

**WSR 12-09-040**  
**PERMANENT RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**

[Filed April 12, 2012, 3:56 p.m., effective May 13, 2012]

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

Purpose: Revise the registration program fee structure and to adjust the registration fee amounts to reflect the costs of implementing the registration program.

Citation of Existing Rules Affected by this Order: Amending ORCAA Regulations Rules 1.4, 3.1, 4.4.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-04-021 on January 25, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 11, 2012.

Francea L. McNair  
Executive Director

## AMENDED SECTION

### *Rule 1.4 Definitions*

When used in regulations of the Olympic Region Clean Air Agency, the following definitions shall apply, unless defined otherwise in individual Regulations:

**"Actual Emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with a through c of this rule.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Agency shall allow the use of a different time period upon determination that it is more representative of normal source rates, and types of materials processed, stored, or combusted during the selected time operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production period.

(b) The Agency may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For an emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

**"Agency"** shall mean the same as "Authority."

**"Agricultural Operation"** means the growing of crops, the raising of fowl or animals as gainful occupation.

**"Air Contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

**"Air Pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, property, or which unreasonably interferes with enjoyment of life and property. For the purpose of these Regulations, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

**"Air Pollution Episode"** means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

**"Allowable Emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR part 60, 61, or 63;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or;

(c) The emissions rate specified as a federally enforceable permit condition, including those with future compliance date.

**"Alteration"** means the act of altering, which means to change or make different and includes any addition to or enlargement or replacement; or change of the design, capacity, process or arrangement; or any increase in the connected loading of equipment or control facility; or any change in fuels, method of operation or hours of operation not previously approved by the Agency through a Notice of Construction Approval, which would increase or adversely affect the kind or amount of air contaminant emitted by a stationary source.

**"Ambient Air"** means the surrounding outside air.

**"Ambient Air Quality Standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

**"Ancillary"** for the purpose of defining "stationary source" or "source," means "related."

**"Approval Order"** is defined in "order of approval."

**"Attainment Area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

**"Authority"** means the Olympic Region Clean Air Agency. "Agency" shall mean the same as "Authority."

**"Authorized Permitting Agent"** means either the county, county fire marshal, fire districts, or county conservation district, provided an agreement has been signed with the local air pollution control agency or Department of Ecology.

**"Begin Actual Construction"** means, in general, initiation of physical on-site construction activities on an emission unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**"Best Available Control Technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source which the permitting agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available control technology result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 62. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

**"Board"** means the Board of Directors of the Olympic Region Clean Air Agency.

**"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and Rule 6.1.12 of Regulation 6.

**"Commenced"** as applied to "Construction" means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

For the purpose of this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

**"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gas-

eous effluent while, in fact, not reducing the total amount of pollutant discharged.

**"Control Apparatus"** means any device that prevents or controls the emission of any air contaminant.

**"Control Officer"** means the Air Pollution Control Officer of the Olympic Region Clean Air Agency. "Executive Director" means the same as "Control Officer."

**"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

**"Criteria Pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

**"Daylight Hours"** means the hours between official sunrise and official sunset.

**"Ecology"** means the Washington State Department of Ecology.

**"Emission"** means a release of air contaminants into the ambient air.

**"Emission Point"** means the location (place in horizontal plant and vertical elevation) at which an emission enters the atmosphere.

**"Emission reduction credit (ERC)"** means a credit granted pursuant to chapter 173-400 WAC. This is a voluntary reduction in emissions.

**"Emission Standard"** and "Emission Limitation" means requirements established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act, chapter 70.94 RCW.

**"Emission Unit"** means any part of a stationary source or source which emits or would have a potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

**"EPA"** means the United States Environmental Protection Agency (USEPA).

**"Equipment"** means any stationary or portable device, or any part thereof, capable of causing the emission of any air contaminant into the atmosphere.

**"Establishment"** means the act of establishing, which means creating, setting up, or putting into practice any equipment, material, fuel, or operational change.

**"Excess Emission"** means emissions of an air pollutant in excess of an applicable emission standard.

**"Facility"** means all emission units in the same industrial grouping located on contiguous or adjacent properties and under common ownership and control.

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

**"Federally Enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to Rule 6.1.12 or WAC 173-400-091.

~~("Fee Eligible Generating Equipment" means, for the purposes of calculating Rule 3.1 fees, any equipment or process capable of generating or emitting air contaminants except for the equipment and processes listed in a through g below:~~

~~(a) Gasoline or other fuel storage tanks located at dispensing facilities as defined in Rule 8.12.~~

~~(b) Storage tanks and other equipment located at dry cleaning facilities.~~

~~(c) Combustion units with less than 10 million BTUs per hour heat input.~~

~~(d) Process equipment with less than 5,000 ACFM flow rate.~~

~~(e) Paint spray booths and related paint spraying equipment.~~

~~(f) Mobile sources.~~

~~(g) Any other equipment or process determined appropriate for this exemption by the Agency.~~

~~"Fee Eligible Stack" means, for the purposes of calculating fees pursuant to Rule 3.1, any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct, except for the following:~~

~~(a) Emission points associated with gasoline or fuel dispensing stations.~~

~~(b) Emission points associated with dry cleaning facilities.~~

~~(c) Pipes or ducts equal to or less than six (6) inches in diameter.~~

~~(d) Any other emission point determined appropriate for this exemption by the Agency.)~~

**"Fuel Burning Equipment"** means any equipment, device or contrivance used for the burning of any fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel feeding equipment, ash removal equipment, combustion controls, stacks, chimneys, etc., used for indirect heating in which the material being heated is not contacted by and adds no substances to the products of combustion.

**"Fugitive Dust"** means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

**"Fugitive Emission"** means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**"Garbage"** means refuse, animal or vegetable matter as from a kitchen, restaurant or store.

~~("Generating Equipment" means any equipment, device, process, or system that creates any air contaminant(s) or toxic air pollutant(s).)~~

**"Good Engineering Practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

**"Hogged-fuel"** means wood slabs, edging, trimmings, etc., which have been put through a "hog" to reduce them to a uniform small size, and also includes shavings from planing mills, sawdust from saw-kerfs, bits of bark, chips and other small recovered products from the manufacture of wood products or any combination thereof.

**"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

**"In Operation"** means engaged in activity related to the primary design function of the source.

**"Installation"** means the act of installing, which means placing, assembling or constructing equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

**"Light Detection and Ranging (LIDAR)"** means the EPA alternate method 1 determination of the opacity of emissions from stationary sources remotely by LIDAR

**"Lowest Achievable Emission Rate (LAER)"** means for any stationary source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of stationary source.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

**"Major Modification"** is defined depending on the attainment status of the area in which the project is located, or planned to be located, as follows:

(a) Nonattainment Areas. "Major Modification" as it applies in nonattainment areas means any physical change or change in method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(2) A physical change or change in method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act.

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which: The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or the stationary source is approved to use under any major new source review permit or approval order issued under Rule 6.1.4(b) or WAC 173-400-112;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(B) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) Attainment or unclassified areas. "Major Modification" as it applies in attainment or unclassified areas means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The stationary source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(B) The stationary source is approved to use under any PSD permit;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2001) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(B) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

"Major Stationary Source" is defined depending on the attainment status of the area in which the stationary source is located, or planned to be located as follows:

(a) Nonattainment areas. "Major Stationary Source" as it applies in nonattainment areas means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(i) 70 tons per year of  $PM_{10}$  in any "serious" nonattainment area for  $PM_{10}$ .

(ii) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary sources contribute significantly to carbon monoxide levels in the area.

(2) Any physical change that would occur at a stationary source not qualifying under (b)(1) of this rule as a major stationary source, if the change would constitute a major stationary source by itself.

(3) A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(4) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the stationary source is a major stationary source due to (b)(1)(i) or (b)(1)(ii) of this rule:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 of 113 of the Federal Clean Air Act.

(5) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, FACILITY, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or person under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, as amended.

(b) Attainment or unclassified areas. "Major Stationary Source" as it applies in attainment or unclassified areas means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

- (i) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (ii) Coal cleaning plants (with thermal dryers);
- (iii) Kraft pulp mills;
- (iv) Portland cement plants;
- (v) Primary zinc smelters;
- (vi) Iron and steel mill plants;
- (vii) Primary aluminum ore reduction plants;
- (viii) Primary copper smelters;
- (ix) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (x) Hydrofluoric, sulfuric, and nitric acid plants;
- (xi) Petroleum refineries;
- (xii) Lime plants;
- (xiii) Phosphate rock processing plants;
- (xiv) Coke oven batteries;
- (xv) Sulfur recovery plants;
- (xvi) Carbon black plants (furnace process);
- (xvii) Primary lead smelters;
- (xviii) Fuel conversion plants;
- (xix) Sintering Plants;
- (xx) Secondary metal production plants;
- (xxi) Chemical process plants;
- (xxii) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxiii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiv) Taconite ore processing plants;
- (xxv) Glass fiber processing plants; and
- (xxvi) Charcoal production plants.

(2) Regardless of the stationary source size specified in (b)(1) of this rule, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under (b)(1) or (b)(2) of this rule, as a major stationary source if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;

- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(6) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

"**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

"**Material Handling**" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant chemical or physical alteration.

"**Modification**" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that result in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

"**National Ambient Air Quality Standards (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

"**National Emission Standards for Hazardous Air Pollutants (NESHAP)**" means the federal rules in 40 CFR Part 61.

"**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

"**Net Emissions Increase**" is defined depending on the attainment status of the area in which the new stationary source or modification is located, or planned to be located, as follows:

(a) Nonattainment areas. "Net Emissions Increase" as it applies in nonattainment areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) The permitting agency has not relied on it in issuing any permit or order of approval for the stationary source under this rule or a previous SIP approved nonattainment area new source review regulation, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance to the increase from the particular change; and

(iv) The permitting agency has not relied on it in issuing any permit or order of approval under this rule or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

(6) An increase that results from a physical change at a stationary source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that

requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

(b) Attainment or unclassified areas. "Net Emissions Increase" as it applies in attainment or unclassified areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emission at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if ecology or EPA has not relied on it in issuing a PSD permit for the stationary source, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM<sub>10</sub> emissions can be used to evaluate the net emissions increase for PM<sub>10</sub>.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

"New Source" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new stationary source under the Federal Clean Air Act.

"New Source Performance Standards (NSPS)" means the federal rules set forth in 40 CFR Part 60.

"Nonattainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a national ambient air quality standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

"Nonroad Engine" means:

(a) Except as discussed in (b) of this rule, a nonroad engine is any internal combustion engine:

(1) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(2) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(3) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(1) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(2) The engine is regulated by a New Source Performance Standard promulgated under section 111 or 112 of the Federal Clean Air Act; or

(3) The engine otherwise included in (a)(3) of this rule remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is a single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that operates at a single location approximately three months (or more) each year. The paragraph does not apply to an engine after the engine is removed from the location.

"Notice of Construction Application" means a written application to permit construction, installation or establishment of a new stationary source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

"Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.

"Olympic Air Pollution Control Authority (OAPCA)" is the former name of Olympic Region Clean Air Agency (ORCAA). Reference to "OAPCA" shall mean ORCAA.

"Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

"Order" means any order issued by ecology or a local air agency pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.211, 70.94.152, 70.94.153,

and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

**"Order of Approval"** or **"Approval Order"** means a regulatory order issued by Ecology of the Agency to approve the Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

**"Owner"** means person, agent, lessor, lessee, possessor, manager, supervisor, operator, or other responsible party of real property or other assets which includes equipment or control apparatus.

**"Ozone Depleting Substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR part 82.

**"Particulate Matter"** or **"Particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

**"Parts Per Million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

**"Permit"** means a written warrant or license granted by the Board, Control Officer, or duly authorized Representative or Agent.

**"Permitting Agency"** means ecology or the local air pollution control agency with jurisdiction over the source.

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

**"PM<sub>10</sub>"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

**"PM<sub>10</sub> Emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

**"Potential to Emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

**"Prevention of Significant Deterioration (PSD)"** means the program in WAC 173-400-141. Ecology is responsible for the PSD program for stationary sources in ORCAA's jurisdiction. Contact Ecology at (360) 407-6800 for more information.

**"Process"** means any equipment, device apparatus, chemical, natural element, procedure, effort, or any combination thereof which performs a service, function, use, or

method, leading to an end of a particular performance, or manufacturing production.

**"Reasonably Available Control Technology (RACT)"** means the lowest emission limit that a particular stationary source or stationary source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or stationary source category taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or stationary source category shall be adopted only after notice and opportunity for comment are afforded.

**"Refuse"** means waste as defined in Rule 1.4 of this Regulation.

**"Regulation"** means any regulation, or any subsequently adopted additions or amendments thereto, of the Olympic Region Clean Air Agency.

**"Regulatory Order"** means an order issued by Ecology or an Agency to an air contaminant source that applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted there under, or, for sources regulated by a local air agency, the regulations of that agency.

**"Representative"** or **"Agent"** means any person authorized by the Control Officer of the Agency to represent him in an official and specific manner.

**"Residential"** means a two or single-family unit.

**"Secondary Emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new modified stationary source; and,

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

**"Significant"** is defined depending on the attainment status of the area:

(a) Nonattainment areas. "Significant" as it applies in nonattainment areas means, in reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy



Pollutant and Emissions Rate	
Lead:	0.6 tpy
PM-10:	15 tpy

(b) Attainment or unclassified areas. "Significant" as it applies in attainment or unclassified areas means:

(1) In reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter (PM)	25 tpy of PM emissions 15 tpy of PM-10 emissions
Volatile organic compounds	40 tpy
Fluorides	3 tpy
Lead	0.6 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 megagrams per year (50 tpy)
Ozone-depleting substances (in effect on July 1, 2000)	100 tpy

(2) In reference to a new emissions increase or the stationary source's potential to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(1) of this rule does not list, any emissions rate. However, for purposes of the applicability of this rule, the hazardous air pollutants listed under section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

(3) Regardless of the definition in (b)(1) of this rule, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 microgram per cubic meter (twenty four hour average).

"**Source**" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same Major Group (i.e., which have the same two digit code) as describe in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

"**Source Category**" means all sources of the same type of classification.

"**Stack**" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

"**Stack Height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.

"**Standard Conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

"**Standard Cubic Foot of Gas**" means that amount of the gas, which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor and at standard conditions.

"**State Act**" means the Washington Clean Air Act, chapter 70.94 RCW, as amended.

"**State Implementation Plan (SIP)**" or the "Washington SIP" in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

"**Stationary Source**" means any building, structure, facility, or installation, which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216(11) of the Federal Clean Air Act.

"**Synthetic Minor**" means any stationary source that's potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

"**Temporary**" means a period of time not to exceed one (1) year.

"**Total Reduced Sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

"**Total Suspended Particulate (TSP)**" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

**"Toxic Air Pollutant (TAP)" or "Toxic Air Contaminant"** means any Class A or Class B toxic air pollutant listed in WAC 173-460-150 and WAC 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or WAC 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes or compounds.

**"True Vapor Pressure"** means the equilibrium partial pressure exerted by the stored organic compound at:

(a) The annual average temperature of the organic compound as stored; or

(b) At the local annual average temperature as reported by the National Weather Service if stored at ambient temperature.

**"Unclassifiable Area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant that is listed by EPA at 40 CFR part 81.

**"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

**"Vent"** means any opening through which gaseous emissions are exhausted into the ambient air.

**"Volatile Organic Compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC:

Acetone;  
carbon monoxide;  
carbon dioxide;  
carbonic acid;  
metallic carbides or carbonates;  
ammonium carbonate;  
dimethyl carbonate;  
propylene carbonate;  
methane;  
ethane;  
methylene chloride (dichloromethane);  
1,1,1-trichloroethane (methyl chloroform);  
1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113);  
trichlorofluoromethane (CFC-11);  
dichlorodifluoromethane (CFC-12);  
chlorodifluoromethane (HCFC-22);  
trifluoromethane (HFC-23);  
1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);  
chloropentafluoroethane (CFC-115);  
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);  
1,1,1,2-tetrafluoroethane (HCFC-134a);  
1,1-dichloro 1-fluoroethane (HCFC-141b);  
1-chloro 1,1-difluoroethane (HCFC-142b);  
2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124);  
pentafluoroethane (HFC-125);  
1,1,2,2-tetrafluoroethane (HFC-134);  
1,1,1-trifluoroethane (HFC-143a);  
1,1-difluoroethane (HFC-152a);  
parachlorobenzotrifluoride (PCBTF);

cyclic, branched, or linear completely methylated siloxanes;

perchloroethylene (tetrachloroethylene);  
3,3-dichloro 1,1,1,2,2-pentafluoropropane (HCFC-225ca);

1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);  
difluoromethane (HFC-32);  
ethylfluoride (HFC-161);

1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

1,1,2,2,3-pentafluoropropane (HFC-254ca);

1,1,2,3,3-pentafluoropropane (HFC-245ea);

1,1,1,2,3-pentafluoropropane (HFC-245eb);

1,1,1,3,3-pentafluoropropane (HFC-245fa);

1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

1,1,1,3,3-pentafluorobutane (HFC-365mfc);

chlorofluoromethane (HCFC-31);

1-chloro-1-fluoroethane (HCFC-151a);

1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>);

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>(CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);

methyl acetate and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no saturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and

(iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the Agency, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly reactive compounds in the source's emissions.

## AMENDED SECTION

### Rule 3.1 Annual Registration Fees

(a) The Agency shall charge Initial and Annual registration fees pursuant to RCW 70.94.151. Annual registration fees shall be assessed according to the annual fee schedules set forth in Rule 3.1(b) below. Initial registration fees shall

be assessed upon initial registration of a source (~~subject to registration~~) and shall equal the annual registration fee based on projected emissions and prorated for the remaining months in the fiscal year. Initial and Annual registration fees shall provide revenue to fund the Agency's ongoing Registration Program.

**(b)** All sources requiring registration shall be assessed an annual registration fee; the fees required by this rule shall be based on process rates, equipment specifications, and emissions data from the previous calendar year on file with the Agency, provided that, if this information is not on file with the Agency, the Agency may base the annual fee on the enforceable emissions limitations for the source and maximum capacities and production rates. For purposes of assessing annual registration fees, the Agency shall consider updates and revisions to any source's file received prior to July 1 of the current year. (~~consisting of the sum of a "source fee," "generating equipment fee," "stack fee," "class fee," "emissions fee," and "source specific monitoring fee"~~) The fees shall be assessed according to items (1) and (~~through (9)) (2) of this rule, (and amounts as specified in Table 3.1a.)~~) Sources assessed annual operating permit fees under Rule 3.2 shall not be assessed annual fees under this rule.

~~((1) Source fee—All sources requiring registration shall pay an annual "source fee" of an amount as indicated in Table 3.1a; and~~

~~(2) A Generating Equipment Fee of an amount as indicated in Table 3.1a for each fee eligible generating equipment located at the source; and~~

~~(3) A Stack Fee of an amount as indicated in Table 3.1a for each fee eligible stack located at the source; and~~

~~(4)) (1) An Emissions Fee of an amount as indicated in Table 3.1a per ton of each air contaminant listed in Table 3.1b that is emitted by the source, (for air contaminant emitted in excess of 5 tons, evaluated on a pollutant by pollutant basis;) The emissions fee shall be based on actual emissions from the source, for the last calendar year when available, (during the previous calendar year;) or as (contained) specified in the file or permit. Only non-VOC TAPs will be subject to the emission fee; and~~

~~((5)) (2) A Registration Class Fee of an amount as specified in Table 3.1a; and~~

~~(6) A Source Specific Monitoring Fee of an amount as specified in Table 3.1a if ambient monitoring is a requirement for the source;~~

~~(7) The Agency shall assess the emissions fee based on actual emissions from the source for the last calendar year when available.~~

~~(8) The annual registration fees required by this rule shall be based on process rates, equipment specifications, and emissions data from the previous calendar year on file with the Agency. For purposes of assessing annual registration fees, the Agency shall consider updates and revisions to any source's file, received prior to July 1 of the current year. If process rates, equipment specifications, and emissions data from the previous calendar year is not on file with the Agency, the Agency may base the annual fee on the enforceable emissions limitations for the source and maximum capacities and production rates.~~

~~(9) For purposes of assessing annual registration fees, definitions for "fee eligible generating equipment" and "fee eligible stack" shall be consistent with the definitions in Rule 1.4, and fee eligible generating equipment and fee eligible stacks which are identical in size, capacity, function, and emissions may be counted as one unit as approved by the Agency.)~~

**(c)** The Agency shall assess annual registration fees after August 1 of each year to cover the cost of administering the program for the current fiscal year commencing July 1 and ending June 30. The agency shall assess annual registration fees based on the most recent information on file with the Agency including any updates to the source's file received prior to July 1 of that year.

**(d)** Upon assessment by the Agency, annual registration fees are due and payable and shall be deemed delinquent if not fully paid within thirty (30) days. However, sources classified as RC1, ~~(or) RC2, or RC3~~ shall be given the option to pay their annual fee in quarterly installments. RC1, ~~(and) RC2, and RC3~~ sources may choose to pay their annual fees in quarterly installments by indicating so on the first invoice received and remitting payment of the first installment to the Agency along with the duplicate copy of the invoice. Quarterly installments shall be equal to 25% of the total annual registration fee and shall be due within 30 days of each quarter following initial assessment by the Agency.

**(e)** Any source which fails to pay, in full, their annual registration fee or annual registration installment by the due date, as stated on the invoice, shall be assessed a late penalty in the amount of 25% of their annual registration fee. This late penalty shall be in addition to the annual registration fee.

**(f)** Annual registration fees may be appealed according to the procedure specified in Rule 1.8.

**(g)** Failure to pay annual registration fees is a violation of these Regulations and will result in the issuance of a Notice of Violation and prescribed penalties.

**(h)** On an annual basis, the Agency shall conduct a workload analysis to determine the adequacy of annual registration fees in funding the Agency's Registration Program. The workload analysis shall be based on the Agency's historical record of time and resource expenditures associated with the registration program. The workload analysis shall be presented to the Board at least every two years (~~made available if a request is made to the Agency~~). Any proposed revisions to the annual registration fee schedule shall be presented to the Board for adoption after public noticing pursuant to these Regulations public noticing requirements and opportunity for a public hearing.

**(i)** All registered sources needing to be re-inspected, due to verified conditions or actions caused by the source, will be charged an additional flat rate of \$100.00 per re-inspection.

**Table 3.1a: Annual Registration Fees (RC)**

<del>((ANNUAL FEE COMPONENT</del>	FEE COMPONENT-DESCRIPTION	FEE-AMOUNT
<del>Facility Fee</del>	Fee assessed to all sources requiring registration.	\$135.00

<u>((ANNUAL-FEE-COMPONENT</u>	<u>FEE COMPONENT-DESCRIPTION</u>	<u>FEE-AMOUNT</u>
Generating-Equip-Fee	Fee assessed per each fee eligible generating equipment located at the source.	\$45.00
Stack-Fee	Fee assessed per each fee eligible stack located at the source.	\$30.00
Emissions-Fee	Fee assessed per ton of particulate matter, SO <sub>2</sub> , NO <sub>x</sub> , VOC, and toxic air contaminants emissions which exceeded 5 tons per year for the previous calendar year based on actual emissions.	\$20.00
Class Fees:		
RC1	Major sources (≥100 tpy)	\$1600.00
RC2	Major toxic sources	\$1600.00
RC3	Criteria pollutants ≥ 30 tpy	\$800.00
RC4	Criteria pollutants ≥ 10 tpy	\$250.00
RC5	Criteria pollutant < 10 tpy	\$50.00
RC6	Toxic air contaminants < 10 tpy	\$200.00
RC7	< 100 gal/mo VOC containing materials	\$50.00
RC8	Incinerators < 30 tpy emissions	\$210.00
RC9	Potential odor sources.	\$400.00
RC10	Maj. gasoline terminals & bulk plants	\$500.00
RC11	Min. gasoline terminals & bulk plants	\$200.00
RC12	Gas stations requiring Stage-H	\$20.00
RC13	Gas stations	\$0
RC14	VACANT CLASSIFICATION	
RC15	Other sources requiring registration	\$100.00
Source Specific Ambient Air Monitoring Fees	Fees charged a source for ORCAA to establish and operate a special purpose source specific monitoring station would be determined on a case by case basis when such monitoring is required.	Variable))

<u>Registration Class (RC)</u>	<u>Registration Class Fee Amount</u>	<u>Emission Fee</u>
RC1	\$1625.00	\$50.00 per ton
RC2	\$1450.00	\$50.00 per ton
RC3	\$1300.00	\$50.00 per ton

<u>Registration Class (RC)</u>	<u>Registration Class Fee Amount</u>	<u>Emission Fee</u>
RC4	\$600.00	N/A
RC5	\$240.00	N/A

**Table 3.1b: Pollutants Considered For Fees**

Total <u>Suspended</u> Particulates (TSP)
<u>Carbon Monoxide (CO)</u>
Sulfur Oxides (SOx)
Nitrogen Oxides (NOx)
Volatile Organic Compounds (VOC)
Toxic Air Pollutants ( <u>TAP</u> )

**AMENDED SECTION**

**Rule 4.4 Classification of Sources Required to Register with Agency**

All sources requiring registration pursuant to Rule 4.1 shall be classified in one of the registration classes listed in Table 4.4b. A source will be placed in the most appropriate class as determined by the Agency. For purposes of classification, the pollutants listed in Table 4.4a will be considered.

**Table 4.4a: Pollutants**

Total <u>Suspended</u> Particulates (TSP)
Sulfur Oxides (SOx)
Nitrogen Oxides (NOx)
Volatile Organic Compounds (VOC)
Carbon Monoxide (CO)
Toxic Air Pollutants ( <u>TAP</u> )

**Table 4.4b: Registration Classes (RC)**

CLASS RC1 - Any source ((with a potential to emit 100 tons per year or more of any pollutant listed in Table 4.4a.)) <u>that has an effective Synthetic Minor Order issued pursuant to WAC 173-400-091.</u>
CLASS RC2 - Any source((, except those sources classifiable under RC1,)) with a potential to emit ((+0)) <u>30</u> tons or more per year of any <u>combination of ((toxic air))</u> pollutants ((or 25 tons or more per year of any combination of toxic air pollutants)) listed in Table 4.4a.
CLASS RC3 - Any source((, except those sources classifiable under RC1 or RC2,)) with a potential to emit ((30)) <u>10</u> tons <u>or more</u> per year ((or more)) of any <u>combination of</u> pollutants listed in Table 4.4a.
CLASS RC4 - Any source((, except those sources classifiable under RC6, RC8, or RC10, RC11, RC12, or RC13)), with a potential to emit ((at least 10)) <u>5</u> tons <u>or more</u> per year((, but not more than 30 tons per year,)) of any <u>combination of</u> pollutants listed in Table 4.4a.

~~CLASS RC5 - Any source, except those sources classifiable under RC7, RC8, RC9, RC10, RC11, RC12, or RC13, with a potential to emit less than ((40)) 5 tons per year of any combination of pollutants listed in Table 4.4a.~~

~~((CLASS RC6 - Any source, except those sources classifiable as RC1, RC2, RC3, RC7, RC8, RC10, RC11, RC12, or RC13, with a potential to emit at least 5 tons per year, but not more than 10 tons per year, of any combination of toxic air pollutants.~~

~~CLASS RC7 - Any source, except those sources classifiable as RC1, RC2, RC3, RC4, RC8, RC10, RC11, RC12, or RC13, that uses or projects to use an average of less than 100 gallons per month (annual average) of materials containing volatile organic compounds, or with a maximum potential to emit less than 5 tons per year of any combination of toxic air pollutants.~~

~~CLASS RC8 - All incinerators not classified as RC1, or RC2.~~

~~CLASS RC9 - Any air contaminant sources, not classifiable in any other RC classification, which has an actual or potential odor problem associated with its operation.~~

~~CLASS RC10 - Any gasoline terminal or bulk plant, except those terminals or bulk plants classifiable under RC1 or RC2 whose gasoline throughput was greater than 7.2 million gallons for the previous calendar year.~~

~~CLASS RC11 (minor gasoline terminals and bulk plants) - Any gasoline terminal or bulk plant, except those terminals or bulk plants classifiable under RC1 or RC2, whose gasoline throughput was equal to or less than 7.2 million gallons for the previous calendar year.~~

~~CLASS RC12 (gasoline stations, Stage II) - Any gasoline dispensing facility requiring Stage II vapor recovery.~~

~~CLASS RC13 (gasoline stations, general) - Any gasoline dispensing facility with total gasoline throughput of greater than 100 thousand gallons during the previous calendar year.~~

~~CLASS RC14 - vacant classification~~

~~CLASS RC15 - Any air contaminant sources, which are unique and because of special circumstances cannot be adequately classified elsewhere.))~~

132X-30-040, 132X-30-050, 132X-30-060 and 132X-30-070; and adding WAC 132X-30-080 and 132X-30-090.

Statutory Authority for Adoption: Chapter 28B.50 RCW and RCW 42.56.040.

Adopted under notice filed as WSR 12-05-007 on February 3, 2012.

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 2, Amended 7, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, 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: April 12 [13], 2012.

Gerald Pumphrey  
College President

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

**WAC 132X-30-010 General ((policy)) rule.** ~~((South Puget Sound Community College District 24 is an educational institution provided and maintained by the people of the state. Its campuses, buildings, properties and facilities shall be reserved at all times for those activities which are related to its broad educational objectives and goals. However, the facilities, when not required for scheduled college use, are available for rental by the public in accordance with specified fee schedules and other regulations and procedures for such use.))~~ The college allows but is not required to rent college facilities when they are not previously scheduled for college use to noncollege organizations or any individuals upon approval by the president or designee, and in accordance with administrative guidelines and procedures.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

**WAC 132X-30-020 ((Administrative control.)) Definitions.** ~~((The board of trustees delegates to the president authority to establish procedures for proper review and approval of the use of the college's facilities; to establish, within the framework of these policies, regulations governing such use; and to establish and revise fee schedules consistent with WAC 132X-30-070.))~~ (1) "College groups" shall mean individuals who are currently enrolled students or current employees of South Puget Sound Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) "College facilities" include all buildings, structures, grounds, office spaces and parking lots.

## WSR 12-10-007

### PERMANENT RULES SOUTH PUGET SOUND COMMUNITY COLLEGE

[Filed April 19, 2012, 10:50 a.m., effective May 20, 2012]

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

Purpose: For inclusion of new language to update and clarify guidelines and procedural changes, as recommended by the attorney general's office.

Citation of Existing Rules Affected by this Order:  
Amending WAC 132X-30-010, 132X-30-020, 132X-30-030,

(3) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner restrictions.

(4) "First amendment activities" include, but are not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of South Puget Sound Community College or who are not officially sponsored by a recognized student organization or a recognized employee group of the college.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

**WAC 132X-30-030 (~~Trespass regulations~~) Statement of purpose.** ((1) In order to safeguard the right of every citizen to criticize and to seek meaningful change, each individual has an obligation to respect the rights of all members of the college community.

(2) In order to assure those rights to all members of the college community and to maintain a peaceful atmosphere, the following types of conduct are hereby prohibited on or in college property:

(a) ~~Conduct which intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on the college campus;~~

(b) ~~Physical abuse of any person or conduct which is intended unlawfully to threaten imminent bodily harm or to endanger the health or safety of any person on the college campus;~~

(c) ~~Malicious damage to or malicious misuse of college property, or the property of any person where such property is located on the college campus;~~

(d) ~~Refusal to comply with any order of the president, the president's designee, or a law enforcement officer to leave the college campus or any portion thereof;~~

(e) ~~Intentionally inciting others to engage immediately in any of the conduct prohibited herein, which incitement leads directly to such conduct. (Inciting is that advocacy which prepares the group addressed for imminent action and steels it to the conduct prohibited herein.)~~

(3) ~~Guests and visitors on college property who willfully refuse to obey an order of the president, the president's designee, or a law enforcement officer to desist from conduct prohibited by the above rules and regulations may be ejected from the premises.~~

~~Refusal to obey such an order will subject the person to arrest under the provisions of the Criminal Trespass Act, in addition to such other sanctions as may be applicable.~~

(4) ~~Persons who repeatedly engage in any conduct prohibited above may be barred permanently from college prop-~~

~~erty. Before being barred permanently, a person will be given the following:~~

(a) ~~Written notice sent to the person's last known address specifying the charges against the person; and~~

(b) ~~The opportunity to request a hearing with the president or the president's designee within two weeks from the date notice is sent.~~

~~The written notice shall inform the person that he or she may produce and question witnesses, and that failure to request a hearing within the time specified constitutes a waiver of the person's right to such hearing. The college shall have the burden of proving that the person repeatedly engaged in conduct prohibited by subsection (2) of this section. After the hearing, if one is requested, the president or the president's designee may decide to bar the person from college property permanently, to grant the person a limited license to enter onto college property, or to grant the person full access to college property. A copy of the decision will be sent to the person's last known address within two weeks after the hearing.)~~ South Puget Sound Community College district is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this rule.

The purpose of the time, place and manner regulations set forth in this rule is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

**WAC 132X-30-040 (~~Scheduling~~) Use of facilities for first amendment activities.** ((The administrative regulations and procedures, schedule of fees, and application forms for use may be obtained at the office of the vice-president for administrative services or the college facilities rental coordinator. The scheduling of facilities by groups or organizations will be through these offices.)) (1) Subject to the regulations and requirements of this rule, both college and noncollege groups may use the campus limited forum areas for first

amendment activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) College groups are encouraged to notify the campus security department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

(5) College group events shall not last longer than eight hours from beginning to end.

(6) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(7) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this rule.

(8) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(9) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(10) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(11) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities service educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially recognized student organization.

(12) The event must also be conducted in accordance with any other applicable college rules and regulations, college, local ordinances and state or federal laws.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

**WAC 132X-30-050 ((Users-)) Additional requirements for noncollege groups.** ~~((In order to assure appropriate scheduling of college facilities, the following priorities will serve as guidelines:~~

~~(1) College scheduled programs and activities.~~

~~(2) College related activities, recognized college organizations, and those public or private agencies, whose purpose relate to the advancement of college programs, and/or sponsored activities.~~

~~(3) Nonprofit organizations that are nonsectarian, non-political, and noncommercial:~~

~~(a) Public education groups that would be engaging in activities serving public education goals and objectives; and~~

~~(b) Other than public education groups or organizations;~~

~~(i) That would be engaging in activities that serve governmentally supported objectives; or~~

~~(ii) That would be engaging in activities related to community improvement objectives; or~~

~~(iii) That would be engaging in activities related to the organization's goals and objectives.~~

~~(4) Private organizations and those organizations of a religious or sectarian, political or commercial nature requesting facilities on an emergency basis.~~

~~(5) Other organizations or groups-))~~ (1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities administrative guidelines and procedures. Noncollege groups may otherwise use college facilities as identified in this rule.

(2) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:

(a) The outside area between buildings 31, 32, and 33;

(b) The outside area between buildings 27, 28, and 22, excluding the covered walkway.

(3) Noncollege groups that seek to use the campus limited forums to engage in first amendment activities shall provide notice to campus security no later than forty-eight hours prior to the event along with the following information:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(b) The name, address and telephone number of a contact person for the sponsoring organization; and

(c) The date, time and requested location of the event; and

(d) The nature and purpose of the event; and

(e) The type of sound amplification devices to be used in connection with the event, if any; and

(f) The estimated number of people expected to participate in the event.

(4) Noncollege group events shall not last longer than five hours from beginning to end.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

**WAC 132X-30-060 ((Limitations of use-)) Distribution of materials.** ~~((1) College facilities may not be used in~~

ways which interfere with or are detrimental to the college's own instructional and educational programs:

~~(2) College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities serve educational purposes of the college and are conducted under the sponsorship of a college department or office.~~

~~(3) Each group or organization which uses college facilities must abide by the regulations and procedure of use as determined by the board of trustees and/or the president and shall be subject to revocation of their privilege to use the facilities for failing to do so.~~

~~(4) The administration reserves the right to deny or cancel the use of facilities when such use or meeting may in any way be prejudicial to the best interests of the college.)~~ Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

**WAC 132X-30-070 ((Fees-)) Criminal trespass.** ((Fees, when applicable, will be determined by the following categories and assessed accordingly:

~~(1) Direct charges: Will include charges for utilities (heat, light, etc.) and custodial services.~~

~~(2) Special charges: Will include charges for use of audio-visual or television equipment and operator; for campus security services, and/or any other similar kind of expenses incurred.~~

~~(3) Rental charges: Will include charges (depreciation, overhead costs, amortization, etc.) for use of facilities.~~

~~(4) Damage charges: Will include charges to defray any expense for the repair or replacement of damaged property or equipment incurred as a result of a rental agreement.)~~ Persons who violate a district policy or rule may have their license or privilege to be on district property revoked and be ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property after one's license or privilege to be on district property has been revoked shall constitute trespass and such persons shall be subject to arrest for criminal trespass under the provisions of chapter 9A.52 RCW or municipal ordinance.

#### NEW SECTION

**WAC 132X-30-080 Posting of a bond and hold harmless statement.** When using college facilities or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use rule.

When the college grants permission to a college group or noncollege group to use its facilities it is with the express

understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

#### NEW SECTION

**WAC 132X-30-090 Violations.** (1) Noncollege groups and individuals who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the campus president or designee to leave the college property, consistent with the college's trespass rule.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with established college policies, collective bargaining agreements and code of student rights and responsibilities. Nothing herein shall prevent campus security to order any violator to cease and desist from any violation, which may include an order to leave the immediate premises pending operation of the applicable disciplinary code.

#### **WSR 12-10-010**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed April 19, 2012, 2:59 p.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: WAC 246-330-010 and 246-330-199 change the definition of ambulatory surgical facilities (ASF) to reflect the definition in RCW 70.230.010 and increase fees to more adequately fund the operation of the ASF program. The new fee structure includes nine tiers with fees ranging from \$3,630 to \$10,068.

Citation of Existing Rules Affected by this Order: Amending WAC 246-330-010 and 246-330-199.

Statutory Authority for Adoption: Chapter 43.70 RCW; HB [SHB] 1575 (2011); 2ESHB 1087 (2011).

Adopted under notice filed as WSR 12-05-116 on February 22, 2012.

Changes Other than Editing from Proposed to Adopted Version: Language in WAC 246-330-199 (1)(a) and (c) "accredited at the level that meets medicare conditions of coverage" and "for the purposes of the initial and renewal fee" were removed from the proposed meaning of accredited. Language in subsection (3)(a) "date as indicated by the postmark" was added to the description of change of ownership submission date. There was also minor editing in subsections (4)(a) and (b).

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: April 19, 2012.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

**WAC 246-330-010 Definitions.** ~~((For the purposes of this chapter, the following words and phrases will have the following meanings))~~ The definitions in this section apply throughout this chapter unless the context clearly ((indicates)) requires otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the National Quality Forum in 2002 (and as updated), in its consensus report on serious reportable events in health care as referenced in chapter 70.56 RCW.

(4) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(5) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

(6) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. ~~((Excluded from this definition are a dental office, an ambulatory surgical facility licensed as part of a hospital under chapter 70.41 RCW or a practitioner's office where surgical procedures are conducted without general anesthesia.))~~ An ambulatory sur-

gical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the type of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice.

(7) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into the ambulatory surgical facility or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(8) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(9) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

(10) "Clinical evidence" means evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; or

(e) Medical photographs.

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

(12) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(13) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(14) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent of immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to provide a safe transfer to a hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(15) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(16) "Family" means individuals designated by a patient who need not be relatives.

(17) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(18) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

(19) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

(20) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(21) "Invasive medical procedure" means a procedure involving puncture or incision of the skin or insertion of an

instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(22) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(23) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(24) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

(25) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(26) "Near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

(27) "Neglect" means mistreatment or maltreatment, a disregard of consequences constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts that may result in emotional or behavioral problems, physical manifestations, and disorders.

(28) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

(29) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(30) "Operating room" means a room intended for invasive procedures.

(31) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(32) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(33) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

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

(35) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(36) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(37) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(38) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(39) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical facility staff under defined circumstances recorded in policy and procedure.

(40) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, surgery, or other diagnostic or treatment procedures.

(41) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(42) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(43) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(44) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(45) "Sexual assault" means, according to RCW 70.125.-030, one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or
- (h) An attempt to commit any of the offenses in (a) through (h) of this subsection.

(46) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10-point scale with 1 being the least and 10 being the most pain.

(47) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(48) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cytogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

(49) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

(50) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a hospital providing emergency services and for continuity of care for that patient.

(51) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(52) "Vulnerable adult" means:

(a) As defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(53) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

**WAC 246-330-199 Fees—License, ~~((survey,))~~ change of ownership, refund process.** This section establishes the initial and renewal license fees, ~~((survey, and))~~ change of ownership fee((s)), ~~((a))~~ late ~~((penalty))~~ fee, and request for refund of an initial license fee for an ambulatory surgical facility (ASF). ~~((The license and survey fee are good for the entire three-year license period. The change of ownership fee is good for that transaction and does not change the original license ending date.))~~

(1) Initial and renewal license fees. An initial license or a renewal license and fee are valid for three years. An appli-

cant((s)) for an initial or renewal license must ((send)) submit one of the following fees to the department:

**AMBULATORY SURGICAL FACILITY INITIAL AND RENEWAL FEES**

<u>Fee Type</u>	<u>Fees</u>		
<u>Initial and Renewal License</u>	<u>Performs 1,000 or Fewer Surgical Procedures on an Annual Basis</u>	<u>Performs 1,001 - 5,000 Surgical Procedures on an Annual Basis</u>	<u>Performs More than 5,000 Surgical Procedures on an Annual Basis</u>
<u>Accredited</u>	<u>\$3,630</u>	<u>\$4,447</u>	<u>\$5,410</u>
<u>Medicare Certified</u>	<u>\$4,781</u>	<u>\$5,925</u>	<u>\$7,273</u>
<u>State Licensed Only</u>	<u>\$6,507</u>	<u>\$8,142</u>	<u>\$10,068</u>

(a) ~~((An initial license fee of two hundred dollars; and (b) An initial survey fee based on the number of known or expected annual visits as follows:~~

- ~~(i) One thousand two hundred dollars for under one thousand annual patient visits;~~
- ~~(ii) One thousand six hundred dollars for one thousand one to five thousand annual patient visits; or~~
- ~~(iii) Two thousand two hundred dollars for more than five thousand annual patient visits.~~

~~(2) Renewal license. Licensees must send the department a license renewal and survey fee at least thirty days before the license expiration date as follows:~~

- ~~(a) One thousand three hundred dollars for under one thousand annual patient visits;~~
- ~~(b) One thousand seven hundred dollars for one thousand one to five thousand annual patient visits; or~~
- ~~(c) Two thousand three hundred dollars for more than five thousand annual patient visits.~~

~~(3)) Accredited means an ASF is accredited by one of the organizations identified in WAC 246-330-025 (1)(b).~~

~~(b) Medicare certified means an ASF is certified by the Centers for Medicare and Medicaid Services (CMS).~~

~~(c) State licensed only means an ASF that is not accredited and is not medicare certified.~~

~~(2) Late fee. A licensee must send the department a late fee in the amount of ((twenty-five)) fifty dollars per day, not to exceed ((five hundred)) one thousand dollars, whenever the renewal fee is not paid by thirty days before the license expiration (date as indicated by the postmark).~~

~~((4)) (3) Change of ownership. The change of ownership fee is good for that transaction and does not change the original license ending date. The person purchasing or taking over ownership of a licensed ((ambulatory surgical facility)) ASF must:~~

- ~~(a) Send the department a change of ownership fee in the amount of ((two)) five hundred ((fifty)) dollars((- The fee is paid)) thirty days before the change of ownership becomes final (date as indicated by the postmark); and~~
- ~~(b) Receive from the department a new license valid for the remainder of the current license period.~~

~~((5)) (4) An applicant may request a refund for initial licensure as follows:~~

- ~~(a) Two-thirds of the initial fee paid after the department has received an application ((and)) but has not conducted an~~

on-site survey or provided technical assistance and has not issued a license; or

(b) One-third of the initial fee paid after the department has received an application and has conducted either an on-site survey or provided technical assistance but not issued a license.

**WSR 12-10-032  
PERMANENT RULES  
TRANSPORTATION COMMISSION**

[Filed April 25, 2012, 9:41 a.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: In accordance with the guiding principle in Washington state ferries' new reservation system that reservations should not result in total cost above what that customer would have paid without reservations, the transportation commission proposes to delete a section in WAC 468-300-040 that currently requires a vehicle reservation fee for ferry routes in the San Juan Islands.

Citation of Existing Rules Affected by this Order: Amending WAC 468-300-040 Oversize vehicle ferry tolls.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.315 and section 205(1), chapter 247, Laws of 2010.

Adopted under notice filed as WSR 12-06-044 on March 5, 2012.

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: April 17, 2012.

Reema Griffith  
Executive Director

**AMENDATORY SECTION** (Amending WSR 11-18-034, filed 8/30/11, effective 10/1/11 and 5/1/12)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

**EFFECTIVE 03:00 A.M. October 1, 2011**

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	22' To Under 30' Under 7'6" High <sup>5</sup>	22' To Under 30' Over 7'6" High <sup>5</sup>	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	
Fauntleroy-Southworth Port Townsend/Coupeville	14.65	29.30	39.35	49.45	59.50	69.60	79.70	1.00
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	19.05	38.15	51.25	64.40	77.50	90.65	103.75	1.30
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	24.40	48.80	65.60	82.40	99.20	116.00	132.80	1.70
Mukilteo-Clinton	11.20	22.40	30.15	37.85	45.55	53.30	61.00	0.75
*Anacortes to Lopez <sup>2</sup>	43.85	87.70	117.85	148.05	178.25	208.45	238.65	3.00
*Anacortes to Shaw, Orcas <sup>2</sup>	52.60	105.20	141.45	177.70	213.90	250.15	286.35	3.60
*Anacortes to Friday Harbor	62.55	125.05	168.10	211.15	254.20	297.25	340.30	4.30
Between Lopez, Shaw, Orcas and Fri- day Harbor <sup>3</sup>	29.35	58.70	78.90	99.15	119.35	139.55	159.80	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	70.55	70.55	94.80	119.10	143.40	167.65	191.95	2.45
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	70.55	141.05	189.60	238.20	286.75	335.30	383.90	4.85
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	21.15	21.15	28.40	35.70	42.95	50.20	57.50	0.75
- Commercial Vehicles	21.15	42.25	56.80	71.35	85.85	100.40	114.95	1.45
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup> - Recreational Vehicles and Buses	91.70	91.70	123.20	154.80	186.35	217.85	249.45	3.20
- Commercial Vehicles	91.70	183.30	246.40	309.55	372.60	435.70	498.85	6.30

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and over 7'6" in height shall be charged the 22-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: \$61.00 base season, \$82.25 peak season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of

charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain special circumstances.

~~((COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.))~~

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount

shall apply to the driver of an oversize vehicle. The resulting fare is rounded up to the next \$0.05 if required.

**SENIOR CITIZEN DISCOUNTS** - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

**PENALTY CHARGES** - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**DISCOUNT FROM REGULAR TOLL** - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**EMERGENCY TRIPS DURING NONSERVICE HOURS** - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

**DISCLAIMER** - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

**EFFECTIVE 03:00 A.M. May 1, 2012**

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	22' To Under 30' Under 7'6" High <sup>5</sup>	22' To Under 30' Over 7'6" High <sup>5</sup>	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	
Fauntleroy-Southworth								
Port Townsend/Coupeville	15.45	30.85	41.30	51.75	62.20	72.65	83.10	1.05
Seattle-Bainbridge Island								
Seattle/Bremerton								
Edmonds-Kingston	20.00	40.00	53.55	67.10	80.65	94.15	107.70	1.35
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	25.60	51.15	68.50	85.80	103.15	120.45	137.80	1.75
Mukilteo-Clinton	11.80	23.55	31.55	39.50	47.50	55.50	63.45	0.80
*Anacortes to Lopez <sup>2</sup>	45.95	91.90	123.05	154.20	185.30	216.45	247.60	3.10
*Anacortes to Shaw, Orcas <sup>2</sup>	55.20	110.35	147.75	185.10	222.50	259.90	297.25	3.75
*Anacortes to Friday Harbor	65.60	131.15	175.55	219.95	264.40	308.80	353.20	4.45
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	30.80	61.55	82.40	103.20	124.05	144.90	165.75	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	73.85	73.85	98.90	123.90	148.90	173.95	198.95	2.50
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	73.85	147.70	197.75	247.80	297.80	347.85	397.90	5.00
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	22.10	22.10	29.60	37.05	44.55	52.00	59.50	0.75
- Commercial Vehicles	22.10	44.20	59.15	74.10	89.05	104.00	119.00	1.50

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	22' To Under 30' Under 7'6" High <sup>5</sup>	22' To Under 30' Over 7'6" High <sup>5</sup>	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup> - Recreational Vehicles and Buses	95.95	95.95	128.50	160.95	193.45	225.95	258.45	3.25
- Commercial Vehicles	95.95	191.90	256.90	321.90	386.85	451.85	516.90	6.50

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and over 7'6" in height shall be charged the 22-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: \$62.85 base season, \$84.70 peak season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain special circumstances.

~~((COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.))~~

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded up to the next \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

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## WSR 12-10-034

## PERMANENT RULES

## DEPARTMENT OF TRANSPORTATION

[Filed April 25, 2012, 11:26 a.m., effective May 26, 2012]

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

Purpose: The purpose of the WAC rule amendment is to revise the preferential loading rules for Washington state ferries' routes to support the implementation of a new vehicle reservation system, plus responding to specific legislation concerning priority loading for health care workers in the San Juan Islands.

Citation of Existing Rules Affected by this Order: Amending WAC 468-300-700 Preferential loading.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.315 and section 205(1), chapter 247, Laws of 2010.

Adopted under notice filed as WSR 12-06-057 on March 5, 2012.

Changes Other than Editing from Proposed to Adopted Version: A broader definition of route eligibility for San Juan Islands home health care workers was included; and two terms used in the new subsection (4) were more specifically defined. These changes were in response to public comment.

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: April 11, 2012.

Stephen T. Reinmuth  
Chief of Staff

AMENDATORY SECTION (Amending WSR 08-09-092, filed 4/18/08, effective 5/19/08)

**WAC 468-300-700 Preferential loading.** In order to protect public health, safety and commerce; to encourage more efficient use of the ferry system; and to reduce dependency on single occupant private automobiles:

(1) Preferential loading privileges on vessels operated by Washington state ferries (WSF), exempting vehicles from the standard first-come first-served rule, shall be granted in the order set forth below:

(a) An emergency medical vehicle, medical unit, aid unit, or ambulance dispatched to and returning from an emergency or nonemergency call while in service. Up to one additional vehicle may accompany a qualifying emergency medical vehicle or authorized med-evac when going to, but not when returning from, an emergency.

(b) A public police or fire vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call. However, these vehicles will receive priority loading when they are returning from either an emergency or nonemergency call to Vashon Island or the San Juan Islands.

(c) A public utility or public utility support vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call.

(d) Preferential loading may be granted for vehicles carrying passengers needing to accompany a family member who is being transported by an emergency vehicle, which requires the customer's timely access to the vessel's destination.

(e) Specific to routes without reservations where a vehicle occupant states that an extended wait would cause detrimental health risks to a vehicle occupant, that vehicle will be allowed preferential loading whenever the afflicted occupant has provided a medical form certified by a physician that such preferential loading is required.

However, when that vehicle occupant has not submitted the proper medical form, preferential loading will be permissible based upon appropriate terminal staff determination.

~~((e) Preferential loading may be granted for vehicles carrying passengers needing to attend to a family member subject to risk of physical threat/harm or medical emergencies which requires the customer's timely access to the vessel's destination.))~~

(f) Specific to routes with reservations, where a vehicle occupant provides a medical form certified by a physician that the occupant is returning from a medical appointment or has been discharged from the hospital and that an extended wait would cause detrimental health risks, that vehicle will be allowed preferential treatment.

(g) Specific to routes with reservations (defined in subsections (4) through (10) of this section), a vehicle with a reservation, presenting proof of that reservation.

(h) Specific to routes with reservations available to all vehicles, vehicles identified in subsection (4)(a)(i) through (v) of this section receive preferential loading only if they have a reservation.

(i) A visibly marked school vehicle owned, operated, or sponsored by a school\*\* when operating on regular schedules preapproved by the WSF or when advance notice is provided to each affected WSF terminal (\*\*as defined in RCW 28A.150.010 (K-12), RCW 28A.150.020 (public schools), RCW 28A.195.010 (K-12 private schools), and RCW 28B.195.070 (secondary schools)).

~~((g))~~ (j) A visibly marked, preapproved or regularly scheduled publicly or privately owned public transportation vehicle\*\* operating under a Washington state utilities and transportation commission certificate for public convenience and necessity (\*\*as defined in RCW 81.68.010 (regular route/fixed termini), RCW 81.70.010 (charter and excursion)).

~~((h))~~ (k) A visibly marked nonprofit or publicly supported transportation vehicle\*\* having provided each affected WSF terminal with advance notice and ~~((displaying))~~ presenting a WSF permit making it readily identifiable



as a public transportation vehicle (\*\*as defined in chapter 81.66 RCW (private, nonprofit special needs)).

~~((+))~~ (l) A visibly marked and randomly scheduled private for profit transportation vehicle\*\* operating under a Washington state utilities and transportation commission certificate for public convenience and necessity traveling on routes where WSF is the only major access for land-based traffic only when that private for profit transportation vehicle has provided each affected WSF terminal with a preapproved schedule and/or advance notice of its proposed sailing(s), (\*\*as defined in chapter 81.68 RCW (regular route/fixed termini), chapter 81.70 RCW (charter and excursion), chapter 81.66 RCW (private nonprofit special needs), chapter 46.72 RCW (private, for hire)).

~~((+))~~ (m) A ride-sharing vehicle for persons with special transportation needs\*\* transporting a minimum of three elderly and/or disabled riders or two elderly and/or disabled riders and an attendant (~~(displaying)~~ presenting WSF ride-share registration program permit only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (\*\*as defined in RCW 46.74.010 (ride sharing for persons with special transportation needs)).

~~((+))~~ (n) A visibly marked, public ride-share vehicle\*\* owned by a transit agency and leased out to members of the public through the transit agency's registration program only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (\*\*as defined in RCW 46.74.010 (commuter ride sharing)).

~~((+))~~ (o) A privately owned commuter ride-share vehicle\*\* that visibly (~~(displays)~~ presents WSF approved identification markings readily identifiable by the public. There must be a minimum of three occupants in any such vehicle to receive preferential loading. Any such ride-share vehicle must be registered and in good standing in the WSF ride-share registration program (\*\*as defined by RCW 46.74.010 (commuter ride sharing)).

~~((+))~~ (p) Specific to the Anacortes-San Juan Islands routes, a vehicle carrying livestock and traveling on routes where Washington state ferries is the only major access for land-based traffic, where such livestock (i) is raised for commercial purposes and is recognized by the department of agriculture, county agriculture soil and conservation service, as raised on a farm; or (ii) is traveling to participate in a 4H event sanctioned by a county extension agent.

~~((+))~~ (q) Specific to the Anacortes-San Juan Islands routes and until reservations are available for general purpose traffic to and from the San Juan Islands, home health care workers engaged in travel to and from patient visits.

(r) Specific to the Seattle-Bainbridge and Edmonds-Kingston ferry routes, where a vehicle occupant claims that an extended wait would cause detrimental health risks to their livestock en route to veterinarian services not available in the local community, that vehicle will be allowed preferential loading whenever the vehicle occupant has provided a medical form certified by a veterinarian that such preferential loading is required.

~~((+))~~ (s) Specific to the Fauntleroy-Vashon, Seattle-Bainbridge, Mukilteo-Clinton, and Anacortes-San Juan ferry

routes, any mail delivery vehicle with proper documentation from the U.S. Postal Service showing that such vehicle is in the actual process of delivering mail.

~~((p))~~ Specific to the Anacortes-San Juan Islands routes, a vehicle 20 ft. and over in length and 10,000 lbs. or greater in weight, provided that the vehicle is carrying or returning from carrying article(s) of commerce for purchase or sale in commercial activity.

~~((+))~~ (t) Vehicles 20 feet and over in length engaged in the conduct of commerce and/or transportation of passengers where and when WSF management has determined that the sale of vehicle space may promote higher utilization of available route capacity and an increase in revenues.

~~((+))~~ (u) An oversized or overweight vehicle (20 ft. and over in length, and/or over 8 1/2 ft. in width, and 80,000 lbs. or greater in weight) requiring transport at special times due to tidal conditions, vessel assignments, or availability of space.

~~((s))~~ As a pilot program during temporarily reduced service capacity, vehicles under 20 feet in length and passengers traveling with advance reservations on routes serving Port Townsend.

~~((+))~~ (v) A scheduled bicycle group as determined by WSF only when a representative of that group has provided WSF with advance notice of the proposed travel schedule.

(2) Preferential loading privileges shall be subject to the following conditions:

(a) Privileges shall be granted only where physical facilities are deemed by WSF management to be adequate to allow granting the privilege and achieving an efficient operation.

(b) Subject to specified exceptions, documentation outlining qualifications for preferential loading and details of travel will be required in advance from all agencies, companies, or individuals requesting such privileges.

(c) Privileges may be limited to specified time periods as determined by WSF management.

(d) Privileges may require a minimum frequency of travel, as determined by WSF management.

(e) Privileges may be limited to a specific number of vehicle deck spaces and passenger capacity for any one sailing.

(f) Privileges may require arriving at the ferry terminal at a specified time prior to the scheduled sailing.

(3) To obtain more information about the documentation required and conditions imposed under subsection (2) of this section, call WSF's general information number, 206-464-6400, or a terminal on a route for which the preferential boarding right is requested.

THE REMAINING SUBSECTIONS PROVIDE ADDITIONAL DETAILS ON VEHICLE RESERVATIONS, REFERENCED UNDER SUBSECTION (1) OF THIS SECTION.

(4) Vehicle reservation system intent.

(a) The intent of the vehicle reservation system is:

(i) To reduce queuing and congestion outside of ferry terminals;

(ii) To maximize the use of existing assets;

(iii) To provide enhanced customer service and travel predictability, spontaneity, and flexibility;

(iv) To manage demand by shifting discretionary trips from peak to off-peak sailings;

(v) To recognize the uniqueness of each different route;

(vi) To allow WSF flexibility to manage the system to best balance the needs of customers, communities, and WSF.

(b) Ferry customers are not required to make a reservation in order to travel on a Washington state ferry.

(5) Definitions.

(a) "Business account program" is a reservations program for customers who have an active business account with WSF.

(b) "Business account program member" is an individual or business who has an active business account with WSF.

(c) "Business reservation" is a vehicle reservation made by a business account program member.

(d) "General customer" is an individual or business that has purchased or is planning to purchase a reservation on a Washington state ferry and does not participate in WSF's business, premier, carpool, or vanpool reservations account programs.

(e) "General reservation" is a vehicle reservation made by a general customer.

(f) "Operational day" begins at 3:00 a.m. and ends at 2:59 a.m.

(g) "Premier account program" is a reservations program for customers who travel frequently on the route for which they are seeking a reservation.

(h) "Premier account program member" is an individual who is currently enrolled in the premier account program.

(i) "Premier reservation" is a vehicle reservation made by a premier account program member.

(j) "Reservation holder" is a ferry customer who has acquired a vehicle reservation.

(k) "Reserved space" is space within the vehicle deck space available for vehicle reservations that has been secured by a customer by making a business, premier, or general reservation on that sailing.

(l) "Service interruption" is an event that causes WSF to not be able to run according to the published schedule.

(m) "Terms of use" refers to the agreement customers must read and agree to before their transaction to make a reservation is complete.

(n) "Unreservable space" is all space on a vessel that has not been reserved, or is not available to be reserved.

(o) "Vehicle deck space available for vehicle reservations" is the amount of vehicle deck space on a given vessel that WSF will allow to be reserved. All other space on the vessel is unreservable space.

(6) Modification of these regulations. WSF management reserves the right to add, delete, or modify portions of these regulations including the schedule of reservations charges and the terms of use in accordance with its regulations and applicable laws.

(7) Properties of a vehicle reservation.

(a) A vehicle reservation gives a ferry customer the right to travel at a specific date and time on a specific route with a vehicle of a specific size, as declared at the time of booking, subject to the priority loading conditions set forth in subsections (1) and (2) of this section. This right may be withdrawn at WSF's discretion due to service interruptions; or customer behavior that is inappropriate or dangerous.

(b) A vehicle reservation is not a ticket. Customers with reservations must purchase a ticket at the tollbooth of their departure terminal in order to travel on their reserved sailing.

(c) A vehicle reservation is not resalable to third parties.

(8) Vehicle reservation deposits.

(a) Vehicle reservation deposits may be collected at levels set by WSF management according to the rules set in WAC 468-300-020 (vehicle under 22', motorcycle, and stowage ferry tolls), and WAC 468-300-040 (oversize vehicle ferry tolls).

(b) Reservation deposits paid in advance will be applied toward the actual ticket cost for the reserved sailing at the departure terminal tollbooth. However, if a customer who has paid a reservation deposit is denied the ability to purchase a ticket for that reserved sailing due to priority loading conditions identified in subsections (1) and (2) of this section, then the customer may either seek a refund of the deposit, apply the deposit towards a ticket on the next scheduled sailing on the same route, or apply the deposit in accordance with (c) of this subsection. These are the sole and exclusive remedies available to a customer in these situations.

(c) Reservation deposits paid in advance may be applied toward the actual ticket cost of other, nonreserved sailings on the same route, as defined in the terms of use.

(9) Vessel space available for reservations.

(a) WSF has the authority to set the amount of tall and standard height vehicle deck space available for vehicle reservations on each sailing in order to achieve the intentions of the vehicle reservation system.

(b) For any given sailing, WSF may vary the amount of tall and standard height vehicle deck space available for vehicle reservations, depending on factors including, but not limited to:

(i) Time of day;

(ii) Day of week;

(iii) Season of year;

(iv) Direction of travel;

(v) Route;

(vi) Vessel size;

(vii) Level of demand; or

(viii) Level of congestion.

(c) For any given sailing, WSF may vary the distribution of tall and standard height vehicle deck space dedicated for business, premier, carpool or vanpool reservations; and dedicated to general reservations, depending on factors including, but not limited to:

(i) Time of day;

(ii) Day of week;

(iii) Season of year;

(iv) Direction of travel;

(v) Route;

(vi) Vessel size;

(vii) Level of demand; or

(viii) Level of congestion.

(d) WSF may change the distribution of unreservable space up until sailing departure.

(e) WSF may release vehicle deck space available for vehicle reservations up to one year in advance of a sailing. WSF may choose to phase the release of space on a particular

sailing over time, as WSF management deems necessary to achieve the intent of the vehicle reservation system listed.

(f) Space may be made available for vehicle reservations for only certain reservation types (business account, premier account, carpool, vanpool, or general reservations).

(g) Space may be made available for a tentative sailing schedule if the final sailing schedule is not available.

(i) If departure times on the final sailing schedule are different than those on the tentative schedule, WSF will notify all affected reservation holders.

(ii) If the reserved sailing is canceled, WSF will notify the customer and refund any deposit paid.

(iii) All sailing schedules will be finalized at least six weeks before the schedule would take effect, and customers with affected reservations will be notified as soon as the schedule is final.

(h) Space allocations for specific reservation types (business account, premier account, carpool, vanpool, or general reservations) may be changed by WSF at any point in time up until sailing departure.

(10) Reservation system during service interruptions.

(a) During a ferry service interruption, WSF management may temporarily adjust business and operational rules to address the issue until normal service is restored. This may include, but is not limited to:

(i) Canceling existing reservations;

(ii) Not allowing new reservations; or

(iii) Changing existing reservations to other sailings.

(b) Upon canceling or moving a reservation, WSF will notify the affected customers via e-mail or phone.

(c) Customers will not be charged for any changes or cancellations resulting from service interruptions.

(d) If a customer's reserved sailing has been canceled or significantly delayed and the customer can no longer travel that operational day, any deposit paid will be refunded, which shall be the sole and exclusive remedy available to the customer in such situations.

(e) During service interruptions, WSF may turn customers without reservations away from the terminal.

(f) During service interruptions, WSF may not be able to guarantee travel for reservation holders.

to fulfill its due process obligation to notify parties of upcoming program changes before the associated amended program rules go into effect and will require application of those amended rules to any disputes about the department's action.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0010 and 388-02-0220.

Statutory Authority for Adoption: RCW 34.05.310(4) [34.05.020].

Adopted under notice filed as WSR 12-06-073 on March 6, 2012.

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 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 2, Repealed 0.

Date Adopted: April 17, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-04-074, filed 1/31/11, effective 3/3/11)

**WAC 388-02-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:

**"Administrative law judge (ALJ)"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not department employees or department representatives.

**"BOA"** means the board of appeals.

**"Business days"** means all days except Saturdays, Sundays and legal holidays.

**"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

**"Date of the department action"** means the date when the department's decision is effective.

**"Deliver"** means giving a document to someone in person.

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

**"Documents"** means papers, letters, writings, or other printed or written items.

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

**"DSHS or department representative"** means an employee of the department, a department contractor, or an assistant attorney general authorized to represent the department in an administrative hearing. Department representa-

**WSR 12-10-036**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Policy and External Relations)

[Filed April 26, 2012, 8:22 a.m., effective May 27, 2012]

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

Purpose: The purpose of this proposal is to make these rules more consistent with case law, other Washington regulations, and Washington statutes that refer to the date of the department's action, conduct, or decision rather than to the date of its notice. It is also necessary to manage budget shortfalls, which will require swift programmatic changes and associated amendments to program rules. The proposed changes to chapter 388-02 WAC will enable the department

tives include, but are not limited to, claims officers and administrative hearing coordinators.

**"Final order"** means an order that is the final department decision.

**"Hearing"** means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about department programs. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code (WAC), chapter 10-08 WAC, or other law.

**"Initial order"** is a hearing decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

**"Judicial review"** means a superior court's review of a final order.

**"Mail"** means placing a document in the mail with the proper postage.

**"OAH"** means the office of administrative hearings, a separate state agency from the department.

**"Party"** means:

- (1) The department or DSHS; or
- (2) A person or entity:
  - (a) Named in a department action;
  - (b) To whom a department action is directed; or
  - (c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

**"Prehearing conference"** means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

**"Prehearing meeting"** means an informal voluntary meeting that may be held before any prehearing conference or hearing.

**"Program"** means a department organizational unit and the services that it provides, including services provided by department staff and through contracts with providers. Organizational units include, but are not limited to, administrations and divisions.

**"Record"** means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

**"Review"** means a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

**"Review judge"** means a decision-maker with expertise in department rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In some cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by the department, are located in the board of appeals (BOA), and are not part of the department program involved in the review. See WAC 388-02-0600 for information on the authority of a review judge.

**"Rule"** means a state regulation. Rules are found in the Washington Administrative Code (WAC).

**"Should"** means that an action is recommended but not required.

**"Stay"** means an order temporarily halting the department decision or action.

**"You"** means any individual or entity that has a right to be involved with the department hearing process, which includes a party or a party's representative. "You" does not include the department or its representative.

**AMENDATORY SECTION** (Amending WSR 11-04-074, filed 1/31/11, effective 3/3/11)

**WAC 388-02-0220 What rules and laws must an ALJ and review judge apply when conducting a hearing or making a decision?** (1) ALJs and review judges must first apply the department rules adopted in the Washington Administrative Code.

(2) If no department rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules (~~(that were)~~) in effect on the date of the department (~~(notice was sent)~~) action, unless otherwise required by other rule or law. If the department amends (~~(the)~~) its notice of the action, the ALJ and review judge must apply the rules (~~(that were)~~) in effect on the date the (~~(initial notice was sent)~~) action was taken, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time the department has to process your application for services, benefits or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

(7) If you have a dispute with the department concerning the working connections child care (WCCC) program, the ALJ and review judge must apply the hearing rules in this chapter and not the hearing rules in chapter 170-03 WAC. The rules in this chapter apply to disputes between you and the department of social and health services.

## WSR 12-10-041

### PERMANENT RULES

### PUBLIC DISCLOSURE COMMISSION

[Filed April 27, 2012, 11:21 a.m., effective May 28, 2012]

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

Purpose: Insert and adjust contribution limits for city council and mayor candidates found in RCW 42.17A.405.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400.

Statutory Authority for Adoption: RCW 42.17.110 and 42.17.125.

Adopted under notice filed as WSR 12-06-006 on February 24, 2012.

Changes Other than Editing from Proposed to Adopted Version: Proposed version erroneously changed Code Section .405(2).

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: April 26, 2012.

Lori Anderson  
Communications and  
Training Officer

AMENDATORY SECTION (Amending WSR 12-01-032, filed 12/13/11, effective 1/13/12)

**WAC 390-05-400 Changes in dollar amounts.** Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
.005	Definition of "Independent Expenditure"	\$800	\$900
.445(3)	Reimbursement of candidate for loan to own campaign	\$4,700	\$5,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$16,000 \$800	\$18,000 \$900
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts <u>Candidates for city council office</u> <u>Candidates for mayoral office</u>	\$800 \$800 \$1,600 \$1,600 <u>\$800</u> <u>\$800</u>	\$900 \$900 \$1,800 \$1,800 <u>\$900</u> <u>\$900</u>
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$800 \$1,600	\$900 \$1,800
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.80 per voter .40 per voter .40 per voter	.90 per registered voter .45 per registered voter .45 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or		

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
	committee supporting recall		
	State parties and caucuses	.80 per voter	.90 per registered voter
	County and leg. district parties	.40 per voter	.45 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.40 per voter	.45 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$800	\$900
	To political party	\$4,000	\$4,500
.410(1)	Candidates for judicial office	\$1,600	\$1,800
.475	Contribution must be made by written instrument	\$80	\$90

**WSR 12-10-042**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Community Services Division)

[Filed April 27, 2012, 11:38 a.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: These amendments eliminate reference to general assistance (GA) and disability lifeline (DL) terminated effective October 31, 2011, and establish the aged, blind, or disabled (ABD) cash assistance program and pregnant women assistance program established November 1, 2011. These amendments are necessary to comply with the changes outlined in ESHB 2082, Laws of 2011.

Amending WAC 388-273-0020 Who may receive WTAP?, 388-406-0005 Can I apply for cash, medical, or Basic Food?, 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed?, 388-406-0055 When do my benefits start?, 388-408-0005 What is a cash assistance unit?, 388-416-0010 Medical certification periods for recipients of cash assistance programs, 388-424-0010 Citizenship and alien status—Eligibility for TANF, medicaid, and CHIP, 388-424-0015 Immigrant eligibility restrictions for the state family assistance, general assistance, and ADATSA programs, 388-436-0030 Eligibility for CEAP depends on other possible cash benefits, 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?, 388-450-0040 Native American benefits and payments, 388-450-0045 How do we count income from employment and training programs?, 388-450-0095 Allocating income—General, 388-450-0100 Allocating income—Definitions, 388-450-0115 Allocating the income of a financially responsible person excluded from the assistance unit, 388-450-0120 Allocating the income of financially responsible parents to a pregnant or parenting minor, 388-450-0130 Allocating the income of a nonapplying spouse to a caretaker relative, 388-450-0156 When am I exempt from deeming?, 388-450-0170 TANF/SFA earned income incentive and

deduction, 388-460-0020 Who is a protective payee?, 388-460-0040 When is a protective payee assigned to TANF/SFA pregnant or parenting minors?, 388-468-0005 Residency, 388-473-0010 What are ongoing additional requirements and how do I qualify?, 388-474-0010 How does being a Supplemental Security Income (SSI) client affect your cash assistance eligibility?, 388-474-0020 What can a general assistance-unemployable (GA-U) client expect when Supplemental Security Income (SSI) benefits begin?, 388-476-0005 Social Security number requirements, 388-478-0035 Maximum earned income limits for TANF, SFA and RCA and 388-486-0005 Unmarried pregnant or parenting minors—Required living arrangement; repealing WAC 388-400-0025 Who is eligible for disability lifeline benefits?, 388-404-0010 Age requirement for GA-U and ADATSA, 388-408-0010 Who is in my assistance unit for general assistance?, 388-418-0025 Effect of changes on medical program eligibility, 388-424-0016 Citizenship and alien status—Immigrant eligibility restrictions for state medical benefits, 388-448-0001 What are the incapacity requirements for general assistance?, 388-448-0010 How do we decide if you are incapacitated?, 388-448-0020 Which health professionals can I go to for medical evidence?, 388-448-0030 What medical evidence do I need to provide?, 388-448-0035 How we assign severity ratings to your impairment, 388-448-0040 PEP step I—Review of medical evidence required for eligibility determination, 388-448-0050 PEP step II—How we determine the severity of mental impairments, 388-448-0060 PEP step III—How we determine the severity of physical impairments, 388-448-0070 PEP step IV—How we determine the severity of multiple impairments, 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment, 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have a physical impairment, 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work, 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work, 388-448-0120 How we decide how long you are incapacitated, 388-448-

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Citation of Existing Rules Affected by this Order: Repealing WAC 388-400-0025, 388-404-0010, 388-408-0010, 388-418-0025, 388-424-0016, 388-448-0001, 388-448-0010, 388-448-0020, 388-448-0030, 388-448-0035, 388-448-0040, 388-448-0050, 388-448-0060, 388-448-0070, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110, 388-448-0120, 388-448-0130, 388-448-0140, 388-448-0150, 388-448-0160, 388-448-0180, 388-448-0200, 388-448-0210, 388-448-0220, 388-448-0250, 388-450-0110, 388-450-0135, 388-450-0175, 388-462-0011 and 388-478-0030; and amending WAC 388-273-0020, 388-406-0005, 388-406-0045, 388-406-0055, 388-408-0005, 388-416-0010, 388-424-0010, 388-424-0015, 388-436-0030, 388-442-0010, 388-450-0040, 388-450-0045, 388-450-0095, 388-450-0100, 388-450-0115, 388-450-0120, 388-450-0130, 388-450-0156, 388-450-0170, 388-460-0020, 388-460-0040, 388-468-0005, 388-473-0010, 388-474-0010, 388-474-0020, 388-476-0005, 388-478-0035, and 388-486-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335.

Other Authority: ESHB 2082, chapter 36, Laws of 2011 1st sp. sess.

Adopted under notice filed as WSR 12-05-023 on February 7, 2012.

Changes Other than Editing from Proposed to Adopted Version: The department originally proposed rules under WSR 11-22-032 on October 26, 2011. Due to significant changes made to the proposed rules, the department filed a supplemental notice as WSR 12-05-023 on February 7, 2012. After the supplemental notice was filed, the department made changes for clarity and to improve readability, and also amended:

- WAC 388-449-0005 (1)(b) to remove reference to requiring verification from the individual's employer.
- WAC 388-449-0100(3) to retitle "Social restrictions" as "Social and cognitive limitations."
- WAC 388-449-0200(2) to add: "(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or (d) You practice an organized religion that prohibits the treatment."

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 27, Amended 28, Repealed 33.

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 27, Amended 28, Repealed 33.

Date Adopted: April 24, 2012.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-12 issue of the Register.

**WSR 12-10-051**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Securities Division)

[Filed April 30, 2012, 11:41 a.m., effective May 31, 2012]

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

Purpose: The securities division is hereby amending WAC 460-10A-215, 460-20B-035, 460-24A-020, 460-24A-045, 460-33A-010, 460-33A-015 and 460-44A-501, to correct inaccurate reference to the definitions section of the Securities Act of Washington, RCW 21.20.005. RCW 21.20.005 was revised by the office of the code reviser pursuant to RCW 1.08.015 (2)(k). This revision resulted in a renumbering of the definitions found in RCW 21.20.005. As a result, the Washington Administrative Code now contains several inaccurate references. The rule making will correct these inaccuracies by removing the paragraph number from each reference in the WAC to the definitions in RCW 21.20.005.

Citation of Existing Rules Affected by this Order: Amending WAC 460-10A-215, 460-20B-035, 460-24A-020, 460-24A-045, 460-33A-010, 460-33A-015, and 460-44A-501.

Statutory Authority for Adoption: RCW 21.20.450.

Adopted under notice filed as WSR 12-06-059 on March 5, 2012.

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 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 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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: April 23, 2012.

Scott Jarvis  
Director

AMENDATORY SECTION (Amending WSR 02-18-044, filed 8/28/02, effective 9/28/02)

**WAC 460-10A-215 Security—Viatical and life settlement agreements.** (1) A viatical or life settlement agreement constitutes a security if the agreement falls within the definition of "security" under RCW 21.20.005(~~((12))~~) as an investment contract; an investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; or otherwise.

(2) For purpose of this section, a "viatical or life settlement agreement" means an agreement for consideration for the purchase, assignment, transfer, sale, devise or bequest of any portion of the death benefit under, or ownership of, either an insurance policy or certificate of insurance. A viatical or life settlement agreement does not include:

(a) Any agreement for the original issuance of an insurance policy or certificate of insurance;

(b) An assignment, transfer, sale, devise or bequest of a death benefit under, or ownership of, either an insurance policy or certificate of insurance by the original owner, or a person who has an insurable interest in the insured, to any of the following:

(i) The insured;

(ii) A person who has an insurable interest in the insured;

(iii) A dealer; or

(iv) A person who is engaged in the business of purchasing the death benefit under, or ownership of, either insurance policies or certificates of insurance;

(c) An assignment of an insurance policy or certificate of insurance to any bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

(d) The exercise of accelerated benefits pursuant to the life insurance policy.

AMENDATORY SECTION (Amending WSR 96-15-062, filed 7/17/96, effective 8/17/96)

**WAC 460-20B-035 Canadian broker-dealers and salespersons.** (1) A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in the United States and is not an office of, branch of, or a natural person associated with, a broker-dealer otherwise registered in the United States may transact business in this state without registering as a broker-dealer pursuant to RCW 21.20.040 under the following conditions:

(a) The business transacted by the Canadian broker-dealer must be limited to:

(i) Transactions subject to the exemption provided by RCW 21.20.320(8);



(ii) Transactions with or for a Canadian person who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the person entered this state; or

(iii) Transactions with or for a Canadian person in a self-directed tax advantaged retirement plan in Canada of which that person is the holder or contributor; and

(b) The Canadian broker-dealer must:

(i) File the following with the securities administrator:

(A) A notice in the form of that person's current application for registration required by the jurisdiction in which that person's head office is located; and

(B) A consent to service process pursuant to RCW 21.20.330; and

(ii) Be a member of a self-regulatory organization or stock exchange in Canada; and

(iii) Maintain provincial or territorial registration and membership in a Canadian self-regulatory organization or stock exchange in good standing; and

(c) Disclosure must be made to the customers in this state that the Canadian broker-dealer is not subject to the full regulatory requirements of the Securities Act of Washington.

(2) A Canadian securities salesperson representing a Canadian broker-dealer transacting business in this state pursuant to subsection (1) of this section need not register pursuant to RCW 21.20.040 provided that he or she is registered in good standing in the appropriate Canadian jurisdiction.

(3) Transactions by Canadian broker-dealers and their salespersons pursuant to subsections (1) and (2) of this section will be deemed not to involve the "offer" or "sale" of a security, as those terms are defined in RCW 21.20.005(~~((10))~~), for purposes of compliance with RCW 21.20.140. Nothing in this section shall affect the duty of the Canadian broker-dealer and its agents to comply with RCW 21.20.010 and the rules promulgated thereunder.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers.** An individual employed by or associated with a federal covered adviser is an "investment adviser representative," pursuant to RCW 21.20.005(~~((14))~~), if the representative has a "place of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940, and:

(1) Is an "investment adviser representative" pursuant to the Investment Advisers Act of 1940; or

(2) Solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser, but is not a "supervised person" as that term is defined under the Investment Advisers Act of 1940.

AMENDATORY SECTION (Amending WSR 97-16-050, filed 7/31/97, effective 8/31/97)

**WAC 460-24A-045 Holding out as a financial planner.** A person using a term deemed similar to "financial planner" or "investment counselor" under WAC 460-24A-040(2) will not be considered to be holding himself out as a financial

planner for purposes of RCW 21.20.005(~~((6))~~) and 21.20.040 under the following circumstances:

(1) The person is not in the business of providing advice relating to the purchase or sale of securities, and would not, but for his use of such a term, be an investment adviser required to register pursuant to RCW 21.20.040; and

(2) The person does not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and

(3) The person delivers to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:

(a) The person is not registered as an investment adviser or investment adviser salesperson in the state of Washington;

(b) The person is not authorized to provide financial planning or investment advisory services and does not provide such services; and

(c) A brief description the person's business which description should include a statement of the kind of products offered or services provided (e.g., the person is in the business of selling securities and insurance products) and of the basis on which the person is compensated for the products sold or services provided; and

(4) The person has each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) The person shall retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as the person continues to receive compensation from such customers, but in no case for less than three years from date of execution of the acknowledgment;

(6) If the person received compensation from the customer on more than one occasion, the person need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case the person must give the customer updated disclosure before receiving further compensation from the customer.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-010 Application.** (1) The rules contained in these regulations are intended to offer an optional method for the registration of "mortgage paper securities" as defined in WAC 460-33A-015(4). While applications for registration not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain rules of this chapter may be modified or waived by the director, if consistent with the spirit of these rules.

(2) The application of these rules does not affect those issuers to which or to whom the debenture company sections of the Securities Act apply.

(3) These rules do not affect the statutory exemptions provided for by, nor will they be applied to, those securities or transactions exempt under RCW 21.20.310 or 21.20.320. These rules are not intended to expand or restrict the definition of "security" as defined in RCW 21.20.005(~~((12))~~).

(4) The rules contained in this chapter are only applicable to mortgage paper securities, mortgage broker-dealers and mortgage salespersons registering under this chapter.

**AMENDATORY SECTION** (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

**WAC 460-33A-015 Definitions.** As used in this chapter:

(1) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005(~~((3))~~) and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(2) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of offering the mortgage paper securities including a description of the mortgage broker-dealer.

(3) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005(~~((2))~~) and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(4) "Mortgage paper securities" means notes and bonds, or other debt securities secured by mortgages or trust deeds on real or personal property or by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing, including any guarantee of or interest in the foregoing.

(5) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

(6) "Financial institution" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or other similarly regulated financial institution, or holding company for any of the foregoing.

(7) "Construction loan" means a loan in which twenty-five percent or more of the loan proceeds will be used to fund future improvements to real estate securing the loan.

(8) "Income-producing properties" means real property that produces income on a regular basis.

**AMENDATORY SECTION** (Amending WSR 11-01-139, filed 12/21/10, effective 1/21/11)

**WAC 460-44A-501 Definitions and terms.** As used in rules WAC 460-44A-501 through 460-44A-508, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000 excluding the value of the primary residence of such natural person;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its

securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made;

(4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-504 and 460-44A-505 the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than fifty percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through 460-44A-508, except to the extent provided in (a) of this subsection.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-505 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-505 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(7) "Issuer" as defined in Section 2(4) of the Securities Act of 1933 or RCW 21.20.005(~~(7)~~) shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-

44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

**WSR 12-10-057**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed May 1, 2012, 7:49 a.m., effective June 1, 2012]

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

Purpose: The purpose of this proposal is to create a department WAC to ensure compliance with ESHB 1981, chapter 47, Laws of 2011. The Washington state legislature has enacted legislation requiring the department of retirement systems to collect employer contributions from each state institution of higher education and deposit those contributions into a newly established higher education retirement plan supplemental benefit fund.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.50.030 and 28B.10.423.

Adopted under notice filed as WSR 12-06-078 on March 7, 2012.

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 1, Amended 0, Repealed 0.

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

Date Adopted: May 1, 2012.

Steve Hill  
Director

**Chapter 415-700 WAC**

**HIGHER EDUCATION RETIREMENT PLAN  
SUPPLEMENTAL BENEFIT FUND**

NEW SECTION

**WAC 415-700-010 The higher education retirement plan (HERP) supplemental benefit fund.** RCW 28B.10.-423 establishes a higher education retirement plan supplemental benefit fund, in the custody of the state treasurer, for

the purpose of funding future higher education retirement plan supplemental benefits.

(1) **Who finances the HERP supplemental benefit fund?** Higher education employers pay into the HERP supplemental benefit fund at an employer contribution rate as established in RCW 28B.10.423 on the salaries paid to employees participating in their HERP.

(2) **Who are the higher education employers?** For the purpose of this section, higher education employers, as defined by chapter 28B.10 RCW includes:

- (a) All state universities;
- (b) All regional universities;
- (c) All state colleges;
- (d) All community and technical colleges;
- (e) The state board for community and technical colleges; and
- (f) Any other higher education entities granted authority for HERP coverage under chapter 28B.10 RCW.

(3) **How are the assets in the HERP supplemental benefit fund invested?** The Washington state investment board (WSIB) is responsible for investing HERP supplemental benefit fund assets. For investment purposes, the assets may be commingled with other trust fund accounts in the commingled trust fund (CTF).

(4) **How are assets in the HERP supplemental benefit fund used?** Assets in the HERP supplemental benefit fund are held in trust for the purpose of funding future higher education retirement plan supplemental benefits. Assets will remain in this fund until the legislature authorizes distribution(s).

(5) **What role does the department of retirement systems (department) have in administering the HERP supplemental benefit fund?** The department will:

- (a) Collect employer HERP contributions from higher education employers;
- (b) Deposit HERP contributions into the HERP supplemental benefit fund;
- (c) Provide buy/sell investment information to WSIB; and
- (d) Account for the fund's assets, including each employer's contributions and the earnings on those contributions.

(6) **What information will higher education employers be responsible for reporting to the department?** Each higher education employer will be responsible for reporting the total HERP salaries paid and the contributions owed on those salaries. HERP salaries include the salaries paid to all employees participating in the employer's higher education retirement plan, regardless of employee eligibility for the supplemental benefit portion of the plan.

(7) **Are HERP salaries reportable as they are earned or as they are paid?** HERP salaries are reportable as they are paid.

(8) **When are HERP reports and payment of HERP contributions due to the department?** Reporting and payments of HERP salaries and contributions should coincide with the employer's payroll periods. HERP reports and contribution payments for a calendar month are due on or before the 15th day of the calendar month following payment of the HERP salaries. Reports and contribution payments are con-

sidered overdue if not received by the close of business on the third business day after the due date.

**Example:** A higher education employer pays \$50,000 in HERP salaries on January 10th. The same employer pays another \$50,000 in HERP salaries on January 25th. The employer must report the HERP salaries paid for both payrolls and make payment of the contributions due on the total combined \$100,000 HERP salaries to the department by February 15th.

**(9) Does the department charge interest on overdue payments of contributions for the HERP supplemental benefit fund?** Yes. The department charges interest on overdue contributions to the HERP supplemental benefit fund at the rate of one percent per month simple interest. Interest is charged for each day the payment is overdue. Assessed interest will appear on the employer's monthly accounts receivable statement from the department.

**(10) Can the department charge employers an administrative expense fee for the HERP supplemental benefit fund?** Yes. RCW 41.50.110 authorizes the department to charge employers an administrative expense fee for expenses related to the administration of the HERP supplemental benefit fund.

### WSR 12-10-085

#### PERMANENT RULES

#### BOARD OF ACCOUNTANCY

[Filed May 2, 2012, 9:50 a.m., effective June 2, 2012]

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

Purpose: To add language to the rule that will allow use of:

(1) The designation "CPA retired" for those CPAs who:  
(a) Have reached sixty years of age and hold an active license in good standing; or

(b) At any age, have held an active license in good standing, not suspended or revoked, to practice public accountancy in any state for a combined period of not less than twenty years.

(2) Designations or titles authorized by the American Institute of Certified Public Accountants.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-058.

Statutory Authority for Adoption: RCW 18.04.350(13).

Adopted under notice filed as WSR 12-07-079 on April 26 [March 20], 2012.

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 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: April 26, 2012.

Richard C. Sweeney  
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

**WAC 4-30-058 Does the board authorize the use of any other titles or designations?** Yes. ~~((The board))~~ RCW 18.04.350(13), Practices not prohibited, authorizes the board to allow the use of ~~((the following))~~ other titles ~~((and))~~ (designations) ~~((provided))~~ if the individual using the title or designation is ~~((so))~~ authorized ~~((to))~~ at the time of use by a nationally recognized entity sanctioning the use of board authorized titles or designations. Accordingly, the board authorizes the use of the following titles ~~((or))~~ and designations:

(1) Designations or titles authorized by the American Institute of Certified Public Accountants (AICPA):

(2) Designations or titles authorized by the Accreditation Council for Accountancy and Taxation located in Alexandria, Virginia, or its successor:

- "Accredited Business Accountant" or "ABA";
- "Accredited Tax Preparer" or "ATP"; and
- "Accredited Tax Advisor" or "ATA."

~~((The board also authorizes the use of the title "Certified Financial Planner" or "CFP" provided the individual is so))~~

(3) Designations or titles authorized ~~((to use the title or designation))~~ by the Certified Financial Planner Board of Standards in Denver, Colorado, or its successor:

- "Certified financial planner" or "CFP."

~~((This authorization))~~ These authorized designations relate ~~((s))~~ to title use only, ~~((is))~~ are not limited to individuals who have held or are holding a license or certificate under the act, and ~~((does))~~ do not authorize these other designated individuals to use the title "certified public accountant" or "CPA ~~((:))~~ ," or "CPA-inactive."

The board further authorizes the use of the designation "CPA retired" in this state by those individuals who, upon notice to the board to retire a license, meet the following criteria:

- Has reached sixty years of age and holds an active license in good standing; or
- At any age, has held an active license in good standing, not suspended or revoked, to practice public accounting in any state for a combined period of not less than twenty years.

## WSR 12-10-094

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed May 2, 2012, 11:10 a.m., effective May 3, 2012]

Effective Date of Rule: May 3, 2012.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SHB 2430 (2010) requires issuing licenses to existing qualified individuals by July 1, 2012. RCW 34.05.380 allows for an earlier adoption date for rules required by state law.

Purpose: Chapter 246-926 WAC implements the new cardiovascular invasive specialist profession created by SHB 2430 (chapter 92, Laws of 2010), now codified in chapter 18.84 RCW. These rules establish enforceable standards of practice, education and examination requirements, and fees.

Citation of Existing Rules Affected by this Order: Amending WAC 246-926-020, 246-926-180, and 246-926-990.

Statutory Authority for Adoption: RCW 18.84.040, 43.70.250.

Adopted under notice filed as WSR 12-01-072 on December 19, 2011.

Changes Other than Editing from Proposed to Adopted Version: The exam name "International Board of Heart Rhythm Examiners," which is the new name of the North American Society of Pacing and Electrophysiology exam, was added to WAC 246-926-410 (2)(c). Also, the certification of registration or certificate and the duplicate registration or certificate fees in WAC 246-926-990(5) were reduced from \$30 to \$15 to make them consistent with other professions' fees.

A final cost-benefit analysis is available by contacting Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4941, fax (360) 236-2901, e-mail susan.gragg@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 3, Repealed 0.

Date Adopted: May 2, 2012.

Gregg Grunenfelder  
Deputy Secretary  
for Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 10-10-043, filed 4/27/10, effective 5/28/10)

**WAC 246-926-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "ARRT" means the American Registry of Radiologic Technologists.

(2) "Cardiovascular invasive specialist" means a person certified under chapter 18.84 RCW to assist in cardiac or vascular catheterization procedures.

(3) "Department" means the department of health.

~~((3))~~ (4) "Direct supervision" means the appropriate licensed practitioner is on the premises and is quickly and easily available.

(a) For a diagnostic, therapeutic, or nuclear medicine radiologic technologist, the appropriate licensed practitioner is a physician licensed under chapter 18.71 or 18.57 RCW.

(b) For a radiologist assistant, the appropriate licensed practitioner is a radiologist.

~~((4))~~ (5) "General supervision" for a radiologist assistant means the procedure is furnished under the supervising radiologist's overall direction and control. The supervising radiologist must be on-call or be available for consultation.

~~((5))~~ (6) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

~~((6))~~ (7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

~~((7))~~ (8) "Personal supervision" ~~((for a radiologist assistant))~~ means the supervising ~~((radiologist))~~ physician must be in the room during the performance of the procedure.

~~((8))~~ (a) For a cardiovascular invasive specialist, the supervising physician is a physician licensed under chapter 18.71 or 18.57 RCW.

(b) For a radiologist assistant, the supervising physician is a radiologist.

(9) "Radiological technologist" means a person certified under chapter 18.84 RCW.

~~((9))~~ (10) "Radiologist" means a licensed physician licensed under chapter 18.71 or 18.57 RCW and certified by the American Board of Radiology or the American Osteopathic Board of Radiology.

~~((10))~~ (11) "Radiologist assistant" means an advanced-level diagnostic radiologic technologist certified under chapter 18.84 RCW.

~~((11))~~ (12) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

~~((12))~~ (13) "Unprofessional conduct" as used in this chapter means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 10-10-043, filed 4/27/10, effective 5/28/10)

**WAC 246-926-180 Parenteral procedures for a diagnostic or therapeutic radiologic technologist~~(\*)~~, or a cardiovascular invasive specialist.** (1) A certified diagnostic or therapeutic radiologic technologist may administer diagnostic and therapeutic agents under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Diagnostic and therapeutic agents may be administered via intra-

venous, intramuscular, or subcutaneous injection. In addition to direct supervision, before the radiologic technologist may administer diagnostic and therapeutic agents, the following guidelines must be met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed;

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including readily available appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facilities must be available to the patient for at least thirty minutes in case of a delayed reaction.

(2) A cardiovascular invasive specialist may administer diagnostic and therapeutic agents during cardiac or vascular catheterization procedures under the personal supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Parenteral administration includes, but is not limited to, procedures involving arteries and veins.

(3) A certified radiologic technologist or cardiovascular invasive specialist may perform venipuncture under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW.

#### NEW SECTION

**WAC 246-926-400 Cardiovascular invasive specialist scope of practice.** (1) A cardiovascular invasive specialist assists in cardiac or vascular catheterization procedures in the role of either:

(a) A monitoring technologist, who documents every action during a catheterization procedure and monitors the patient's status, reporting any irregularities to the surgical team;

(b) A circulating technologist, who provides assistance to the surgical team from outside the sterile field; or

(c) A sterile/scrub technologist, who directly assists the physician during the catheterization procedure.

Except as provided in subsection (8) of this section, no cardiovascular invasive specialist shall perform the tasks of more than one role during any individual procedure. All intraprocedure tasks in any role must be performed under personal supervision.

(2) The preprocedure tasks a cardiovascular invasive specialist may perform in any role include:

(a) Prepare sterile table and necessary supplies;

(b) Verify patient identification;

(c) Verify or facilitate patient consent;

(d) Verify history and physical information to include:

(i) Chief complaint;

(ii) History of present illness;

(iii) Current medications;

(iv) Laboratory results;

(v) Test reports, as necessary, such as X rays and/or electrocardiograms (ECG);

(vi) Past medical history;

(vii) Family and social history; and

(e) Obtain blood samples as allowed under WAC 246-926-180(3).

(3) The intraprocedure and post-procedure tasks a cardiovascular invasive specialist may perform in the role of a monitoring technologist include:

(a) Operate physiologic monitoring and recording equipment;

(b) Capture and input data for procedural calculations;

(c) Monitor, identify, measure, and record information from electrocardiograms (ECG), intracardiac electrograms, and pressure waveforms;

(d) Document each step and action during a procedure; and

(e) Inform the physician and team members of noted abnormalities.

(4) The intraprocedure tasks a cardiovascular invasive specialist may perform in the role of a sterile/scrub technologist include:

(a) Administer local anesthetic as allowed under WAC 246-926-180;

(b) Gain arterial/venous access;

(c) Insert and flush vascular sheath;

(d) Assist with insertion and manipulation of guidewires, catheters, and pacing leads;

(e) Assist with implantation of leads and devices for implantable devices, such as pacemakers or implantable cardioverter-defibrillators (ICDs);

(f) Close implantable device pockets;

(g) Assist in ablation of intracardiac lesions;

(h) Assist with performing intracardiac mapping;

(i) Assist with performing intracardiac lead extraction;

(j) Assist with obtaining invasive hemodynamic data, cardiac outputs, and blood samples;

(k) Inject contrast as allowed under WAC 246-926-180 for visualizing cardiovascular anatomical structures either manually or with the aid of a mechanical contrast device;

(l) Administer medications related to cardiac or vascular catheterization as directed by the physician;

(m) Assist with obtaining tissue samples for biopsy; and

(n) Operate intravascular ultrasound/intracardiac echocardiography (IVUS/ICE), fluoroscopy, and other imaging modalities.

(5) The intraprocedure tasks a cardiovascular invasive specialist may perform in the role of a circulating technologist include:

(a) Maintain sterile field and equipment supply;

(b) Set-up and operate ancillary equipment to include:

(i) Contrast injectors;

(ii) IVUS/ICE;

(iii) Fractional flow reserve/coronary flow reserve (FFR/CFR);

(iv) Atherectomy/thrombectomy devices and consoles;

(v) Intra-aortic balloon pump;

(vi) Percutaneous ventricular assist devices;

(vii) Pacemakers, automated implantable cardioverter defibrillators (AICD), and temporary pacemakers;

(viii) Pacemaker and AICD programmers;

(ix) Ablation devices;

(x) Intracardiac mapping devices;

(xi) Lead extraction devices;

- (xii) Electrophysiologic stimulators;
  - (xiii) Other diagnostic, interventional, and mechanical support devices;
  - (xiv) Activated coagulation time (ACT) and other coagulation studies;
  - (xv) Whole blood oximetry; and
  - (xvi) Arterial blood gas (ABG).
- (6) The post-procedure access site tasks a cardiovascular invasive specialist may perform in the role of either circulating technologist or sterile/scrub technologist include the following:
- (a) Manually remove vascular sheath/catheter;
  - (b) Secure retained sheath/catheter;
  - (c) Use compression devices;
  - (d) Use vascular closure devices; and
  - (e) Instruct patient on care of site.
- (7) The post-procedure patient care tasks a cardiovascular invasive specialist may perform in any role include the following:
- (a) Monitor and assess patient ECG, vital signs, and level of consciousness;
  - (b) Identify, monitor, and compress rebleeds and/or hematomas;
  - (c) Assess distal pulses; and
  - (d) Document patient chart as appropriate.
- (8) On an individual case basis and at the sole discretion of the physician, a cardiovascular invasive specialist may assume the dual role of monitoring and circulating technologist during an individual procedure. Such dual role approval shall be documented in the patient chart.
- (9) Nothing in this chapter shall be interpreted to alter the scope of practice of any other credentialed health profession or to limit the ability of any other credentialed health professional to assist in cardiac or vascular catheterization if such assistance is within the profession's scope of practice.

NEW SECTION

**WAC 246-926-410 Requirements for cardiovascular invasive specialist certification.** (1) Applicants for certification as a cardiovascular invasive specialist must meet the following requirements:

- (a) Graduate from an educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) utilizing the standards and criteria established by the Joint Review Committee on Education in Cardiovascular Technology (JRC-CVT); and
- (b) Obtain a passing score on the national Registered Cardiovascular Invasive Specialist (RCIS) examination administered by Cardiovascular Credentialing International (CCI).

(2) Individuals who have been certified or registered with one of the following national organizations shall be considered to have met the education and training requirements:

- (a) CCI through the RCIS examination;
- (b) CCI through the Registered Cardiac Electrophysiology Specialist (RCES) examination;
- (c) Heart Rhythm Society (HRS) through the International Board of Heart Rhythm Examiners (IBHRE), formerly

the North American Society of Pacing and Electrophysiology (NASPE) examination; or

(d) ARRT through the Cardiac Interventional Radiographer (RTR-CI) post-primary examination, the Vascular Interventional Radiographer (RTR-VI) post-primary examination, or the Cardiovascular Interventional Radiographer (RTR-CV) post-primary examination.

NEW SECTION

**WAC 246-926-420 Alternate certification process—Time limited.** Until July 1, 2012, the department shall issue a cardiovascular invasive specialist certification to applicants who meet the following requirements:

- (1) Hold a current health care credential issued by the department that has been in good standing for at least the last five consecutive years; and
- (2) Document qualifying prior experience. Such qualifying experience must:
  - (a) Be in cardiac or vascular catheterization functions as defined in WAC 246-926-400;
  - (b) Have been obtained in the last five years;
  - (c) Include at least one thousand hours per year; and
  - (d) Be documented on forms prepared by the department and attested to by the catheterization laboratory lead technologist, manager, or director.
- (3) If an individual certified through this section allows his or her certification to expire for more than one year, he or she must then meet the education and examination requirements under WAC 246-926-410 before being issued a new certification.

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

**WAC 246-926-990 Radiologist assistants; diagnostic, therapeutic, and nuclear medicine radiologic technologists; cardiovascular invasive specialists; X-ray technicians—Certification and registration fees and renewal cycle.** (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

<b>Title of Fee</b>	<b>Fee</b>
(2) The following nonrefundable fees will be charged for certified diagnostic, therapeutic, and nuclear medicine radiologic technologists:	
Application	\$150.00
Renewal	105.00
Late renewal penalty	50.00
Expired certificate reissuance	80.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(3) The following nonrefundable fees will be charged for registered X-ray technicians:	
Application	105.00
Renewal	103.00



<b>Title of Fee</b>	<b>Fee</b>
Late renewal penalty	50.00
Expired reissuance	50.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(4) The following nonrefundable fees will be charged for certified radiologist assistants:	
Application	150.00
Renewal	150.00
Late renewal penalty	75.00
Expired reissuance	75.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
<u>(5) The following nonrefundable fees will be charged for cardiovascular invasive specialists:</u>	
<u>Application</u>	<u>150.00</u>
<u>Renewal</u>	<u>105.00</u>
<u>Late renewal penalty</u>	<u>75.00</u>
<u>Expired reissuance</u>	<u>75.00</u>
<u>Certification of registration or certificate</u>	<u>15.00</u>
<u>Duplicate registration or certificate</u>	<u>15.00</u>