove provisions that are prescribed by internal policies.

Citation of Existing Rules Affected by this Order: Repealing WAC 172-168-020, 172-168-030, 172-168-050, 172-168-070, 172-168-080, 172-168-090, 172-168-100, 172-168-110, 172-168-120 and 172-168-130; and amending WAC 172-168-010 and 172-168-040.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 11-17-091 on August 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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 2, Repealed 10.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 2, Repealed 10; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 18, 2011.

Trent Lutey
University Policy
Administrator

AMENDATORY SECTION (Amending Resolution No. 82-02, filed 3/22/82)

WAC 172-168-010 Eastern Washington University ~~(library)~~ libraries. ~~((The library at))~~ Eastern Washington University (EWU) libraries exist~~((s))~~ first and foremost to serve the needs of EWU students and faculty. ~~((#))~~ EWU libraries also serve~~((s))~~ the rest of the university community, the regional needs of Eastern Washington, and the general ~~((scholarly))~~ community. ~~((Although normal hours for providing service varies from forty five to more than eighty hours per week, the library may adjust these hours to meet~~

~~changing public demand, availability of staff, and budgetary limitations.))~~

NEW SECTION

WAC 172-168-025 Eligible library users. EWU libraries are open to the public. However, children under twelve years of age must be accompanied by an adult or have prearranged permission from the senior staff member on duty. Borrowing privileges and other library services are limited to the following users:

- (1) Current students, faculty, staff and trustees;
- (2) Eligible users through the Orbis Cascade Alliance or through other reciprocal agreements;
- (3) Other libraries through interlibrary loans;
- (4) Emeriti faculty;
- (5) Spokane-area residents, not affiliated with EWU, who obtain a community member borrower's card;
- (6) Other individuals as determined by the dean of libraries;
- (7) Children between twelve and seventeen years of age may be issued a borrower's card provided the card is co-signed by the child's parent or guardian.

NEW SECTION

WAC 172-168-035 Conduct. Users of EWU libraries' facilities shall maintain appropriate public behavior and comply with all library policies. Violators of library policies may be subject to disciplinary action including, but not limited to, assessment of fines, fees, or other service charges and revocation of library privileges. Use of the library may be denied to anyone for abuse of library services or resources.

AMENDATORY SECTION (Amending Order 73-10, filed 4/18/73)

WAC 172-168-040 Inspection. ~~((The library shall have the right to inspect packages, briefcases, containers, articles, materials, etc., leaving the building to prevent unauthorized removal of library resources. The inspection may be done by persons, by electronic equipment, or other devices designed to detect unauthorized removals.))~~ Briefcases, backpacks, and any other containers or items being carried out of library facilities may be inspected. Inspections may be performed by employees or through the use of electronic equipment or other devices.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 172-168-020	Selection of services, personnel, resources.
WAC 172-168-030	Circulation records.
WAC 172-168-050	Prohibited entry.
WAC 172-168-070	Displays.
WAC 172-168-080	Library carrels.

WAC 172-168-090	Gifts.
WAC 172-168-100	Library borrowers.
WAC 172-168-110	Library circulation policy.
WAC 172-168-120	Library fines and charges for lost, damaged, and overdue materials.
WAC 172-168-130	Library service fees.

WSR 11-23-116
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 21, 2011, 10:36 a.m., effective December 22, 2011]

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

Purpose: Pursuant to section 513(5) of the 2011-13 State Operating Appropriations Act, 2ESHB 1087, these revisions to the national board bonus program:

- Reduce a school's eligibility to be designated a challenging, high poverty school, and thus making that school's national board teachers eligible for the challenging, high poverty school bonus, from the current two years to one year only;
- Pay all bonuses for the 2011-12 school year in July 2012, and similarly for subsequent school years;
- Reduce all bonuses by a factor of forty percent for first year national board certified teachers, to reflect the portion of the instructional school year they are certified.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-973 and 392-140-974.

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

Adopted under notice filed as WSR 11-17-025 on August 8, 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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2011.

Randy Dorn
 State Superintendent

AMENDATORY SECTION (Amending WSR 11-02-054, filed 1/3/11, effective 2/3/11)

WAC 392-140-973 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Eligibility. Candidates who are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards; and

(2) Who are:

(a) Teachers and other certificated staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or

(b) Teachers and other certificated staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or

(c) Teachers and other certificated staff employed full time or part time by the Washington school for the deaf or Washington school for the blind.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated staff shall be eligible for additional bonuses if the employee is in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) For the ~~((2009-10))~~ 2011-12 school year and thereafter, challenging, high poverty schools are schools ~~((eligible by either:~~

~~((i) Eligibility in the prior year; or~~

~~((ii) Schools))~~ where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

~~((A))~~ (i) 70 percent for elementary schools;

~~((B))~~ (ii) 60 percent for middle schools; or

~~((C))~~ (iii) 50 percent for high schools; as determined by the October 1 count of ~~((the core student records system or successor data collection and reporting systems, such as))~~ the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on May 1st of that prior year.

(b) For purposes of the national board challenging, high poverty schools bonus, a school shall be categorized based upon the highest grades served as follows:

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

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

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

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

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging~~((s))~~, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

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

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

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of ~~((either October 1 of the current school year or the employee's employment contract date for the current))~~ June 15th of the school year.

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

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

WAC 392-140-974 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Administrative procedures. (1) School districts that employ teachers and other certificated staff eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting for each employee the required data as determined by the superintendent of public instruction.

(2) Districts shall document each employee's eligibility by maintaining on file for audit a copy of the employee's national board certification notice and evidence of employment and duties assigned. For employees eligible for additional bonuses pursuant to WAC 392-140-973(3), districts shall also document the employee's instructional assignments in challenging, high poverty schools.

(3) Beginning in the 2011-12 school year, all requests ((received by)) must be submitted to the superintendent of public instruction by ((the)) June 15th of the ((month)) school year and shall be paid in ((that month's)) the July apportionment and displayed on Report 1197, in revenue account 4158. Bonuses in WAC 392-140-973 shall be reduced by a factor of 40 percent for first year National Board for Professional Teaching Standards (NBPTS) certified teachers, to reflect the portion of the instructional school year they are certified.

(4) For each candidate, the superintendent of public instruction shall send the district the amount of the salary bonus set in the operating appropriations act plus an amount for the district's (employer) portion of mandatory fringe benefits. The amount of the annual bonus in WAC 392-140-973(2) shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. The amount of the additional bonus in WAC 392-140-973(3) shall be five thousand dollars in the 2007-08 school year. Thereafter, the additional bonus shall not increase by inflation.

(5) The district shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200.

(6) The salary bonus is excluded from the definition of "earnable compensation" under RCW 41.32.010(10) teachers' retirement through the 2007-08 school year. Beginning in the 2008-09 school year and thereafter, the salary bonus is included in the definition of "earnable compensation."

WSR 11-23-124

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 21, 2011, 11:38 a.m., effective November 26, 2011]

Effective Date of Rule: November 26, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rules must be effective November 26, 2011, in order to maintain state compliance with federal requirements under 75 F.R. 43330.

Purpose: Chapter 246-305 WAC, Certification of independent review organizations (IROs), the adopted rules replace emergency rules filed July 29, 2011, and ensure the state's IRO certification process remains compliant with the consumer protection requirements under the 2010 Patient Protection and Affordable Care Act (ACA) and Federal Interim Rules (75 F.R. 43330).

Citation of Existing Rules Affected by this Order: Amending WAC 246-305-001, 246-305-010, 246-305-020, 246-305-030, 246-305-040, 246-305-050, 246-305-060, 246-305-070, 246-305-080, 246-305-090, 246-305-100, 246-305-110, and 246-305-990.

Statutory Authority for Adoption: RCW 43.70.235 and 48.43.535.

Adopted under notice filed as WSR 11-19-106 on September 21, 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 8, 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 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 13, Repealed 0.

Date Adopted: November 21, 2011.

Mary C. Selecky
Secretary

Chapter 246-305 WAC

CERTIFICATION OF INDEPENDENT REVIEW ORGANIZATIONS (IROs)

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-001 Purpose and scope. (1) Purpose. These rules are adopted by the Washington state department of health to implement the provisions of RCW 43.70.235 regarding the certification of independent review organizations (IROs). Certified (~~(independent review organizations)~~) IROs are qualified to receive referrals from the insurance commissioner or designee under RCW 48.43.535 to make binding determinations related to health care coverage and payment disputes between health insurance carriers and their enrollees.

(2) Other applicable rules. Independent review (~~(also)~~) is also subject to rules of the insurance commissioner implementing RCW 48.43.535.

(3) Applicability. These rules apply to independent review cases originating in Washington state under RCW 48.43.535, and to independent review organizations conducting these reviews.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-010 Definitions. (~~For the purpose of this chapter, the following words and phrases shall have the following meanings~~) The definitions in this section apply throughout the chapter unless the context clearly (~~(indicates)~~) requires otherwise.

(1) "Adverse benefit determination" means a (~~(decision by a health carrier to deny, modify, reduce, or terminate coverage of or payment for a health care service for an enrollee)~~) benefit is denied, reduced, or terminated. The basis for these actions or determinations may include:

(a) An enrollee's or applicant's eligibility to participate in a plan or group plan;

(b) Any utilization review; or

(c) Failure to cover an item or service for which benefits are otherwise provided because of a determination that the item or service is experimental, investigational, or not medically necessary or appropriate.

(2) "Applicant" means a person or entity seeking to become a Washington certified (~~(IRO-)~~) independent review organization(~~(s)~~) (IRO).

(3) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-620 and 284-43-630.

(4) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-130.

(5) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(6) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification

and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(7) "Clinical reviewer" means a medical reviewer, as defined in this section.

(8) "Conflict of interest" means violation of any provision of WAC 246-305-030, including, but not limited to, material familial, professional and financial affiliations.

(9) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical reviewer is also interpreting health plan coverage provisions, that reviewer (~~(must)~~) shall have the qualifications required of a contract specialist.

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

(11) "Enrollee" means (~~(a)~~) an (~~(covered person)~~) appellant as defined in WAC 284-43-130. "Enrollee" also means a person lawfully acting on behalf of the enrollee, including, but not limited to, a parent or guardian.

(12) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(13) "Health care provider" or "provider" means a person practicing health care services consistent with Washington state law, or a person with valid credentials from another state for a similar scope of practice.

~~((13))~~ (14) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

~~((14))~~ (15) "Independent review organization" or "IRO" means an entity certified by the department under this chapter.

~~((15))~~ (16) "IRO," see independent review organization.

~~((16))~~ (17) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

~~((17))~~ (18) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

~~((18))~~ (19) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

~~((19))~~ (20) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

~~((20))~~ (21) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical

practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the federal Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, ~~((Health Care Financing Administration))~~ Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet Institute of Medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

~~((21))~~ (22) "Referral" means receipt by an IRO of notification from the insurance commissioner or designee that a case has been assigned to that IRO under provisions of RCW 48.43.535.

~~((22))~~ (23) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-020 General requirements for certification. In order to qualify for certification, an IRO ~~((must))~~ shall:

(1) Submit an application for certification to the department as described in WAC 246-305-080.

(2) Hold a current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(3) Demonstrate expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions.

~~((2))~~ (4) Demonstrate the ability to handle a full range of review cases occurring in Washington state. Certified IROs may contract with more specialized review organizations; however, the certified IRO ~~((must))~~ shall ensure that each review conducted meets all the requirements of this chapter.

~~((3))~~ (5) Demonstrate capability to review administrative and contractual coverage issues, as well as medical necessity and effectiveness, and the appropriateness of experimental and investigational treatments.

~~((4))~~ (6) Comply with all conflict of interest provisions in WAC 246-305-030.

~~((5))~~ (7) Maintain and assign qualified expert reviewers in compliance with WAC 246-305-040.

~~((6))~~ (8) Conduct reviews, reach determinations and document determinations consistent with WAC 246-305-050 and 246-305-060.

~~((7))~~ (9) Maintain administrative processes and capabilities in compliance with WAC 246-305-070.

~~((8) File an application for certification meeting the requirements of WAC 246-305-080.)~~

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-030 Conflict of interest. (1) An IRO:

(a) Must not be a subsidiary of, or in any way owned or controlled by, a carrier or an association of health care providers or carriers;

(b) ~~((Must))~~ Shall provide information to the department on its own organizational affiliations and potential conflicts of interest at the time of application and when material changes occur;

(c) ~~((Must))~~ Shall immediately turn down a case referred by the insurance commissioner if accepting it would constitute an organizational conflict of interest; and

(d) ~~((Must))~~ Shall ensure that reviewers are free from any actual or potential conflict of interest in assigned cases.

(2) An IRO, as well as its reviewers, must not have any material familial, professional, ~~((familial))~~ or financial affiliation, as defined in WAC 246-305-010, with the health carrier, enrollee, enrollee's provider, that provider's medical or practice group, the facility at which the service would be provided, or the developer or manufacturer of a drug or device under review. An affiliation with any director, officer or executive of an IRO ~~((shall))~~ must be considered to be an affiliation with the IRO.

(3) The following do not constitute violations of this section:

(a) Staff affiliation with an academic medical center or National Cancer Institute-designated clinical cancer research center;

(b) Staff privileges at a health care facility;

(c) Maintaining a provider contract with a carrier which provides no more than five percent of the provider's or clinical group's annual revenue; or

(d) An IRO's receipt of a carrier's payment for independent reviews assigned by the insurance commissioner under RCW 48.43.535.

(4) Notwithstanding the provisions of subsection (3) of this section, a potential reviewer ~~((shall))~~ must be considered to have a conflict of interest with regard to a facility or health plan, regardless of revenue from that source, if the potential reviewer is a member of a standing committee of: The facility, the health plan, or a provider network that contracts with the health plan.

(5) A conflict of interest may be waived only if both the enrollee and the health plan agree in writing after receiving full disclosure of the conflict, and only if:

(a) The conflict involves a reviewer, and no alternate reviewer with necessary special expertise is available; or

(b) The conflict involves an IRO and the insurance commissioner determines that seeking a waiver of conflict is preferable to reassigning the review to a different IRO.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-040 Expert reviewers. (1) Each IRO ~~((must))~~ shall maintain an adequate number and range of qualified expert reviewers in order to:

(a) Make determinations regarding the full range of independent review cases occurring in Washington state under RCW 48.43.535; and

(b) Meet timelines specified in WAC 246-305-050(3) including those for expedited review.

(2) All reviewers ~~((shall))~~ must be health care providers with the exception of contract specialists.

(3) IROs ~~((must))~~ shall maintain policies and practices that assure that all clinical reviewers:

(a) Hold a current, unrestricted license, certification, or registration in Washington state, or current, unrestricted credentials from another state with substantially comparable requirements, as determined by the department and outlined in the ~~((November 2000))~~ May 2011 edition of the department of health publication, *Health Care Professional Credentialing Requirements*;

(b) Have at least five years of recent clinical experience;

(c) Are board-certified in the case of a medical doctor, a doctor of osteopathy, a podiatrist, or a member of another profession in which board certification exists as determined by the department of health; and

(d) Have the ability to apply scientific standards of evidence in judging research literature pertinent to review issues, as demonstrated through relevant training or professional experience.

(4) Contract specialists must be knowledgeable in health insurance contract law, as evidenced by training and experience, but do not need to be an attorney or have any state credential.

(5) Assignment of appropriate reviewers to a case.

(a) An IRO shall assign one or more expert reviewer to each case, as necessary to meet requirements of this subsection.

(b) Any reviewer assigned to a case ~~((must))~~ shall comply with the conflict of interest provisions in WAC 246-305-030.

(c) The IRO shall assign one or more clinical reviewers to each case. ~~((At least one))~~ All clinical reviewers assigned

to ~~((each))~~ a case ~~((must))~~ shall each meet ~~((each of))~~ the following requirements:

(i) ~~((Have expertise to address each of the issues that are the source of the dispute;~~

~~((ii) Be))~~ A clinical peer as defined in WAC 246-305-010(6);

An expert in the treatment of the enrollee's medical condition that is the subject of the external review;

Knowledgeable about the recommended health care service or treatment through five years of recent or current actual clinical experience treating patients with the same or similar medical condition of the enrollee. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement; and

~~((iii))~~ (iv) Have the ability to evaluate alternatives to the proposed treatment.

~~((All clinical reviewers assigned must have at least five years of recent clinical experience dealing with the same health conditions under review or similar conditions. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement.~~

~~((e))~~ If contract interpretation issues must be addressed, a contract specialist must be assigned to the review.

~~((f))~~ (e) Each IRO ~~((must))~~ shall have a policy specifying the number and qualifications of reviewers to be assigned to each case. The number of expert reviewers should be dictated by what it takes to meet the requirements of this subsection.

(i) The number of expert reviewers should reflect the complexity of the case, the goal of avoiding unnecessary cost, and the need to avoid tie votes.

(ii) The IRO may consider, but shall not be bound by, recommendations regarding complexity from the carrier or attending provider.

(iii) Special attention should be given to situations such as review of experimental and investigational treatments that may benefit from an expanded panel.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-050 Independent review process. (1) Information for review.

(a) IROs ~~((must))~~ shall, as necessary, request ~~((as necessary)),~~ accept, and consider the following information as relevant to a case ~~((referred))~~:

(i) Information that the carrier is required to submit to the IRO under WAC 284-43-630, including information identified in that section that is initially missing or incomplete as submitted by the carrier.

(ii) Other medical, scientific, and cost-effectiveness evidence which is relevant to the case. For the purposes of this section, medical, scientific, and cost-effectiveness evidence has the meaning ~~((assigned))~~ defined in WAC 246-305-010.

(b) After referral of a case, an IRO ~~((must))~~ shall accept additional information from the enrollee, the carrier, or a pro-

vider acting on behalf of the enrollee or at the enrollee's request, provided the information is submitted within ~~((seven calendar))~~ five business days of the referral or, in the case of an expedited referral, within twenty-four hours. The additional information must be related to the case and relevant to statutory criteria.

(c) The IRO shall forward this information to the carrier within one business day of receipt of the information.

(2) Completion of reviews~~((±))~~. Once the insurance commissioner or designee refers a review, the IRO ~~((must))~~ shall proceed to final determination unless requested otherwise by both the carrier and the enrollee or the carrier notifies the IRO it has reversed its adverse benefit determination.

(3) Time frames for reviews.

(a) An IRO ~~((must))~~ shall make its determination within the following time limits:

(i) If the review is not expedited, within fifteen days after receiving necessary information, or within twenty days after receiving the referral, whichever is earlier. In exceptional circumstances where information is incomplete, the determination may be delayed until no later than twenty-five days after receiving the referral.

(ii) If the review is expedited, as defined in WAC 284-43-540, within seventy-two hours after receiving ~~((all necessary information, or within eight days after receiving))~~ the referral~~((, whichever is earlier. Expedited time frames apply when a condition could seriously jeopardize the enrollee's health or ability to regain maximum function, as determined consistent with WAC 284-43-620))~~. If information on whether a referral is expedited is not provided to the IRO, the IRO may presume that it is not an expedited review, but the IRO has the option to seek clarification from the insurance commissioner or designee.

(b) An IRO ~~((must))~~ shall provide notice to enrollees and the carrier of the result and basis for the determination, consistent with subsection (5) of this section, within two business days of making a determination in regular cases and immediately in expedited cases.

(c) As used in this subsection, a day is a calendar day, except that if the period ends on a weekend or an official Washington state holiday, the time limit is extended to the next business day. A business day is any day other than Saturday, Sunday or an official Washington state holiday.

(4) Decision-making procedures.

(a) The independent review process is intended to be neutral and independent of influence by any affected party or by state government. The department may conduct investigations under the provisions of this chapter but the department has no involvement in the disposition of specific cases.

(b) Independent review is a paper review process. These rules do not establish a right to in-person participation or attendance by the enrollee, the health plan, or the attending provider nor to reconsideration of IRO determinations.

(c) An IRO shall present cases to reviewers in a way that maximizes the likelihood of a clear, unambiguous determination. This may involve stating or restating the questions for review in a clear and precise manner that encourages yes or no answers.

(d) If more than one reviewer is used, the IRO shall:

(i) Provide an opportunity for the reviewers to exchange ideas and opinions about the case with one another, if requested by a reviewer. This ~~((shall))~~ must be done in a manner that avoids pressure on reviewers to take a position with which they do not agree and preserves a dissenting reviewer's opportunity to document the rationale for dissent in the case file.

(ii) Accept the majority decision of the clinical reviewers in determining clinical issues.

(e) When a case requires an interpretation regarding the application of health plan coverage provisions, that determination ~~((shall))~~ must be made by a reviewer or reviewers who are qualified as contract specialists.

(f) An IRO may uphold an adverse benefit determination if the patient or any provider refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond. An IRO may overturn an adverse benefit determination if the carrier refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond.

(g) If reviewers are deadlocked, the IRO may add another reviewer if time allows.

(h) If all pertinent information has been disclosed and reviewers are unable to make a determination, the IRO shall decide in favor of the enrollee.

(5) Notification and documentation of determinations. An IRO ~~((must))~~ shall notify the enrollee and the carrier of the result and rationale for the determination, including its clinical basis unless the decision is wholly based on application of coverage provisions, within the time frame in subsection (3)(b) of this section.

(a) Documentation of the basis for the determination shall include references to ~~((support))~~ supporting evidence, and if applicable, the rationale for any interpretation regarding the application of health plan coverage provisions.

(b) If the determination overrides the health plan's medical necessity or appropriateness standards, the rationale shall document why the health plan's standards are unreasonable or inconsistent with sound, evidence-based medical practice.

(c) The written report shall include the qualifications of reviewers but shall not disclose the identity of the reviewers.

(d) Notification of the determination ~~((shall))~~ must be provided initially by ~~((phone))~~ telephone, e-mail, or ~~((fax))~~ facsimile, followed by a written report by mail. In the case of expedited reviews the initial notification ~~((shall))~~ must be immediate and by ~~((phone))~~ telephone.

NEW SECTION

WAC 246-305-051 Additional requirements for experimental or investigational treatment reviews. (1) In addition to the qualifications listed in WAC 246-305-040 (3) and (5), at least part of the clinical reviewers' relevant, recent clinical experience must have been obtained in the past three years.

(2) Each clinical reviewer shall consider the following information, if appropriate and available, in reaching an opinion:

(a) The enrollee's pertinent medical records;

(b) The attending physician or health care provider's recommendation;

(c) Consulting reports from appropriate health care providers and other documents submitted by the carrier, enrollee, or enrollee's authorized representative, or the enrollee's treating physician or health care provider; and

(d) Whether:

(i) The terms of coverage under the enrollee's health benefit plan would have covered the treatment had the carrier not determined that the treatment was experimental or investigational;

(ii) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(iii) Medical or scientific evidence or evidence-based standards demonstrate that the recommended or requested health care service or treatment is more likely than any available standard health care service or treatment to be beneficial to the enrollee and the adverse risks would not be substantially increased over those of available standard health care services or treatments.

(3) Clinical reviewers shall include the following in their written opinions to the IRO:

(a) A description of the enrollee's medical condition;

(b) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is likely to be more beneficial to the enrollee than any available standard health care services or treatments and the adverse risks would not be substantially increased over those of available standard health care services or treatments;

(c) A description and analysis of any medical, scientific evidence, or cost-effectiveness evidence as defined in WAC 246-305-010(21);

(d) A description and analysis of any evidence-based standard as defined in WAC 246-305-010(12); and

(e) Information on whether the reviewer's rationale for the opinion is based on subsection (2)(e)(i) or (ii) of this section.

(4) IROs shall include the following in their notification of the results and rationale for the determination:

(a) A general description of the reason for the request for external review;

(b) The written opinion of each clinical reviewer, including whether the recommended or requested health care service or treatment should be covered and the rationale for each reviewer's recommendation;

(c) The date the review was requested;

(d) The date the review was conducted;

(e) The date of the IRO's decision;

(f) The principle reason or reasons for the IRO's decision; and

(g) The rationale for the IRO's decision.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-060 Criteria and considerations for independent review determinations. (1) General criteria and considerations.

(a) ~~((An IRO's))~~ The determination must ~~((use fair procedures and))~~ be consistent with the standards in RCW 43.70.235, 48.43.535, and ~~((this))~~ chapter 246-305 WAC.

(b) The expert reviewers from a certified IRO will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee.

(c) The IRO ~~((must))~~ shall ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement.

(i) Clinical reviewers may override the health plan's medical necessity or appropriateness standards only if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice, or experimental or investigational treatment protocols.

(ii) Reviewers may make determinations about the application of general health plan coverage provisions to specific issues concerning health care services for an enrollee. For example, whether a specific service is excluded by more general benefit exclusion language may require independent interpretation.

(2) Medical necessity and appropriateness—Criteria and considerations. Only clinical reviewers may determine whether a service, which is the subject of an adverse decision, is medically necessary and appropriate. These determinations must be based upon their expert clinical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in ~~((the))~~ Washington state ~~((of Washington))~~.

(a) Medical standards of practice include the standards appropriately applied to physicians or other health care providers, as pertinent to the case.

(b) In considering medical standards of practice within ~~((the))~~ Washington state ~~((of Washington))~~:

(i) Clinical reviewers may use national standards of care, absent evidence presented by the health plan or enrollee that the Washington state standard of care is different.

(ii) A health care service or treatment should be considered part of the Washington state standard of practice if reviewers believe that failure to provide it would be inconsistent with that degree of care, skill and learning expected of a reasonably prudent health care provider acting in the same or similar circumstances.

(c) Medical necessity will be a factor in most cases referred to an IRO, but not necessarily in all. See WAC 246-305-060(3).

(3) Health plan coverage provisions—Criteria and considerations. The following requirements ~~((shall))~~ must be observed when a review requires making determinations about the application of health plan coverage provisions to issues concerning health care services for an enrollee.

(a) These determinations ~~((shall))~~ must be made by one or more contract specialists meeting the requirements of WAC 246-305-040(4), except that a clinical determination of medical necessity or appropriateness, by itself, is not an interpretation of the scope of covered benefits and does not require a contract specialist.

(b) If the full health plan coverage agreement has not already been provided by the carrier ~~((pursuant to))~~ under WAC 284-43-630 (2)(f) of the insurance commissioner, the

IRO shall request additional provisions from the health plan coverage agreement in effect during the relevant period of the enrollee's coverage, as necessary to have an adequate context for determinations.

(c) In general, the IRO and its contract specialists may assume that the contractual health plan coverage provisions themselves are consistent with the Washington Insurance Code (Title 48 RCW), absent information to the contrary. Primary responsibility for determining consistency with the insurance code, when at issue, rests with the insurance commissioner.

(4) No provision of this chapter should be interpreted to establish a standard of medical care, or to create or eliminate any cause of action.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-070 Administrative processes and capabilities of ~~((independent review organizations))~~ IROs. (1) An IRO ~~((must))~~ shall maintain written policies and procedures covering all aspects of review.

(2) An IRO ~~((must))~~ shall ensure the confidentiality of medical records and other personal health information received for use in independent reviews, in accordance with applicable federal and state laws.

(3) An IRO ~~((must))~~ shall have a quality assurance ~~((mechanism))~~ program that ensures the timeliness, quality of review, and communication of determinations to enrollees and carriers. The ~~((mechanism must also))~~ quality assurance program must ensure the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers.

(a) The quality assurance program must include a written plan addressing scope and objectives, program organization, monitoring and oversight mechanisms, and evaluation and organizational improvement of IRO activities.

(b) Quality of reviews includes use of appropriate methods to match the case, confidentiality, and systematic evaluation of complaints for patterns or trends. Complaints must be recorded on a log, including the nature of the complaint and ~~((how resolved))~~ the resolution. The department reserves the right to examine both the complaints and the log.

(c) Organizational improvement efforts must include the implementation of action plans to improve or correct identified problems, and communication of the results of action plans to staff and reviewers.

(4) An IRO ~~((must))~~ shall maintain case logs and case files with full documentation of referrals, reviewers, questions posed, information considered (including sources of the information and citations of studies or criteria), determinations and their rationale, communication with parties in the dispute including notices given, and key dates in the process, for at least ~~((two))~~ three years following the review.

(5) An IRO ~~((must))~~ shall maintain a training program for staff and expert reviewers, addressing at least:

- (a) Confidentiality;
- (b) Neutrality and conflict of interest;
- (c) Appropriate conduct of reviews;
- (d) Documentation of evidence for determination; and

(e) In the case of contract specialists, principles of health contract law and any provisions of Washington state law determined to be essential.

(6) An IRO ~~((must))~~ shall maintain business hours, methods of contact (including by telephone), procedures for after-hours requests, and other relevant procedures to ensure timely availability to conduct expedited as well as regular reviews.

(7) An IRO shall not disclose reviewers' identities. The department will not require reviewers' identities as part of the certification application process, but may examine identified information about reviewers as part of enforcement activities.

(8) An IRO shall promptly report any attempt at interference by any party, including a state agency, to the department.

(9) An IRO shall have a medical director who holds a current unrestricted license as a medical doctor or osteopathic physician and has had experience in direct patient care. The medical director shall provide guidance for clinical aspects of the independent review process and oversee the IRO's quality assurance and credentialing programs.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-080 Application for certification as an ~~((independent review organization))~~ IRO. (1) To be certified as an ~~((independent review organization))~~ IRO under this chapter, an organization ~~((must))~~ shall submit to the department an application ~~((in))~~ on the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

- (i) A carrier;
- (ii) A utilization review agent;
- (iii) A nonprofit or for-profit health corporation;
- (iv) A health care provider;
- (v) A drug or device manufacturer; or
- (vi) A group representing any of the entities described by (d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that the applicant anticipates will be derived from reviews conducted under RCW 48.43.535;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant, as well as the IRO's policies and standards addressing qualifications, training, and assignment of all types of reviewers;

(g) The procedures that the (~~independent review organization~~) IRO will use in making review determinations regarding reviews conducted under RCW 48.43.535;

(h) Attestations that all requirements will be met;

(i) Evidence of (~~accreditations, certifications, and government IRO contracts that the applicant believes demonstrate compliance with certain requirements of this chapter~~) current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(i) Applicants (~~must~~) shall authorize release of information from primary sources, including full reports of site visits, inspections, and audits;

(ii) The department may require the applicant to indicate which documents demonstrate compliance with specific Washington state certification requirements under this chapter.

(j) Other documentation, including, but not limited to, legal and financial information, policies and procedures, and data that are pertinent to requirements of this chapter; and

(k) Any other reasonable application requirements demonstrating ability to meet all requirements for certification in Washington state.

(2) Department investigation and verification activities regarding the applicant may include, but are not limited to:

(a) Review of application and filings for completeness and compliance with standards;

(b) On-site survey or examination;

(c) Primary-source verification with accreditation or regulatory bodies of compliance with requirements which are used to demonstrate compliance with certain standards in this chapter;

(d) Other means of determining regulatory and accreditation histories; and

(e) Exercising any power of the department under WAC 246-305-100.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-090 Ongoing requirements for (~~independent review organizations~~) IROs. A certified IRO shall:

(1) Comply with the provisions of RCW 43.70.235, 48.43.535(5), and this chapter;

(2) Cooperate with the department during investigations;

(3) Provide the department with information requested in a prompt manner;

(4) Conduct annual self-assessments of compliance with Washington certification requirements;

(5) (~~File~~) Submit an annual statistical report with the department on a form specified by the department summarizing reviews conducted. The report shall include, but may not be limited to, volumes, types of cases, compliance with timelines for expedited and nonexpedited cases, determinations, number and nature of complaints, and compliance with the conflict of interest(~~s rules~~) requirements described in WAC 246-305-030.

(6) Submit updated information to the department if at any time there is a material change in the information included in the application.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-100 Powers of the department. (1) The department may deny, suspend, revoke, or modify certification of an IRO if the department has reason to believe the applicant, certified IRO, its agents, officers, directors, or any person with any interest (~~therein~~) in the IRO has failed or refused to comply with the requirements established under this chapter.

(2) The department may conduct an on-site review, audit, and examine records to investigate complaints alleging that an applicant, certified IRO, or reviewer committed any conduct described in WAC 246-305-110.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-110 Grounds for action against an applicant or a certified IRO. (1) The department may deny an application for certification, or suspend, revoke, or modify certification if the applicant, certified IRO, its agents, officers, directors, or any person with any interest (~~therein~~):

(a) Knowingly or with reason to know makes a misrepresentation of, false statement of, or fails to disclose, a material fact to the department. This applies to any data attached to any record requested or required by the department or matter under investigation or in a (~~self-inspection~~) self-assessment;

(b) Obtains or attempts to obtain certification by fraudulent means or misrepresentation;

(c) Fails or refuses to comply with the requirements of RCW 43.70.235, 48.43.535(5), or this chapter;

(d) Conducts business or advertising in a misleading or fraudulent manner;

(e) Refuses to allow the department access to records, or fails to promptly produce for inspection any book, record, document, or item requested by the department, or willfully interferes with an investigation;

(f) Accepts referral of cases from the insurance commissioner under RCW 48.43.535 without certification, or with certification which has been terminated, or is subject to sanction;

(g) Was the holder of a license, certification, or contract issued by the department or by any competent authority in any state, federal, or foreign jurisdiction that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(h) Had accreditation from a recognized national or state IRO accrediting body that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(i) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes, but is not limited to: Willful misrepresentation of facts during an investigation, or administra-

tive proceeding, or any other legal action; or use of threats or harassment against any patient, client, customer, or witness; or use of financial inducements to any patient, client, customer, or witness to prevent or attempt to prevent him or her from providing evidence during an investigation, in an administrative proceeding, or any other legal action involving the department;

(j) Willfully prevents or interferes with any department representative in the preservation of evidence;

(k) Misrepresented or was fraudulent in any aspect of the conduct of business;

(l) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an IRO;

(m) Violates any state or federal statute, or administrative rule regulating the IRO;

(n) Fails to comply with an order issued by the secretary of the department of health or designee;

(o) Uses interference, coercion, discrimination, reprisal, or retaliation against a patient, client, or customer exercising his or her rights;

(p) Offers, gives, or promises anything of value or benefit to any federal, state, or local employee or official for the purpose of influencing that employee or official to circumvent federal, state, or local laws, regulations, or ordinances governing the certification holder or applicant;

(2) A person, including, but not limited to, enrollees, carriers, and providers, may submit a written complaint to the department alleging that a certified IRO committed conduct described in this section.

(3) An applicant or certified IRO may contest a department decision or action according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

AMENDATORY SECTION (Amending WSR 05-24-029, filed 11/30/05, effective 12/31/05)

WAC 246-305-990 Maximum fee schedule. This section sets the maximum fee schedule for independent reviews, and the process of review and determination of a case referred to an independent review organization (IRO).

(1) IROs may not charge more than the following amount for each review:

Category	Amount
Contract review, interpretation of health plan coverage provisions	\$600
Standard medical review, straightforward review of medical necessity or adverse determination	\$700
Highly specialized medical review of complex conditions or experimental or investigational treatment	\$1000
Medical review with multiple reviewers	\$1100
Surcharge for expedited review	\$200

The fees in this section include all costs for time and materials associated with the review including, but not limited to:

(a) Record transmission expenses such as postage and facsimile costs; and

(b) Medical record handling and duplication.

(2) If the IRO and the health care plan agree in advance that the referral includes both a contract review and a medical review, the IRO may charge both fees.

(3) If an IRO charges more than the maximum fees allowed under this section, the department may take action as described in WAC 246-305-110.

**WSR 11-23-125
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed November 21, 2011, 11:47 a.m., effective December 22, 2011]

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

Purpose: WAC 246-790-010 through 246-790-130, WIC nutrition program, the rules update a variety of references, definitions, and terms, further define the standards of practice and requirements for retailer participation in the WIC program, and assure consistency between the rule and the retailer contracts. They reflect "plain talk" changes necessary to provide clarity for retailers and are necessary to stay in compliance with federal regulations in order to maintain funding.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-790-050, 246-790-060, 246-790-065, 246-790-070, 246-790-080, 246-790-085, 246-790-090, 246-790-100, 246-790-120 and 246-790-130; and amending WAC 246-790-010.

Statutory Authority for Adoption: RCW 43.70.120.

Adopted under notice filed as WSR 11-17-103 on August 22, 2011.

A final cost-benefit analysis is available by contacting Peter Gayton, Department of Health, P.O. Box 47886, 111 Israel Road S.E., Tumwater, WA 98504-7886, phone (360) 236-3788, fax (360) 236-2345, e-mail Peter.Gayton@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 7, Amended 1, Repealed 10; 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 7, Amended 1, Repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 1, Repealed 10.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 1, Repealed 10.

Date Adopted: November 21, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 06-05-051, filed 2/13/06, effective 3/16/06)

WAC 246-790-010 Definitions. ((1) "Alternate endorser" means a person authorized by the WIC client to pick up WIC checks at the local WIC agency and use the WIC checks at the retailer when the client is unable to do so.

(2) "Appeal hearing" means a formal proceeding to appeal certain program decisions. The appeal hearing process provides a contractor the opportunity to review the case record prior to the hearing, to present its case in an impartial setting, to confront and cross-examine witnesses, and to be represented by counsel.

(3) "Applicant retailer" means any retailer, or person representing a retailer, requesting authorization to participate in the WIC program who has submitted a completed request for authorization packet.

(4) "Authorized" or "authorization" means the retailer has met the selection criteria as required by the United States Department of Agriculture (USDA), received training on WIC program requirements, and signed a contract with the WIC program.

(5) "CFR" means the Code of Federal Regulations.

(6) "Contract" or "retailer contract" means a written legal document which encompasses WIC program requirements that bind the contractor and the WIC program.

(7) "Contractor" means the owner, chief executive officer, controller, or other person legally authorized to represent their corporation, firm, or business and obligate a retailer to a contract.

(8) "Covertly" means in secret, undercover, or not openly announced.

(9) "Current shelf life" or "pull date" or "use by date" means a date and code printed on an item that indicates its best quality. This date shows when a product must be either sold or pulled from a shelf.

(10) "Department" means the Washington state department of health and any of the officers or other officials lawfully representing the department.

(11) "Disqualification" means the act of revoking the authorization and ending the contract of an authorized retailer permanently or for a specific period of time for noncompliance with WIC program requirements.

(12) "Effective policy and program to prevent trafficking" means a written document that states what can and cannot be done with WIC checks and the consequences for failing to follow program requirements. Effectiveness is determined by documentation that a retailer has provided this written policy to all employees, including employees' signatures verifying they have been advised of the policy and understand the consequences of noncompliance, both for the retailer and for the employee, prior to any noncompliance being detected.

(13) "Food company" means a manufacturer or broker of food items.

(14) "Food stamp EBT" means the electronic system that allows a recipient to authorize transfer of their government food benefits from a federal account to a retailer account to pay for products they buy.

(15) "Local WIC agency" means the contracted clinic or agency where a client receives WIC checks.

(16) "Maximum price" means the highest amount that can be charged for WIC approved foods as determined by the WIC program based on evaluation of current prices and market conditions.

(17) "Monetary penalty" means a sum of money imposed by the WIC program for noncompliance with program requirements.

(18) "Notice of correction" means a written document given to a retailer when the WIC program discovers noncompliance with program requirements. The notice of correction gives the retailer a reasonable period of time to correct the noncompliance without risk of receiving a sanction.

(19) "Pattern" means more than one documented incidence of noncompliance with WIC program requirements in a contract period.

(20) "Peer group" means a group of retailers who share similar characteristics. The WIC program considers factors such as location, either rural or urban, and the prices retailers charge when determining a retailer's placement in a peer group.

(21) "Providing credit" means the retailer takes a WIC check and deposits it for the full amount of the foods listed, even though the client does not receive all the foods at the time, and tells the client to come back later for the rest of the food.

(22) "Reauthorization" or "subsequent authorization" means the process when a retailer, who has a contract with the WIC program which is expiring, has reapplied, met the selection criteria, and signed another contract with the WIC program.

(23) "Redeeming WIC checks outside of authorized channels" means not following the requirements regarding who can accept WIC checks and how to redeem them. Examples include, but may not be limited to:

(a) A retailer accepting WIC checks without having a signed contract with the WIC program;

(b) A retailer using WIC checks to repay debt at a different authorized retailer; or

(c) A retailer who accepts and deposits WIC checks from an unauthorized source.

(24) "Rights and responsibilities" means the rights a client has within the WIC program and the rules clients and caregivers must follow to participate in the program. The rights and responsibilities are explained in a document the client, caregiver, or alternate endorser must sign.

(25) "Supplemental WIC foods" or "WIC approved foods" means those foods containing nutrients determined to be beneficial for pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by federal regulations and state requirements, and, as approved by the Washington state WIC program.

(26) "Trafficking" means buying or selling WIC checks for cash.

(27) "WIC program" or "program" means the federally funded special supplemental nutrition program for women, infants, and children administered in Washington state by the department of health.

(28) "WIC program requirements" or "program requirements" mean the rules contractors and retailers must follow to participate in the WIC program. The rules are explained in the federal regulations, the retailer contract, the *Retailer Selection Criteria*, the *WIC Approved Foods – Minimum Stock Levels*, the *WIC Retailer Handbook*, and the WIC approved formula supplier list.

(29) "WIC retailer" or "retailer" means an individual store authorized to participate in the WIC program.

(30) "Wholesaler" or "distributor" or "supplier" means a business licensed to sell food and other items to a retailer for resale.

(31) "WIC check" means a negotiable instrument issued to and used by a WIC client, caregiver, or alternate endorser to obtain specified supplemental WIC foods from a WIC retailer.

(32) "WIC client" or "client" means a woman who is pregnant, breastfeeding, or postpartum, an infant, or a young child receiving WIC benefits.

(33) "WIC only store" means a for-profit business model that focuses primarily on stocking WIC food items and serving WIC customers. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "C.F.R." means Code of Federal Regulations.

(2) "Contract" means a written legal document binding the contractor and the department to designated terms and conditions. Terms and conditions include those stated in 7 C.F.R. 246.12 (h)(3) under "*Retail food delivery systems: Vendor agreements, Vendor agreement provisions.*"

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

(4) "Retailer" means "vendor" as defined in 7 C.F.R. 246.2.

(5) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.

(6) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246 and defined in 7 C.F.R. 246.2.

(7) "WIC check" means "food instrument" and "cash-value voucher" as defined in 7 C.F.R. 246.2.

NEW SECTION

WAC 246-790-055 Adoption by reference. Adopted by reference are 7 C.F.R. 246.2, 246.12, 246.18, 246.21, 246.23, and 246.26 special supplemental nutrition program for women, infants, and children revised as of January 1, 2011, and including all amendments and modifications effective as of the date of adoption of this chapter.

Copies of the incorporated sections of 7 C.F.R. 246 are available from the Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, or by calling the WIC nutrition program at 800-841-1410.

NEW SECTION

WAC 246-790-075 Requirements to become an authorized retailer. (1) To become authorized in the WIC program an applicant must:

- (a) Be a food retailer;
- (b) Apply for authorization using department forms;
- (c) Provide complete and truthful information in the application;
- (d) Meet all the retailer selection criteria stated in WAC 246-790-077;
- (e) Allow the department to inspect the store;
- (f) Participate in training on WIC program requirements; and
- (g) Agree to follow WIC program requirements stated in the contract.

(2) The effective date of authorization is the date on which the last party to sign the contract signs it. The department and the retailer are the parties to the contract.

(3) The department shall give an applicant thirty days notice to correct their application when it is incomplete or insufficient in any manner before the department denies authorization.

(4) The department may not accept a new application sooner than six months after an applicant's denial.

(5) An applicant or an authorized retailer may request an exemption to the retailer selection criteria in WAC 246-790-077.

- (a) The request must:
 - (i) Be in writing;
 - (ii) Identify the specific retailer selection criterion or criteria for which the retailer is seeking an exemption and explain the reasons for the request in detail; and
 - (iii) Demonstrate how the requested exemption is consistent with the requirements, purpose and objectives of the program.
- (b) The department may grant an exemption from retailer selection criteria if the applicant submits a request that satisfies (a) of this subsection.
- (c) The department shall respond in writing to a request for exemption with its decision to grant or deny the request.

NEW SECTION

WAC 246-790-077 Retailer selection criteria. An applicant and an authorized retailer shall meet all the following retailer selection criteria to be authorized.

(1) Business license, permit, and certification requirements.

(a) A current master business license and unified business identifier number issued by the Washington state department of revenue as required under chapter 19.02 RCW with a major operation category that includes the retail sale of foods, such as grocery store.

(b) A current reseller's permit issued by the Washington state department of revenue as required under chapter 82.32 RCW.

(c) A current food establishment permit issued by the local health jurisdiction as required by the Washington state board of health under chapter 246-215 WAC.

(d) A current weighing and measuring device registration issued by the Washington state department of agriculture as required under chapter 16-674 WAC.

(e) A current authorization as a vendor in the supplemental nutrition assistance program (SNAP).

(f) Comply with all other applicable federal, state, county, and city required licenses, permits and certifications.

(2) Business model requirements.

(a) Be primarily engaged in retail sales of a variety of food products and general merchandise as a full line grocery store. A full line grocery store stocks on a continuous basis, multiple varieties of the following product categories:

(i) Canned foods;

(ii) Frozen foods;

(iii) Dairy products;

(iv) Fresh and frozen meat, fish, and poultry;

(v) Fresh fruits;

(vi) Fresh vegetables;

(vii) Juices;

(viii) Bakery goods including, but not limited to, breads, pastries, and tortillas;

(ix) Dried grains and beans;

(x) Baby products;

(xi) Household cleaners;

(xii) Laundry products; and

(xiii) Health care products.

(b) Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.

(c) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.

(d) Not use the WIC program name, acronym, or logo in the store name or advertisement, advertise primarily to WIC customers, offer incentives primarily to WIC customers, or otherwise focus primarily on serving WIC customers.

(e) Not receive or expect to receive more than fifty percent of annual food sales revenue from WIC transactions.

(f) Maintain on store shelves at all times the minimum quantities and varieties of WIC approved foods, including infant formula, required by the contract. Expired foods are not counted as inventory.

(g) Maintain shelf prices for WIC approved foods that are competitive with retailers in the same WIC retailer peer group. A "peer group" means a group of retailers who share similar characteristics established by the department.

(h) Operate from a fixed, permanent location where all WIC transactions take place in the store.

(i) Maintain business hours of at least eight hours per day, six days per week.

(j) Accept various types of tender including cash and SNAP electronic benefit transfer (EBT).

(k) Post WIC food price on the item, on the shelf next to the item, or other means that is clearly visible to customers.

(l) Maintain sanitary conditions that meet food service rules in chapter 246-215 WAC.

(m) Keep fresh fruit and vegetable display areas free of spoiled produce.

(3) Recordkeeping.

(a) Maintain a recordkeeping system that meets the Washington state department of revenue requirements in WAC 458-20-254 including the following:

(i) The recordkeeping system must have original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.

(ii) Documents and records must be retrievable and in a readable format.

(b) The recordkeeping system must include original, dated documents and records that contain enough detail to prove the purchase, inventory, and sale of WIC approved foods, including infant formula, by brand name, container size and quantity. These documents and records must be kept for a period of six years following the date of final payment.

(c) Submit to the department upon request documents and records showing food is purchased from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.

(d) Submit to the department upon request documents and records showing infant formula is purchased from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.

(e) Submit to the department upon request itemized sales receipts for WIC purchases using an electronic cash register or a manual system. Sales receipts must include the store name, food product name, quantity sold, price of each item, and the date of sale.

(f) Submit to the department upon request annual sales information including gross sales and tax exempt food sales by payment type including cash, SNAP EBT, WIC and credit/debit card.

(g) Submit to the department upon request shelf price and stock level information.

(4) Additional requirements.

(a) Allow access to facilities, including nonpublic storage areas, by the department during normal business hours.

(b) Maintain an active e-mail account that is capable of receiving WIC contract and program information.

(c) Comply with WIC training requirements stated in the contract.

(d) Maintain in-store records documenting employee training on WIC requirements.

(e) Demonstrate business integrity.

(f) Comply with all applicable federal and state laws.

(5) Exemptions.

(a) Oregon and Idaho retailers located on the Washington border and that serve Washington residents are exempt from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.

(b) A retailer authorized as an "infant formula only provider" is exempt from the full line grocery store requirement. "Infant formula only provider" means a retailer for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.

NEW SECTION

WAC 246-790-086 Requirements of an authorized retailer. (1) An authorized retailer shall:

- (a) Comply with the terms and conditions of their contract;
 - (b) Continue to meet the retailer selection criteria in WAC 246-790-077 throughout the term of the contract;
 - (c) Notify the department prior to ownership changes; and
 - (d) Notify the department prior to store closures.
- (2) An authorized retailer may reapply at the time of contract expiration; however, neither the department nor the retailer has an obligation to enter into a subsequent contract.

NEW SECTION

WAC 246-790-105 Failure to meet WIC program requirements. (1) When a retailer is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department may initiate appropriate enforcement action which may include notices of violation, unless the department determines that notifying the retailer would compromise the investigation; claims for reimbursement; and disqualification.

(2) The department shall disqualify an authorized retailer for violations stated in 7 C.F.R. 246.12(l).

(3) For violations of the requirements of this chapter, not specified in 7 C.F.R. 246.12(l), the department may take enforcement action based on a pattern of violations. Department actions may include:

- (a) Notice of violation and offer of technical assistance for the first incident;
- (b) Notice of violation and warning of disqualification for the second incident of the same type of violation;
- (c) One year disqualification for the third incident of the same type of violation.

(4) A "pattern" of violations means more than one documented incident of the same type of violation within a thirty-month period.

(5) An authorized retailer's contract is terminated on the effective date of a disqualification.

(6) An authorized retailer who has been disqualified may reapply at the end of the disqualification period.

NEW SECTION

WAC 246-790-125 Retailer appeal process. (1) The retailer may request an administrative appeal of certain adverse actions as provided in 7 C.F.R. 246.18. Actions that the retailer may not appeal are described in 7 C.F.R. 246.18 (a)(1)(iii).

(2) A request for appeal must:

- (a) Be in writing, state the issue, and contain a summary of the retailer's position on the issue;
- (b) Be filed with the Department of Health, Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886; and
- (c) Be received by the department of health, adjudicative services unit within twenty-eight days of the date the retailer

receives the notice unless otherwise specified in the program's notification of adverse action.

(3) The administrative hearing procedures of chapter 246-10 WAC apply to retailer administrative appeals. If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.

NEW SECTION

WAC 246-790-127 Retailer advisory committee. (1) The department shall facilitate a WIC retailer advisory committee.

(2) The committee shall function in an advisory capacity.

(3) Participation is voluntary and there is no compensation.

(4) Invitations for participation may include authorized WIC retailers, retail grocer associations, food manufacturers, wholesale suppliers, and retail checker labor unions.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-790-050	What is the WIC program?
WAC 246-790-060	What are WIC authorized foods?
WAC 246-790-065	What is the process for getting a food WIC authorized?
WAC 246-790-070	How do I become a WIC retailer?
WAC 246-790-080	What do I need to know about WIC retailer contracts?
WAC 246-790-085	What is expected of WIC retailers?
WAC 246-790-090	How are WIC retailer contracts monitored?
WAC 246-790-100	What happens if I don't comply with the WIC retailer contract or requirements?
WAC 246-790-120	How do I appeal a WIC decision I don't agree with?
WAC 246-790-130	How does the WIC program get input from the food industry?

WSR 11-23-136**PERMANENT RULES****WASHINGTON STATE UNIVERSITY**

[Filed November 22, 2011, 8:49 a.m., effective December 23, 2011]

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

Purpose: To update and clarify the library policies, rules and regulations, including but not limited to, administration

and use of the library and library materials. These changes include repeal of chapter 504-40 WAC and creation of new chapter 504-41 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 504-40-010, 504-40-020, 504-40-030, 504-40-045, 504-40-055, and 504-40-060.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 11-15-071 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 11, Amended 0, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 11, Amended 0, Repealed 6.

Number of Sections Adopted Using Negotiated Rule Making: New 11, Amended 0, Repealed v [6]; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 18, 2011.

Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

Chapter 504-41 WAC

LIBRARY POLICIES, RULES, AND REGULATIONS

NEW SECTION

WAC 504-41-010 General provisions. (1) The board of regents of Washington State University (WSU) establishes the following regulations to govern the use of the Washington State University libraries. These regulations apply to all library facilities operated by the Washington State University library and govern the services, schedules, and premises of the Washington State University library.

(2) The dean of the library and his or her designee have the authority to grant exceptions to these rules with respect to library business hours, borrowing and return provisions, and fine and charges provisions.

(3) Violating WSU library regulations may subject the violator to appropriate disciplinary action by the WSU administration and/or the office of student standards and accountability.

NEW SECTION

WAC 504-41-015 Definitions. (1) "Borrow" means any action to obtain authorization to use the materials for a period of minutes, hours, or days. Materials on reserve or which are otherwise restricted in use to a library's premises are considered borrowed if the individual user is required to register to access the materials.

(2) "Classification" means an individual's official relationship with the university which may include, but is not limited to faculty, associate, staff, graduate student, undergraduate student, or community member.

(3) "Dean" means the administrator appointed by the university president or board of regents as the chief executive of the WSU library system.

(4) "Library" means the WSU libraries generally.

(5) "Materials" means any library document or item which the library allows patrons to borrow or access, including those accessed electronically.

(6) "Proxy" means an individual authorized to function or act as a substitute borrower for a specific faculty member, staff member, or other patron.

(7) "Recall" means an instruction to return material to the library facility or location from which it was removed or borrowed.

NEW SECTION

WAC 504-41-020 Use of the library. (1) The university may establish policies for the use of library facilities which may include, but are not limited to, policies on patron behavior within the facilities, food and beverage policies, policies to prevent damage or loss of books and materials, noise control policies, and use of equipment policies. The policies on use of the library facilities are posted in a conspicuous location at each library facility and on the university web site.

(2) Library personnel may impose restrictions on patrons who violate library policy. Library personnel refer serious or repeat violations of library rules and policies to the appropriate authorities which may include, but are not limited to law enforcement, Washington State University administrators, and the office of student standards and accountability.

(3) Library personnel may inspect briefcases, book bags, and other containers when users leave a university library.

NEW SECTION

WAC 504-41-025 Use of library materials. (1) The dean adopts a schedule of borrowing periods for materials. The periods are established based on the type of materials, the classification of borrower, and the borrower's history, if any, of violations of library policies.

(2) The university may adopt a policy which establishes a system for specified users to borrow by proxy. Proxy borrowing may be limited by the borrower's classification or other factor as designated by the dean. The borrower who authorizes a proxy remains responsible for materials borrowed by the authorized proxy.

(3) The university may establish policies to restrict the use of materials to a designated location and/or to handling standards that may assist in the preservation of the materials and effective allocation of library resources.

NEW SECTION

WAC 504-41-030 Business hours. (1) Scheduled business hours are posted at each respective library facility. A change to business hours must be posted fourteen days before

the change is effective unless the change is governed by subsection (2) of this section.

(2) The library may close on legal and university holidays. The dean or his or her designee may make temporary changes to library hours without notice. The dean or his or her designee may declare unscheduled closures. Unscheduled closures must be for good cause, which may include natural disasters, staffing, or physical plant problems.

NEW SECTION

WAC 504-41-035 Borrower identification. (1) The university establishes a policy to allow effective identification of each borrower, including verification of the identity of a patron borrowing materials through electronic communication with the library.

(2) An individual's valid CougarCard provides sufficient identification if presented at the circulation desk. The circulation desk may, in its discretion, allow an individual to borrow materials using his or her WSU identification number and picture identification.

(3) A patron may apply for a borrower card at the circulation desk of a WSU library. The circulation desk may request satisfactory picture identification before accepting a borrower card to identify the borrower.

(4) A patron is responsible for all materials borrowed using his or her WSU CougarCard, borrower card, or electronic verification information. A patron should notify the library or appropriate WSU authorities of the loss of a borrower card, CougarCard, or other WSU-issued identifying information.

(5) If a patron wishes to not be held responsible for the use of his or her identifying information or card because that identifying information or card was used without the patron's permission, the patron is responsible to produce sufficient documentation of the misuse to the dean or library staff member(s) authorized to evaluate such documentation.

(6) Each borrower must keep the library informed of changes of name, permanent address, e-mail address, telephone number, and classification with WSU.

NEW SECTION

WAC 504-41-040 Disclosure of library user identity. Unless otherwise required by law, all library records that contain information about individual users of library services are confidential.

NEW SECTION

WAC 504-41-045 Borrowing rules. (1) Borrowers and library patrons must comply with posted library policies on the terms of borrowing, including requests for holding materials or placing materials on reserve.

(2) Misuse of library privileges may result in revocation of borrowing privileges by the dean or his or her designee.

(3) Materials are due on the date and hour specified at the time checked out or as adjusted by recall. If the hour is not specified, material is due at midnight on the date specified. Fines are assessed for materials returned after the designated date and/or time due. Replacement charges and a nonrefund-

able service charge are assessed for materials which are damaged or not returned to the library within thirty days of the date due.

(4) All materials are subject to recall at any time, and all users may be fined for failing to return recalled material.

NEW SECTION

WAC 504-41-050 Return of materials. (1) Reserve material must be returned directly to the unit from which it is borrowed. If it is returned elsewhere, it is considered to be returned at the time it is received at the unit from which it was borrowed. Special material may be designated for return directly to the unit from which it is borrowed.

(2) All other material is considered returned on the date it is returned to any library unit in the system and presented at the circulation desk or placed in a book drop or receptacle provided for and marked as a material's return location.

(3) Material returned to the outside book drop when the library unit is closed is considered returned as of closing time the previous day that the library was open.

NEW SECTION

WAC 504-41-055 Fines and charges. (1) The dean or his or her designee establishes a schedule of fines for materials not returned by the due date or time and for materials which are damaged or lost by a patron or borrower. Fines are in addition to replacement charges and repair charges, which are based on the actual cost of such replacement or repair. All patrons and borrowers are subject to the established fines and charges. The established schedule of fines and charges is available on the library web page and at the circulation desk of each library facility.

(2) Replacement charges are levied to pay for the replacement of materials more than ninety days overdue. The replacement charges include the cost of the material and the cost of processing the material for the shelves. Regardless of the amount of fines, fees, and charges that a borrower pays, all library materials remain state property.

(3) Binding, mending, and damage charges are levied to repair material, to prepare replacement materials for circulation, or to compensate for the decreased value of materials due to irreparable damage.

(4) Fines are monetary sanctions imposed for the failure to return materials to the library by the designated time or date. Materials due on a designated date must be returned before the library's close of business on that day. Materials due at a designated time are overdue if returned to the unit from which it was borrowed more than five minutes after that time.

(5) Fines, charges, and/or unpaid fees levied by the library are a debt to Washington State University. All policies and law applicable to university debts apply to the fines, charges, and unpaid fees.

(6) The library may levy reasonable charges to defray the costs incurred by the library in billing for fines, charges, and unpaid fees.

(7) The library sends all notices and invoices for fines, charges, and unpaid fees by United States first class, campus, or electronic mail. A library patron or borrower owes the

finest, charges, and fees invoiced even if the patron or borrower does not receive a notice or invoice for those amounts.

NEW SECTION

WAC 504-41-057 Payment of fines, fees, and charges. (1) Individuals are to remit payment of fines, fees, and charges to the WSU cashier unless the university refers the charges to a collection agency.

(2) Departmental, grant, or other funds controlled by the university may not be used to pay fines, fees, and charges.

(3) Failure to pay library fines, charges, and fees and/or failure to return library material by the end of the semester in which the materials are due may result in:

- (a) Holds being placed on student records;
- (b) Cancellation or blocking of registration for students;
- (c) Collection processing by the library and/or campus agencies or a referral to a collection agency;
- (d) Revocation of borrowing privileges;
- (e) Civil or criminal action against the borrower; or
- (f) Any combination thereof.

(4) The dean or his or her designee has the right to reduce or forgive fines and charges for borrowers in accordance with guidelines established by the dean.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 504-40-010	General policies.
WAC 504-40-020	Library patron identification.
WAC 504-40-030	Internal use of library materials, facilities, and services.
WAC 504-40-045	External use of library resources.
WAC 504-40-055	Loan time periods.
WAC 504-40-060	Fines and charges.

**WSR 11-23-138
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed November 22, 2011, 9:03 a.m., effective December 31, 2011]

Effective Date of Rule: December 31, 2011.

Purpose: ESSB 5873, which passed the 2009 legislature, requires the apprenticeship program to adopt rules regarding penalties for contractors found to be working apprentices out of ratio, with inappropriate supervision, or outside their work process scope of the approved apprenticeship program standards. Contractors who are found out of compliance in any of these areas by the Washington state apprenticeship and training council (WSATC) may have their responsible bidder status revoked for the first violation and be barred from bidding

on any public works contract for five years upon the second violation.

Statutory Authority for Adoption: Chapter 49.04 RCW, RCW 19.285.040, and chapter 197, Laws of 2009 (ESSB 5873).

Adopted under notice filed as WSR 11-16-084 on August 2, 2011.

Changes Other than Editing from Proposed to Adopted Version: Based upon comments received during the public hearing process, the department amended the proposed rules by shortening the length of time to process complaints against the training agent who violates apprenticeship standards.

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 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 1, Amended 0, Repealed 0.

Date Adopted: November 22, 2011.

Judy Schurke
Director

NEW SECTION

WAC 296-05-015 Decisions against training agent for violating ratio, supervision and/or approved work process requirements. Based on a complaint, compliance review, or other reason, the supervisor may investigate, in accordance with the rules in this chapter, whether a training agent is in compliance with the program standards relating to the ratio, supervision, or approved work processes requirements for purposes of responsible bidder status for public works under RCW 39.04.350 (1)(e), or for purposes of prohibitions on bidding on public works contracts under RCW 39.12.055(3).

(1) The supervisor shall notify the training agent and the program sponsor that an investigation has commenced.

(2) The supervisor shall prepare a report identifying the results of the investigation. If the results indicate that the training agent is not operating as required by the program standards, the supervisor will notify the training agent and program sponsor in writing of the results, with a copy of the report to the WSATC. Additionally:

(a) The supervisor will make a reasonable effort to secure compliance on the part of the training agent by requiring the training agent to submit to the supervisor a proposed plan identifying voluntary corrective action. The supervisor shall review the proposed corrective action plan and approve it, or work with the training agent to modify it, before its

implementation. If the supervisor does not receive notice, within sixty calendar days, that action has been taken to correct violations, the supervisor may refer the matter to the WSATC for action. The program sponsor shall assist the training agent in developing a proposed corrective action plan and shall assist the supervisor in monitoring the training agent's compliance with the terms of the approved corrective action plan.

(b) If the supervisor is unable to obtain compliance from the training agent under (a) of this subsection, or if a second investigation within one year of the initial inspection reveals the training agent is not operating as required by the program standards, the supervisor shall refer the matter to the WSATC for action.

(3) The WSATC will take action upon the supervisor's referral under subsection (2)(b) of this section. After a hearing, the WSATC will decide by a majority vote of the members present whether to issue a determination under RCW 39.04.350 (1)(e) and 39.12.055(3) that the training agent is out of compliance with program standards relating to the ratio, supervision, or approved work processes requirements.

(4) A determination by the WSATC that a training agent is out of compliance with program standards relating to the ratio, supervision, or approved work processes requirements shall be stated in writing, along with the reasons supporting it, and shall be served upon the training agent, program sponsor, and supervisor as provided by RCW 34.05.010(19). Judicial review of the WSATC's written decision under this section shall be as provided in chapter 34.05 RCW.

(5) The supervisor shall place WSATC determinations under this section on file for public review. The supervisor shall maintain a list of all training agents who, as a result of a determination they are out of compliance pursuant to RCW 39.04.350 (1)(e) and 39.12.055(3), are ineligible to bid on a public works contract, or to have a bid accepted. The supervisor shall make the list available to the public upon request.

WSR 11-23-140
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 22, 2011, 9:04 a.m., effective December 31, 2011]

Effective Date of Rule: December 31, 2011.

Purpose: The purpose of this rule making is to update the contractor registration rules in response to:

- Chapter 15, Laws of 2011 (ESHB 1055), which changes the time period for a contractor to appeal an infraction from twenty to thirty days.
- Chapter 301, Laws of 2011 (SSB 5067), which allows the program to send certified mail by other methods that can be tracked or the delivery can be confirmed.

The contractor registration rules are being amended to be consistent with statute by:

- Changing the contractor appeal period from twenty to thirty days.

- Amending requirements to send correspondence via certified mail to include other methods by which mail can be tracked or the delivery can be confirmed.
- Updating the definition of infraction to include the notice of assessment.
- Adding a new section to clarify when the notice of infraction and notice of assessment become final and the department may begin collection activity on past due accounts.

Citation of Existing Rules Affected by this Order: Amending WAC 296-200A-015 What terms do I need to know to understand this chapter?, 296-200A-040 What can cause the suspension of a contractor's registration?, 296-200A-065 What procedures must be followed when surety bonds and/or other securities approved by the department become impaired?, 296-200A-080 How is a suit filed against a contractor?, 296-200A-305 How does the department notify registered contractors about unregistered subcontractors they have employed?, 296-200A-320 How can a notice of infraction be served?, and 296-200A-340 How does a contractor appeal a notice of infraction?

Statutory Authority for Adoption: Chapter 18.27 RCW, chapter 15, Laws of 2011 (ESHB 1055), and chapter 301, Laws of 2011 (SSB 5067).

Adopted under notice filed as WSR 11-19-084 on September 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 1, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 6, Repealed 0.

Date Adopted: November 22, 2011.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-10-079, filed 5/5/09, effective 6/5/09)

WAC 296-200A-015 What terms do I need to know to understand this chapter? For the purposes of this chapter, the following terms and definitions are important:

"Administrative law judge" is any person appointed by the chief administrative law judge (as defined in RCW 34.12.020(2)) to preside at a notice of infraction appeal hearing convened under chapter 18.27 RCW and this chapter.

"Appeal bond" is a certified check or money order in the amount prescribed under RCW 18.27.250 made payable to the Washington state department of labor and industries.

"Appeal hearing" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

"Applicant" is any person, firm, corporation or other entity applying to become a registered contractor according to chapter 18.27 RCW and this chapter. Applicant includes all principal officer(s), members, partners of a partnership, firm, corporation, or other entity named on the application.

"Citation" means the same as "infraction."

"Compliance inspector" refers to the departmental staff responsible for investigating potential violations of chapter 18.27 RCW and this chapter.

"Consultant" means any person, individual, firm, agent or other entity who directs, controls or monitors construction activities for a property owner. A general contractor registration is required. A licensed professional acting in the capacity of their license is exempt from registration.

"Contractor compliance chief" refers to the person designated by the director to address all policy and technical issues related to chapter 18.27 RCW and this chapter.

"Department" refers to the department of labor and industries.

"Developer" means any person, firm, corporation or other entity that undertakes:

- The subdivision or development of land for residential purposes; or
- The construction or reconstruction of one or more residential units.

A general contractor registration is required.

"Director" refers to the director of the department of labor and industries or the director's designee acting in the place of the director.

"Final judgment" means any money that is owed to a claimant as a result of court action against or settlement with a contractor and/or contractor's bond or assigned savings account with the department or any money that is owed the department as a result of a contractor's unsuccessful appeal of an infraction. Final judgment also includes any penalties assessed against the contractor and owed the department as a result of an infraction or notice of correction that has not been appealed, final tax warrants or any delinquent fees or penalties due.

"Final tax warrant" is a document used by the department to establish the debt of a tax payer.

"Infraction" means a violation of chapter 18.27 RCW and this chapter as cited by the chief contractor compliance inspector or the department's construction compliance inspectors. The notice of infraction also serves as a notice of assessment.

"Mobile/manufactured home dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles and licensed as required under chapter 46.70 RCW.

"On-premise sign" means a sign at a permanent place of business or a sign placed at a job location while the registered contractor is working at the site. A sign left at a work site after a contractor has left is not an "on-premise" sign and must contain the registered contractor's registration number.

"Property management company" means any person, firm or other entity that in the pursuit of a property management business advertises, bids/offers, or performs construction, maintenance or repair services with their own employees on property not owned by the property management company. A general contractor registration is required.

"Renewal" or **"renewed"** means the renewal of a contractor's registration before it expires.

"Reinstatement" or **"reinstated"** means the reinstatement of a contractor's registration after the registration has expired, or has been suspended, or been revoked.

"Reregistration" or **"reregister"** means an update to a contractor's registration because of business structure change.

"Secured contractor" is a contractor who has complied with RCW 18.27.040 by assigning to the department a savings account held in a Washington state bank, or by filing with the department a surety bond.

"Security" is a savings account held in a Washington state bank and assigned to the department in lieu of a surety bond.

"Unregistered contractor" means a person, firm, corporation or other entity working as a contractor without being registered in compliance with chapter 18.27 RCW and this chapter.

"Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

AMENDATORY SECTION (Amending WSR 09-10-079, filed 5/5/09, effective 6/5/09)

WAC 296-200A-040 What can cause the suspension of a contractor's registration? (1) A contractor's registration will be suspended if the following impairments, cancellations, noncompliance, or errors occur:

(a) A surety bond or other security has an unsatisfied final judgment against it or becomes otherwise impaired.

(b) A surety bond is canceled.

(c) An insurance policy is expired, canceled, revoked or the insurer is withdrawn from the insurance policy.

(d) The contractor has an unsatisfied final judgment against it under chapter 18.27 RCW and this chapter.

(e) The department has notice that the contractor is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of chapter 18.27 RCW and this chapter.

(f) The program has been notified that the contractor has outstanding debt owed to the department for work performed under this chapter, such as industrial insurance premiums owed for workers' hours or penalties for violation of chapter 18.27 RCW and this chapter.

(g) The department is notified that the contractor has been certified by the department of social and health services as a person who is not in compliance with a support order as provided in RCW 74.20A.320.

(h) The department finds that the contractor has provided false or misleading information or has otherwise been registered in error.

(i) The contractor fails to comply with a penalty payment plan agreement.

(j) The contractor has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service conditional scholarship.

(k) The contractor does not maintain an active and valid unified business identifier number with the department of revenue.

(1) The contractor does not provide the department with updated information or forms as necessary to validate their information.

(2) The contractor's registration will be automatically suspended on the effective date of the impairment or cancellation. The department must mail a notice of the suspension to the contractor's last recorded address with the contractor registration program (~~((by certified mail and first class mail))~~) within two days after suspension.

(3) A contractor must not advertise, offer to do work, submit a bid, or perform any work as a contractor while its registration is suspended. To continue to operate as a contractor while its registration is suspended is a violation of chapter 18.27 RCW and subject to infractions.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-065 What procedures must be followed when surety bonds and/or other securities approved by the department become impaired? (1) Once the department has been notified that the surety bond or other security approved by the department has been impaired by a final judgment or reduced by payment to an amount less than is required by WAC 296-200A-030, the contractor's registration will automatically be suspended and the department will ~~((send))~~ mail a letter to the contractor (~~((by certified mail and first class mail))~~) within two days.

(2) Once the unsatisfied final judgment has been satisfied, the contractor may reapply according to the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-080 How is a suit filed against a contractor? (1) A civil suit against a contractor must be filed in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. Unless the suit is filed in a superior court, the department will not be able to direct payment on an unsatisfied final judgment against a secured contractor.

(2) Notice that a suit has been filed (a summons and complaint) against a contractor, the contractor's bond, and/or the contractor's deposit must be exclusively delivered to the department by registered or certified mail to: P.O. Box 44450, Olympia, Washington 98504-4450 or by any delivery

requiring notice of receipt to: 7273 Linderson Way S.W., Tumwater, WA 98501. The notice must be addressed to the department and must include three copies of the summons and complaint filed against the contractor, the contractor's bond and/or the contractor's deposit. The person filing the suit must pay a fifty-dollar service fee to the department.

(3) The summons and complaint against a contractor must include the following information:

(a) The name of the contractor exactly as it appears in the contractor's registration file;

(b) The contractor's business address;

(c) The names of the owners, partners or officers of the contractor if known; and

(d) The contractor's registration number.

(4) If the suit joins a bonding company, the summons and complaint should also include:

(a) The name of the bonding company that issued the contractor's bond;

(b) The bond number; and

(c) The effective date of the bond.

(5) If the suit is against a contractor using an assigned account in lieu of a bond, the complaint must also include:

(a) The name of the institution where the assigned account is held;

(b) The account number; and

(c) The date the assigned account was opened.

(6) Service is not considered complete until the department receives the documents in Tumwater with the fifty-dollar fee and three copies of the summons and complaint.

(7) Within two days of receiving a summons and complaint, the department must ~~((transmit))~~ mail a copy of the summons and complaint to the registrant at the address listed on the registrant's application or at their last known address provided to the department and to the registrant's surety. ~~((Under the definition for "service" as described in RCW 18.27.010(11) as related to mailing of summons and complaints under RCW 18.27.040 the requirement of "return receipt" will be fulfilled by use of the United States Postal Service "tracking and confirming" web site data.))~~

(8) The department will return a summons and complaint without it being served, if the department cannot readily identify either the contractor or bonding company being sued, if the action did not arise under chapter 18.27 RCW, or if the fee and three copies of the summons and complaint are not received.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-305 How does the department notify registered contractors about unregistered subcontractors they have employed? (1) Unless a general contractor or its representative has been given written notification by the department that a subcontractor they have employed, who was registered when employed, has subsequently become unregistered, it is not unlawful for the general contractor to employ that subcontractor. (See RCW 18.27.020(3).)

(2) To comply with RCW 18.27.020(3), the department, when feasible, will issue a written "notice of unregistered subcontractors" to a general contractor or its representative.

(3) A "notice of unregistered subcontractor" issued under this section must be personally served on the general contractor named in the notice by the department's compliance inspectors or must be ~~((served by certified mail directed))~~ mailed to the general contractor named in the notice.

(4) If the general contractor named in the notice is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If the notice is personally served upon an employee and the department is able to obtain the general contractor's address, the department must ~~((send))~~ mail a copy of the notice ~~((by certified mail))~~ to the general contractor within four days of service.

(5) A "notice of unregistered subcontractor" **is not** a notice of infraction.

(6) A "notice of unregistered subcontractor" is not required to issue an infraction to a contractor for employing a subcontractor that was unregistered, suspended or expired at the time they were hired by the general contractor.

If no signed contract between the contractor and the unregistered subcontractor exists, the first date of work performed by the subcontractor will be used as the hire date.

(7) If, after receiving the "notice of unregistered subcontractor," the general contractor continues to employ the subcontractor in question, it will be liable for an infraction under RCW 18.27.200.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-320 How can a notice of infraction be served? (1) A notice of infraction is served when the notice of infraction is issued personally or mailed to the contractor named in the notice or to an employee of the contractor named by the compliance inspector issuing it ~~((or when sent by certified mail with "return receipt" requested))~~.

(2) If the notice of infraction is personally served and the person served does not know the contractor's name or address, the department does not need to mail a copy of the infraction to the contractor; however, the notice remains in force.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-340 How does a contractor appeal a notice of infraction? (1) Under RCW 18.27.250 a contractor may appeal a notice of infraction by:

(a) Filing the notice of appeal with the department within ~~((twenty))~~ thirty calendar days of service of the infraction on-site or within ~~((twenty))~~ thirty calendar days of the postmark date of the infraction served through the mail, whichever is earlier; and

(b) Stating the basis for the appeal of the infraction in their written request; and

(c) Including a certified check or money order in the amount of two hundred dollars as a bond on the appeal.

(2) Each notice of infraction required a separate two hundred dollar appeal bond.

(3) These time frames apply to the issuance of the infraction for all violations of chapter 18.27 RCW.

If the ~~((twentieth))~~ thirtieth calendar day falls on a holiday or weekend, receipt will be accepted up to the next business day.

NEW SECTION

WAC 296-200A-345 What happens if a contractor fails to appeal a notice of infraction and assessment? If a contractor fails to appeal a notice of infraction and assessment within the required time frame, the notice of infraction and assessment becomes final and binding and payment is due. If the department does not receive payment, collections action will be taken, which may include additional penalties and interest.

WSR 11-23-141

PERMANENT RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 22, 2011, 9:05 a.m., effective December 31, 2011]

Effective Date of Rule: December 31, 2011.

Purpose: The plumber certification program was given the authority by 2ESHB 1087, which passed the 2011 legislature, to increase fees to cover the program's expenditures. The plumber certification program's budget and projected revenue indicate a fee increase is necessary to help cover the cost of ongoing services of the program. Due to a projected revenue shortfall of \$60,000, the program will need to increase fees 8.6 percent.

Citation of Existing Rules Affected by this Order: Amending WAC 296-400A-045.

Statutory Authority for Adoption: Chapter 18.106 RCW and 2011 2ESHB 1087.

Adopted under notice filed as WSR 11-19-085 on September 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 1, Repealed 0.

Date Adopted: November 22, 2011.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers nonrefundable fees: Fees related to journeyman and specialty plumber certification:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$((139.90)) <u>151.90</u>
Domestic pump specialty application fee*****	Per application	\$((139.90)) <u>151.90</u>
Reciprocity application*	Per application	\$((139.90)) <u>151.90</u>
Trainee certificate**	One year or when hours are updated	\$((41.70)) <u>45.20</u>
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	120 days	\$((69.50)) <u>75.40</u>
Journeyman or residential specialty certificate renewal or 1st card***	Two years	\$((112.00)) <u>121.60</u>
Domestic pump specialty plumber certificate renewal or 1st card***	Three years	\$((168.10)) <u>182.50</u>
Backflow assembly maintenance and repair specialty certificate renewal or 1st card***	Two years	\$((77.30)) <u>83.90</u>
Medical gas endorsement application	Per application	\$((51.50)) <u>55.90</u>
Medical gas endorsement renewal or 1st card***	Two years	\$((77.00)) <u>83.60</u>
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		\$((224.60)) <u>243.90</u>
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$((129.20)) <u>140.30</u>
Reinstatement fee for domestic pump		\$((336.30)) <u>365.20</u>
Replacement fee for all certificates		\$((18.90)) <u>20.50</u>
Refund processing fee		\$((30.10)) <u>32.60</u>
Unsupervised trainee endorsement		\$((30.10)) <u>32.60</u>
Inactive status fee		\$((30.10)) <u>32.60</u>
Honorary plumbing certification		\$((120.00)) <u>130.30</u>
Certified letter fee/verification of licensure		\$((30.10)) <u>32.60</u>
Documents copied from a plumber's file		\$2.00 per page maximum copy charge \$30.00
Continuing education new course fee*****		\$((181.90)) <u>197.50</u>
Continuing education renewal course fee*****		\$((90.80)) <u>98.60</u>
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

- * Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.
- ** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. Trainee update fee required when hours are submitted outside of renewal period.
- *** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The two-year renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed every six months during the renewal cycle.
- **** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement or the domestic pump or pump and irrigation examination. **This fee is not paid to the department.**
- ***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**
- ***** This fee is for a three-year period or code cycle.
- ***** The domestic pump specialty application is valid for one year.

WSR 11-23-154
PERMANENT RULES
BOARD OF INDUSTRIAL
INSURANCE APPEALS

[Filed November 22, 2011, 9:43 a.m., effective December 23, 2011]

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

Purpose: To revise the board's rules of practice and procedure by amending WAC 263-12-01501 and 263-12-165, and by adding two new sections, WAC 263-12-052, regarding contents of claim resolution structured settlement agreements, and 263-12-054, regarding petitions to enforce terms of claim resolution structured settlement agreements. Rules are being modified to meet current business needs and to meet the legislative mandate for enacting rules to implement EHB 2123, chapter 37, Laws of 2011, effective June 15, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 263-12-01501 and 263-12-165.

Statutory Authority for Adoption: RCW 51.52.020.

Adopted under notice filed as WSR 11-20-083 on October 4, 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 2, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 2, 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: November 22, 2011.

J. Scott Timmons
Executive Secretary

NEW SECTION

WAC 263-12-052 Contents of claim resolution structured settlement agreement. A claim resolution structured settlement agreement shall be submitted electronically with a signed copy of the agreement. The agreement shall contain the following information:

- (1) The names and mailing addresses of the parties to the agreement;
- (2) The date of birth of the worker;
- (3) The date the claim was received by the department or the self-insured employer, and the claim number;
- (4) The date of the order allowing the claim and the date the order became final;
- (5) The payment schedule and amounts to be paid through the claim resolution structured settlement agreement;
- (6) The nature and extent of the injuries and disabilities of the worker and the conditions accepted and segregated in the claim;
- (7) The life expectancy of the worker;
- (8) Other benefits the worker is receiving or is entitled to receive and the effect that a claim resolution structured settlement agreement may have on those benefits;
- (9) The marital or domestic partnership status of the worker;
- (10) The number of dependents, if any, the worker has;
- (11) A statement that:
 - (a) The worker knows that he/she has the right to:
 - (i) continue to receive all the benefits for which they are eligible under this title,
 - (ii) participate in vocational training if eligible, or
 - (iii) resolve their claim with a structured settlement;
 - (b) All parties have signed the agreement. If a state fund employer has not signed the agreement, a statement that:
 - (i) the cost of the settlement will no longer be included in the calculation of the employer's experience factor used to determine premiums, or
 - (ii) the employer cannot be located, or
 - (iii) the employer is no longer in business, or
 - (iv) the employer failed to respond or declined to participate after timely notice of the claim resolution settlement process provided by the department;
 - (c) The parties are seeking approval by the board of the agreement;
 - (d) The agreement binds parties with regard to all aspects of the claim except medical benefits;
 - (e) The periodic payment schedule is equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to

RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(f) The agreement does not set aside or reverse an allowance order;

(g) The agreement does not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim;

(h) The agreement does not subject any department funds covered under the title to any responsibility or burden without prior approval from the director or his/her designee;

(i) The unrepresented worker or beneficiary of a self-insured employer was informed that he/she may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during the negotiations;

(j) The claim will remain open for treatment or that the claim will be closed;

(k) The worker will either be required to or not be required to demonstrate aggravation of accepted conditions as contemplated by RCW 51.32.160 if the worker applies to reopen the claim;

(l) The parties understand and agree to the terms of the agreement;

(m) The parties have entered into the agreement knowingly and willingly, without harassment or coercion;

(n) The parties have represented the facts and the law to each other to the best of their knowledge;

(o) The parties believe that the agreement is reasonable under the circumstances;

(p) The parties know that they may revoke consent to the agreement by providing written notice to the other parties and the board within thirty days after the agreement is approved by the board.

(q) The designation of the party that will apply for approval with the board;

(r) Restrictions on the assignment, if any, of rights and benefits under the claim resolution structured settlement agreement.

NEW SECTION

WAC 263-12-054 Petition to enforce terms of claim resolution structured settlement agreement. A petition to enforce the terms of a claim resolution structured settlement agreement must include:

- (1) a copy of the agreement;
- (2) a copy of the board order approving the agreement;
- (3) a statement setting forth the basis for the parties' failure to comply with the agreement; and
- (4) the current mailing address of each party to the agreement.

AMENDATORY SECTION (Amending WSR 10-14-061, filed 6/30/10, effective 7/31/10)

WAC 263-12-01501 Communications and filing with the board. (1) Communications with the board.

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions,

witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(b) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, or by telephone facsimile.

(i) **Filing personally.** The filing of a written communication with the board personally is perfected by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(iii) **Filing by telephone facsimile.**

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(B) The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next business day.

(C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

(D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

(E) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(F) The board may require a party to file an original of any document previously filed by telephone facsimile.

(iv) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's internet site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the notice of appeal is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(v) **Electronic filing of application for approval of claim resolution structured settlement.** An application for approval of claim resolution structured settlement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement as provided on the board's internet site. An electronic application for approval of claim resolution structured settlement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the application for approval of claim resolution structured settlement is considered to be filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement has been received. An electronic copy of the signed agreement for claim resolution structured settlement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(c) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(d) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number which was assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 08-01-081, filed 12/17/07, effective 1/17/08)

WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.

(a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services

rendered before the board, or before the department in a claim resolution structured settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution structured settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution structured settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of ten days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) below.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution structured settlement agreement regardless of the number of attorneys representing the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary ~~((or in))~~, sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution structured settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution structured settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution structured settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

(3) Amount of fees.

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution structured settlement agreement is approved by the board, fees for attorney's services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final.

(4) Excess fee unlawful. Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the department in securing a claim resolution structured settlement agreement, it is unlawful for the attorney to charge or

receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

**WSR 11-23-159
PERMANENT RULES
DEPARTMENT OF LICENSING**

[Filed November 22, 2011, 10:20 a.m., effective December 23, 2011]

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

Purpose: The rule increases licensing fees to support operating costs for the collection agency program.

Citation of Existing Rules Affected by this Order: Amending the rule increases licensing fees to support operating costs for the collection agency program.

Statutory Authority for Adoption: RCW 19.16.140.

Other Authority: Chapter 50, Laws of 2011 (session law), RCW 43.24.086.

Adopted under notice filed as WSR 11-20-088 on October 4, 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 1, Repealed 0.

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

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

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

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

Date Adopted: November 14, 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-043, filed 8/26/04, effective 10/1/04)

WAC 308-29-045 Collection agency fees. The following fees (~~shall~~) will be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Collection agency—Main office:	
Original application	\$ (650.00) <u>850.00</u>
Renewal	(410.00) <u>\$475.00</u>
Reregistration fee after 30 days	(1,060.00) <u>\$1,325.00</u>
Branch office (with WA main office):	
Original application	(350.00) <u>\$550.00</u>

Title of Fee	Fee
Renewal	((238.00)) <u>\$300.00</u>
Reregistration fee after 30 days	((588.00)) <u>\$850.00</u>
<u>Out-of-state collection agency—Main office:</u>	
<u>Original application</u>	<u>\$425.00</u>
<u>Renewal</u>	<u>\$237.50</u>
<u>Reregistration fee after 30 days</u>	<u>\$662.50</u>
<u>Branch office—With out-of-state main office:</u>	
<u>Original application</u>	<u>\$275.00</u>
<u>Renewal</u>	<u>\$150.00</u>
<u>Reregistration fee after 30 days</u>	<u>\$425.00</u>

**WSR 11-23-162
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE**

[Filed November 22, 2011, 10:32 a.m., effective December 23, 2011]

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

Purpose: In fall 2009, the chancellor called for the creation of a Community Colleges of Spokane (CCS) parking services taskforce. It had been many years since CCS had done a comprehensive review of parking services. Members of the taskforce worked diligently over the course of two academic years to examine various issues and bring forward recommendations for improvements. This rule incorporates the updates and changes recommended by the taskforce.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-20-005, 132Q-20-010, 132Q-20-030, 132Q-20-040, 132Q-20-050, 132Q-20-060, 132Q-20-070, 132Q-20-090, 132Q-20-100, 132Q-20-110, 132Q-20-130, 132Q-20-140, 132Q-20-150, 132Q-20-210, 132Q-20-230, 132Q-20-240, 132Q-20-250, 132Q-20-260, and 132Q-20-265.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 11-14-090 on July 1, 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 19, Repealed 0.

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

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

Date Adopted: November 15, 2011.

Anne Tucker
Public Information Officer
and Rules Coordinator

Chapter 132Q-20 WAC

((FACULTY AND STUDENT)) TRAFFIC RULES AND REGULATIONS

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-005 Definitions. As used in this chapter the following words and phrases shall mean:

(1) **Annual permits**—Permits, which are valid for fall through summer quarters.

(2) **Appropriate vice-president**—The chief administrative officer over student services regardless of current position title.

(3) **Board**—The board of trustees of Washington State Community College District 17, also known as Community Colleges of Spokane (CCS).

(4) **Campus**—Any or all real property owned, leased, operated or maintained by Community Colleges of Spokane.

(5) **Campus ((patrol) safety)**—~~((An employee of the college, Administration of))~~ College security officers, criminal justice, work-study students ((or)), contracted security personnel, or employees, who are responsible to the appropriate vice-president or designee for campus ~~((security))~~ safety.

(6) **College**—Any community college or separate instructional unit which may be created by the board of trustees of Community Colleges of Spokane.

(7) ~~((College personnel—Any person employed or representing on a full- or part-time basis Community Colleges of Spokane.~~

~~((8))~~ **Community Colleges of Spokane (CCS)**—Spokane Community College, Spokane Falls Community College, Institute for Extended Learning and the District Office.

~~((9))~~ (8) CCS Facilities are facilities owned by CCS or the CCS Foundation.

(9) Employee—Any person employed or representing Community Colleges of Spokane on a full- or part-time basis.

(10) Invited guest permits—Permits which are valid for an individual invited to campus by a department for a specific period designated on the permit.

(11) Quarterly permits—Permits valid for a specified academic quarter.

~~((10))~~ (12) Special permits—Permits issued under special circumstances such as ~~((“D” permit which is a quarterly disabled parking permit issued by disability support services;))~~ carpool permits, issued to ~~((college personnel))~~ employees who participate in commuter trip reduction; and honorary permits which are issued to Community Colleges of Spokane ~~((personnel))~~ employees upon retirement.

~~((11))~~ (13) Student—Any person who is or has officially registered at any college or instructional unit with the Community Colleges of Spokane and with respect to whom the college maintains education records or personally identifiable information.

~~((12) Temporary guest permits—Permits, which are valid for a specific period designated on the permit.~~

~~(13)) (14) Vehicle—An automobile, truck, motorcycle, scooter, or any vehicle ((empowered)) powered by a motor.~~

~~((14)) (15) Vendors—Persons contracted to provide services to CCS.~~

~~(16) Visitors—Any person ((or persons)), excluding students ((as previously defined, who come upon the campus as guests and person or persons)), employees, vendors and invited guests who lawfully visit the campus for purposes, which are in keeping with the colleges' role as institutions of higher learning in the state of Washington.~~

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-010 Purpose and jurisdiction for adopting rules. Pursuant to the authority granted by RCW 28B.50.140(10), the board of trustees of Community Colleges of Spokane is granted authority to make rules and regulations for pedestrian and vehicular traffic on property owned, operated or maintained by the college district. The rules and regulations contained in this chapter pertain to all students, ~~((college personnel))~~ employees, vendors, invited guests, and visitors who use district facilities unless exempted by the chancellor ~~((CEO))~~ of the district and are established for the following purposes:

- (1) To protect and control pedestrian and vehicular traffic; and
- (2) To assure access at all times for emergency traffic; and
- (3) To minimize traffic disturbance during class hours; and
- (4) To facilitate the work of the community colleges.

AMENDATORY SECTION (Amending Resolution No. 27, filed 7/23/87)

WAC 132Q-20-030 Applicable traffic rules and regulations. The other traffic rules and regulations which may be applicable upon the campuses are as follows:

- (1) The motor vehicle and other traffic laws of the state of Washington; and
- (2) The ~~((Spokane))~~ appropriate municipal code.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-040 Permits required for vehicles on campus. ~~((Students, college personnel, guests and visitors))~~ Vehicles shall not ~~((stop, park, or leave a vehicle whether attended or unattended upon the campus))~~ park at CCS facilities without a valid parking permit issued pursuant to WAC 132Q-20-050, ~~((except guests and visitors who will be given a reasonable time to secure a temporary permit from the appropriate vice-president or designee. All students who plan to park on campus and are attending educational programs on campus that meet ten or more times per quarter are required to purchase a valid quarterly permit))~~ unless parked in a metered space. Failure to obtain a permit may be grounds for disciplinary action. The fees for the parking permits shall be

established by the board of trustees of Community Colleges of Spokane and shall be published. ~~((Anyone parking on campus less than ten times per quarter shall obtain temporary guest permit(s).))~~ Students parking at CCS facilities off the main campuses of SCC and SFCC are not required to have a parking permit.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-050 Authorization for issuance of permits. The colleges are authorized to issue parking permits to students, ~~((college personnel))~~ employees, invited guests, vendors, and visitors of the college pursuant to regulations and the payment of appropriate fees as determined by the board of trustees of Community Colleges of Spokane.

Employees, students, and visitors may obtain permits from the cashier's office. Invited guests and vendors may obtain permits from the sponsoring department.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-060 Valid permit. A valid ~~((CCS))~~ CCS parking permit is:

- (1) An unexpired student or employee parking permit registered and properly displayed; or
- (2) A visitor or special parking permit authorized by the appropriate vice-president or designee, and properly displayed; or
- (3) ~~((A temporary))~~ An invited guest or vendor parking permit issued by the sponsoring department and authorized by the appropriate vice-president or designee, and properly displayed.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-070 Display of permit. All CCS ~~((permanent and temporary))~~ parking permits shall be ~~((hung))~~ displayed on the rear view mirror or in such a manner that they may be viewed through the front windshield. For motorcycles, permits must be placed on the front fork area of the vehicle.

- (1) Expired permits should be removed before new permits are attached.
- (2) Permits not displayed pursuant to the provisions of this section ~~((shall))~~ are not ((be)) valid.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-090 Permit revocation. Parking permits are the property of ~~((the college))~~ CCS and may be recalled by the appropriate vice-president or designee for any of the following reasons:

- (1) When the purpose for which the permit was issued changes or no longer exists; or
- (2) When a permit is used for an unregistered vehicle or by an unauthorized individual; or
- (3) Falsification on a parking permit application; or

- (4) Continued violations of parking regulations; or
- (5) Counterfeiting or altering a parking permit.

AMENDATORY SECTION (Amending Order 71-4, filed 7/26/71)

WAC 132Q-20-100 Right to refuse permit. ~~((The colleges))~~ CCS reserves the right to refuse the issuance of a parking permit to anyone who has had a previous parking permit revoked.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-110 Right to appeal permit revocation/refusal. ~~((:))~~ When a student parking permit has been recalled pursuant to WAC 132Q-20-090, or has been refused in accordance with WAC 132Q-20-100, or when a fine or penalty has been levied against a violator of the rules ~~((and regulations))~~ set forth in this chapter, such action by the appropriate vice-president or designee, may be appealed pursuant to WAC 132Q-108-050 ~~((; faculty, administrators, and college personnel))~~. Employees of Community Colleges of Spokane shall appeal permit revocations, refusals to grant permits, and fines or penalties levied for violations ~~((by))~~ to the appropriate vice-president ~~((to the respective college president))~~ whose decision on the matter ~~((shall be))~~ is final.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-130 Designation of parking spaces. The parking spaces available on campus shall be designated and allocated by the appropriate vice-president or designee, in such a manner that best achieves the objectives of the rules ~~((and regulations))~~ in this chapter.

(1) Faculty staff, student, and visitor spaces ~~((will be))~~ are designated for their use; and

(2) Parking spaces for the exclusive use by persons of disability ~~((will be))~~ are designated ~~((The appropriate vice-president or designee may issue special permits to students and others to park in these designated spaces))~~;

(3) Δ CCS parking permit along with an official state disabled parking permit allows the permit holder to park in any designated employee or disabled parking space ~~((as listed above; and))~~;

(4) Other special use spaces may be designated; and

(5) Parking at metered parking requires payment.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-140 Parking within designated spaces. (1) All vehicles shall follow traffic arrows and other markings established for the purpose of directing traffic on campus.

(2) In areas marked for diagonal parking, vehicles shall be parked at a forty-five degree angle, facing in.

(3) In areas marked for parallel or right-angle parking, space or stall markings will be observed.

(4) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

(5) No vehicle shall be parked ~~((on the campus))~~ except in those areas set aside and designated pursuant to WAC 132Q-20-130.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-150 Parking hours. Parking ~~((is permitted on campus))~~ permits are required to park at CCS facilities between the hours of 6:30 a.m. ~~((to 11:00))~~ and 5:00 p.m. ~~((for college personnel, and students))~~ Monday through Friday. The rules and regulations pertaining to the use of certain parking permits in specific areas are contained in WAC ~~((132Q-20-130))~~ 132Q-20-130. Students and ~~((college personnel))~~ employees may park in any of the spaces or stalls designated in WAC 132Q-20-140 except visitor's areas on a first-come, first-served basis ~~((between the hours of 5:00 p.m. and 11:00))~~ after 3:30 p.m. Custodial and ~~((other))~~ authorized ~~((personnel))~~ employees may park on campus from 10:00 p.m. to 6:30 a.m., and are ~~((still))~~ required to follow regular parking regulations and obtain parking permits.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-210 Two-wheeled motor bikes or bicycles. (1) All two-wheeled vehicles ~~((empowered))~~ powered by a motor shall park in a space designated for *motorcycles only*.

(2) ~~((No vehicle shall be driven or ridden on the sidewalks on campus at any time unless authorized by the appropriate vice-president or designee. No))~~ Only vehicles authorized by the appropriate vice-president or designee may be driven or ridden on campus sidewalks.

(3) Skateboards ~~((or))~~ and roller blades/skates ~~((shall be allowed))~~ are not permitted on campus.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-230 Exceptions from traffic and parking restrictions. These rules ~~((and regulations))~~ shall not apply to city-, county-, state- or federally owned emergency vehicles.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-240 Enforcement. (1) Enforcement of the parking rules ~~((and regulations will begin the first day of fall quarter and will continue until the start of the following fall quarter))~~ is continuous throughout the year.

(2) The appropriate vice-president or designee shall be responsible for the enforcement of the rules ~~((and regulations))~~ contained in this chapter.

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-250 Issuance of traffic citations. Upon violation of any rules ~~((and/or regulations))~~ contained in this chapter, the ~~((appropriate vice president or designee,))~~ campus safety office may issue ~~((a))~~ traffic citations setting forth the date, approximate time, permit number, license information, infraction, officer, and schedule of fines. Traffic citations may be served by attaching or affixing a copy in a prominent place outside the vehicle or by personally serving the operator/owner and by direct entry into the violator's "Customer Account~~((-))~~."

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-260 Fines and penalties ~~((for students))~~ violations. (1) Fines ~~((with))~~ may be levied by the appropriate vice-president or designee for all violations of the ~~((regulations))~~ rules contained in this chapter. A current schedule of fines is available from the ~~((security))~~ campus safety office.

(2) ~~((Students))~~ Violators have the right to due process and may appeal ~~((a decision of the appropriate vice president or designee to the college president or chief administrator of a recognized instructional unit))~~ to the college parking appeals board created in WAC 132Q-20-265, whose decision ~~((shall be))~~ is final.

(3) Vehicles parked on any campus in violation of any of the ~~((regulations))~~ rules contained in this chapter, may be impounded or detained by use of mechanical devices at the discretion of the ~~((appropriate vice president or designee))~~ campus safety office. If a vehicle is impounded, it may be taken to such place for storage as the appropriate vice-president or designee selects. The expenses of such impounding and storage shall be the sole responsibility of the owner or operator of the vehicle. CCS shall not be liable for loss or damage of any kind resulting from such impounding and storage.

(4) At the discretion of the appropriate vice-president or designee, an accumulation of traffic violations by a student ~~((with))~~ may be cause for disciplinary action, pursuant to ~~((WAC 132Q-02-270.~~

~~((5) The duly elected associated student government officers of CCS recommend a proposed schedule of fines prior to adoption of a new fine schedule.~~

~~((6))~~ chapter 132Q-30 WAC. In the case of students, failure to pay fines shall be grounds for the college, in addition to disciplinary action, to deny admission to CCS, registration, official transcripts, graduation or other administrative action. Failure to pay fines may result in the refusal to issue a permit.

~~((5) For students and employees, refusal to pay a fine still existing after exhaustion of the appellate process shall be grounds for disciplinary action. ((In the case of students, failure to pay fines shall be grounds for the college, in addition to disciplinary action, to deny admission to CCS, registration, official transcripts, graduation or other administrative action. Failure to pay fines could result in the denial of issuing a permit.))~~

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-20-265 ~~((Fines and penalties for all district employees.)) Appeals.~~ ~~((1) Fines levied for all violations are subject to payment to CCS in accordance with the established fine schedule.~~

~~((2) Faculty and other district employees have the right of due process and may appeal a decision of the appropriate vice president or designee to the college president or chief administrator of a recognized institutional unit whose decision shall be final.~~

~~((3) Vehicles parked on any campus in violation of any of the regulations contained in this chapter, may be impounded or detained by use of mechanical devices at the discretion of the appropriate vice president or designee. If a vehicle is impounded, it may be taken to such a place of storage as the appropriate vice president or designee selects. The expenses of such impounding and storage shall be the sole responsibility of the owner or operator of the vehicle. CCS shall not be liable for loss or damage of any kind resulting from such impounding and storage.~~

~~((4) At the discretion of the appropriate vice president or designee, an accumulation of traffic violations by college personnel is subject to disciplinary action pursuant to WAC 132Q-02-270.~~

~~((5) Refusal to pay a fine still existing after exhaustion of the appellate process shall be grounds for disciplinary action. Failure to pay fines could result in the denial of issuance of a permit, and/or impounding of vehicle.))~~ (1) Each college shall establish a parking appeals board consisting of no less than three members appointed by the president. The appeals board membership shall be evenly balanced among faculty, students and classified staff. Appeals from IEL sites shall be considered by the SFCC parking appeals board.

(2) The parking appeals boards shall use criteria on which to fairly judge appeals including, but not limited to:

(a) Did an institutional error occur?

(b) Were there extenuating circumstances that caused the error to occur?

(c) Did the person make a good faith effort to comply with the parking rules?

WSR 11-23-176

PERMANENT RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed November 23, 2011, 9:45 a.m., effective January 1, 2012]

Effective Date of Rule: January 1, 2012.

Purpose: To establish an annual tariff for pilotage services in the Puget Sound pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 11-20-117 on October 5, 2011.

Changes Other than Editing from Proposed to Adopted Version: The only proposed change that was adopted was the change in the effective dates.

All other proposed changes to the tariff rates and language were not adopted.

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 1, Repealed 0.

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

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

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

Date Adopted: November 10, 2011.

Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 11-10-051, filed 4/29/11, effective 5/30/11)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours ((July 1, 2010)) January 1, 2012, through 2400 hours December 31, ((2011)) 2012.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	\$48.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$349.00
Radio Direction Finder Calibration	\$349.00
Launching Vessels	\$524.00
Trial Trips, 6 hours or less (minimum \$984.00)	\$164.00 per hour
Trial Trips, over 6 hours (two pilots)	\$328.00 per hour
Shilshole Bay – Salmon Bay	\$205.00
Salmon Bay – Lake Union	\$159.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	\$205.00
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of \$258.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$123.00 per bridge.

Ships 90' beam and/or over:

A charge of \$350.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$244.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus \$266.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$266.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$266.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$266.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$266.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of \$0.0082 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of \$0.0846 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be \$0.1012 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00

Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge	\$2,107.00
Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	\$283.00 per hour
Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.	\$283.00 per hour
Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.	\$525.00
Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.	\$499.00
Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.	\$630.00

Training Surcharge:

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	255	396	675	1,006	1,354	1,757
450 - 459	266	403	679	1,021	1,376	1,766
460 - 469	268	407	690	1,038	1,395	1,774
470 - 479	277	419	698	1,059	1,399	1,777
480 - 489	285	426	701	1,078	1,408	1,785
490 - 499	289	432	712	1,098	1,424	1,794
500 - 509	304	440	722	1,110	1,436	1,805
510 - 519	306	448	729	1,127	1,451	1,812
520 - 529	310	464	740	1,132	1,464	1,826
530 - 539	319	470	749	1,145	1,487	1,847
540 - 549	324	476	766	1,157	1,510	1,864
550 - 559	331	492	771	1,174	1,522	1,882
560 - 569	343	512	786	1,185	1,536	1,899
570 - 579	350	516	789	1,190	1,552	1,912
580 - 589	365	524	808	1,199	1,561	1,931
590 - 599	382	536	813	1,205	1,584	1,954
600 - 609	396	552	824	1,209	1,604	1,963
610 - 619	418	557	838	1,214	1,619	1,981
620 - 629	434	564	846	1,229	1,638	2,004
630 - 639	454	574	855	1,232	1,652	2,021
640 - 649	472	587	864	1,234	1,666	2,036
650 - 659	505	597	880	1,244	1,686	2,057
660 - 669	515	605	887	1,251	1,705	2,073

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
670 - 679	534	620	896	1,274	1,724	2,086
680 - 689	541	630	908	1,284	1,739	2,106
690 - 699	557	640	922	1,307	1,757	2,150
700 - 719	582	661	939	1,324	1,791	2,174
720 - 739	616	679	963	1,342	1,826	2,210
740 - 759	640	712	982	1,354	1,864	2,250
760 - 779	665	734	1,006	1,376	1,899	2,279
780 - 799	698	767	1,021	1,395	1,931	2,320
800 - 819	726	789	1,041	1,402	1,963	2,355
820 - 839	749	818	1,065	1,424	2,004	2,382
840 - 859	781	851	1,086	1,441	2,034	2,423
860 - 879	810	880	1,105	1,478	2,073	2,458
880 - 899	838	905	1,127	1,512	2,106	2,494
900 - 919	863	935	1,146	1,551	2,150	2,528
920 - 939	890	963	1,174	1,584	2,172	2,563
940 - 959	922	988	1,191	1,619	2,210	2,594
960 - 979	943	1,017	1,212	1,652	2,250	2,633
980 - 999	974	1,041	1,233	1,686	2,279	2,667
1000 - 1019	1,034	1,108	1,288	1,776	2,387	2,782
1020 - 1039	1,062	1,141	1,328	1,826	2,459	2,863
1040 - 1059	1,094	1,169	1,367	1,882	2,529	2,948
1060 - 1079	1,127	1,210	1,407	1,938	2,608	3,035
1080 - 1099	1,161	1,244	1,448	1,994	2,684	3,127
1100 - 1119	1,194	1,282	1,492	2,056	2,765	3,221
1120 - 1139	1,231	1,323	1,538	2,116	2,848	3,317
1140 - 1159	1,266	1,360	1,582	2,179	2,934	3,418
1160 - 1179	1,304	1,399	1,632	2,245	3,021	3,518
1180 - 1199	1,344	1,442	1,679	2,312	3,113	3,625
1200 - 1219	1,385	1,485	1,728	2,382	3,206	3,732
1220 - 1239	1,424	1,530	1,779	2,453	3,300	3,844
1240 - 1259	1,467	1,575	1,831	2,526	3,400	3,958
1260 - 1279	1,510	1,621	1,887	2,602	3,503	4,077
1280 - 1299	1,555	1,671	1,945	2,680	3,605	4,200
1300 - 1319	1,603	1,718	2,001	2,759	3,714	4,324
1320 - 1339	1,651	1,771	2,063	2,842	3,824	4,455
1340 - 1359	1,698	1,824	2,124	2,926	3,939	4,589
1360 - 1379	1,750	1,877	2,187	3,016	4,055	4,724
1380 - 1399	1,801	1,933	2,254	3,104	4,178	4,868
1400 - 1419	1,856	1,992	2,319	3,196	4,302	5,013
1420 - 1439	1,911	2,052	2,389	3,293	4,433	5,163
1440 - 1459	1,970	2,114	2,462	3,391	4,565	5,317
1460 - 1479	2,025	2,175	2,534	3,492	4,702	5,474
1480 - 1499	2,087	2,240	2,609	3,596	4,841	5,639
1500 & Over	2,150	2,308	2,686	3,706	4,985	5,807